IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 83-C-2379

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHELL OIL COMPANY,

Defendants.

NOTICE OF LODGING OF PROPOSED AMENDMENT TO CONSENT DECREE BETWEEN UNITED STATES OF AMERICA AND SHELL OIL COMPANY

EXHIBIT 1

REC'D
10/5/92
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 83-C-2379

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHELL OIL COMPANY,

Defendant.

CONSENT DECREE

The Parties herein, the United States of America and Shell Oil Company, having consented to the entry of this Consent Decree,

NOW THEREFORE, before the taking of any testimony, upon the pleadings, and without the admission or adjudication of issues of fact or law herein, except for the Court's Order entered March 26, 1985, Order on United States Motion for Protective Order dated May 23, 1986, Order dated February 13, 1987, Protective Order No. 1 dated May 1, 1985, Protective Order No. 2 dated October 1, 1985, Protective Order No. 3 dated June 12, 1986, Protective Order No. 4 dated May 6, 1987, a Stipulation of Fact filed November 18, 1985, and the denial of certain defenses of Shell Oil Company, and upon the consent of the Parties hereto, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

1.1 This Court has jurisdiction over the Parties and the subject matter of this action.

II. DEFINITIONS

2.1 "Settlement Agreement" means the document entitled "Settlement Agreement Between the United States and Shell Oil Company Concerning the Rocky Mountain Arsenal," effective February 17, 1989, which is attached as Exhibit A.

2.2 All other terms used herein have the meanings specified in Section III of the Settlement Agreement.

III. INCORPORATION AND MODIFICATION OF SETTLEMENT AGREEMENT

3.1 The Parties intend, by this Consent Decree, to conclude the case of United States of America v. Shell Oil Company, Civil Action No. 83-C-2379 (D. Colo.), on the terms and conditions set forth in the Settlement Agreement. The Settlement Agreement is hereby adopted and incorporated into this Consent Decree by reference, subject to the limitation of scope provisions of Section VII, and subject to the following specific modification:

> Paragraph 4.1 of the Settlement Agreement is modified to read: "As between the United States and Shell, compliance with the terms and conditions of this Settlement Agreement, and the Federal Facility Agreement shall constitute compliance with CERCLA, and all other environmental laws applicable through CERCLA, with respect to the Site. This Settlement Agreement shall resolve all outstanding claims between the United States and Shell with respect to the pending litigation referred to in paragraphs 17.1 and 17.2, except for those indicated in Section XXI."

3.2 If for any reason the Court should decline to approve this Consent Decree in the form presented, the terms of the Settlement Agreement shall remain in full force and effect between the Parties.

IV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

4.1 This Consent Decree, and any modification hereto pursuant to Section V hereof, shall be lodged with the Court for a period of not less than thirty (30) days for public review and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

4.2 If this Consent Decree is substantially modified after its entry by the Court, it shall be resubmitted to the Court for a 30-day period of public review and comment, according to the process set forth in the previous paragraph.

V. MODIFICATION OF THE CONSENT DECREE

5.1 There shall be no modification of this Consent Decree following its entry by the Court without the written approval of all Parties and entry of such modification by the Court. Notwithstanding the preceding sentence, if the United States Supreme Court declares any provision(s) in CERCLA

unconstitutional, or if the United States elects not to appeal such a declaration by a lower Federal court, either Party, without the approval of the other, may petition this Court to modify the Consent Decree in light of any such declaration. Any modification to this Consent Decree shall be subject to public comment pursuant to Section IV.

5.2 The requirements of paragraph 5.1 hereof shall not apply to any revision of the Financial Manual, the Access and Use Agreement attached as Exhibit E to the Settlement Agreement, the utilities contracts attached as Exhibit F to the Settlement Agreement, or the form of Memorandum of Understanding attached as Exhibit G to the Settlement Agreement, all of which may be revised by the respective parties thereto, subject to any applicable requirements therein.

VI. BINDING EFFECT

6.1 This Consent Decree shall apply to and be binding upon the signatory Parties and their successors and assigns, as well as any agencies, officers, directors, agents, employees, servants, and any entities of any sort, including political subdivisions thereof.

6.2 The Parties hereby consent to the entry of this Consent Decree. The consent of the United States is subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

VII. LIMITATION OF SCOPE

7.1 Entry of this Consent Decree is not, and shall not be construed to be, an adjudication of any claim or interest that the State may have, or may raise, in this or any other judicial or administrative proceeding.

7.2 This Consent Decree and the Settlement Agreement do not incorporate the Federal Facility Agreement, by reference or otherwise, except to the extent necessary to provide definition to the terms of the Settlement Agreement. Entry of this Consent Decree is not, and shall not be construed to be, any adjudication by this Court of the lawfulness or enforceability of the Federal Facility Agreement in whole or in part. Entry of this Consent Decree is not, and shall not be construed to be, any adjudication by this Court of whether any Remedial Investigation or Feasibility Study relating to the Site is proper under or in compliance with CERCLA or the NCP.

7.3 The Parties consider the Federal Facility

Agreement to be binding upon each Party individually, and both of them together.

VIII. CONTINUING JURISDICTION

8.1 This Court shall retain jurisdiction of this action for the purpose of enforcing the terms of this Consent Decree and adjudicating any dispute subject to judicial review, as set forth herein, and any dispute with respect to compliance with this Consent Decree.

IX. EFFECTIVE DATE

9.1 This Consent Decree is effective on the date of its entry by the Court.

Entered this 12 day of Feb., 1992.

JUDGE JIM R. CARRIGAN
United States District Court
District of Colorado

UNITED STATES OF AMERICA

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Date

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10/5/92
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE JIM R. CARRIGAN

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the Order signed by Judge Carrigan to:

Casey Shpall, Esq.
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Deputy Clerk

Dated: Feb. 16, 1993

Re: 83-C-2379

EXHIBIT A
TO CONSENT DECREE
CIVIL ACTION
NO. 83-C-2379

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES AND SHELL OIL COMPANY CONCERNING THE ROCKY MOUNTAIN ARSENAL

TABLE OF CONTENTS

SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES AND SHELL OIL COMPANY CONCERNING THE ROCKY MOUNTAIN ARSENAL

The Parties hereto, the United States of America and Shell Oil Company, enter into this Settlement Agreement pursuant to CERCLA Section 122(d)(3), 42 U.S.C. § 9622(d)(3).

I. STATEMENT OF PURPOSE

1.1 On June 7, 1988, the United States and Shell moved for entry of the modified Consent Decree in United States v. Shell Oil Co. To date, the Court has not acted on that motion.

1.2 In order to preserve the significant settlement that the United States and Shell reached in the proposed modified Consent Decree, the United States and Shell have executed this Settlement Agreement and the Federal Facility Agreement. This Settlement Agreement thus provides a mechanism for resolving disputes between the United States and Shell, provides for payment by the Army and Shell of certain costs incurred by other federal agencies at the Arsenal, establishes a process for allocation and payment of costs of Response Actions and residual Natural Resource Damages resulting from releases of hazardous substances at or from the Arsenal, and provides for judicial review in accordance with CERCLA.

1.3 In addition, in order to preserve the utility of the work plans and schedules already adopted for the investigation and remediation of contamination at the Arsenal, the Army, EPA, DOI, ATSDR, and Shell have executed the Federal Facility Agreement. The Federal Facility Agreement provides the process for the planning, selection, design, implementation, operation, and maintenance of Response Actions taken pursuant to CERCLA as the result of the release or threatened release of hazardous substances, pollutants or contaminants at or from the Arsenal, including the public participation process. In accordance with the terms of the Federal Facility Agreement, Response Actions at the Arsenal will meet all applicable requirements of CERCLA and the NCP.

1.4 It is the hope of the United States and Shell that this Settlement Agreement (along with the Federal Facility Agreement) ultimately will be incorporated into, and specifically be made a part of, any Consent Decree that is entered as part of the settlement of United States v. Shell Oil Co., Civil Action No. 83-C-2379. Prior to incorporation of this Settlement Agreement into any Consent Decree, it may be

amended as provided in Section XXII. Upon incorporation of this Settlement Agreement into any Consent Decree, it may be amended only pursuant to the terms of that Consent Decree.

1.5 This Settlement Agreement shall be binding on the United States and Shell irrespective of whether it is incorporated into a Consent Decree and it is judicially enforceable.

II. BINDING EFFECT

2.1 This Settlement Agreement shall apply to and be binding upon the Parties and their successors and assigns, as well as any agencies, officers, directors, agents, employees, servants, and any entries of any sort, including political subdivisions thereof.

III. DEFINITIONS

In this Settlement Agreement, the terms "hazardous substance" and "pollutant or contaminant" shall have the meanings specified in Sections 101(4) and 101(33), respectively, of CERCLA, 42 U.S.C. §§ 9601(14), (33). In addition, the following terms used in this Settlement Agreement are defined as follows:

3.1 "Administrative Record" means the documents designated pursuant to Section XXIII of the RI/FS Process Document.

3.2 "Allocable Costs' means (1) all Response Costs, including Data Management Costs, but excluding all Army-only Response Costs and all Shell-Only Response Costs; (2) all Off-Site Response Costs; (3) all EPA Costs, ATSDR Costs and DOI Costs; (4) all Natural Resource Damage Assessment Costs; (5) all Natural Resource Damages; (6) the salary and benefits, if any, of the Custodian of the JARDF; (7), if the Central Repository is located off the Arsenal, all costs associated with the Central Repository and the JARDF (if the JARDF is also located off the Arsenal), including without limitation costs for office space and utilities, but excluding: (a) all Army-Only Response Costs and Shell-Only Response Costs associated with the Central Repository and the JARDF; (b) all salaries and any benefits of the clerk or clerks of the Central Repository and the JARDF; and (c) all office supplies used by them in the performance of their official duties; and (8) all other costs that the Army and Shell may agree in writing constitute Allocable Costs.

3.3 "Army" means the United States Department of the Army and any successors or assigns thereof, and any agency, office or other subdivision thereof; and includes the officers, members, employees and agents of the Army when acting within the scope of their authority.

3.4 "Army Buildings and Equipment" means the buildings and equipment referred to in Items 1 and 2 of Exhibit C.

3.5 "Army Invention" means any invention assigned to the United States as represented by the Secretary of the Army, that was conceived or reduced to practice by the Army in the course of performance of the Response Action work for the Site.

3.6 "Army-Only Response Actions" means the Response Actions listed as Army-Only Response Actions on Exhibit C hereto.

3.7 "Army-Only Response Costs" means all Response Costs for Army-Only Response Actions.

3.8 "Arsenal" means the United States property known as the Rocky Mountain Arsenal and described more particularly on Exhibit A.

3.9 "ATSDR" means the United States Agency for Toxic Substances and Disease Registry and any successors or assigns thereof and any Region, office or other subdivision thereof; and includes the officers, employees and agents of ATSDR when acting within the scope of their authority.

3.10 "ATSDR Costs" means all Response Costs incurred by ATSDR or its Contractors on or after October 1, 1987, in performing the duties or ATSDR, as set forth in this Settlement Agreement or the Federal Facility Agreement.

3.11 "Basin F Interim Action Costs" means all costs incurred or payments made by Shell pursuant to Parts VII, VIII or X(8) of the Basin F MOU.

3.12 "Basin F MOU" means the "Memorandum of Understanding between the Department of the Army and Shell Oil Company with respect to the Basin F Interim Action," executed by Shell and the Army on September 26 and 27, 1986, respectively (and any amendments or modifications thereof and supplements thereto).

3.13 "Central Repository" means the document repository established pursuant to the Financial Manual.

3.14 "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

3.15 "Collateral Contracts" means the following: (a) Contract for Sale of Utilities Services, No. DAAA05-70-S-0010, original No. DA(S)-05-021-AMC-39(A), as modified; (b) Negotiated Steam, Electrical, Potable Water, Process Water and Compressed Air Service Contract, No. DAAA05-70-C-0008, original No. DA-05-021-401-CML-10,119, as modified; (c) Negotiated Service Contract for Railroad Switching

Services No. DA(S)-05-021-AMC-49(A), as modified; (d) Department of the Army Lease No. DACA45-1-81-6084; (e) Railroad Switching Contract, No. DAAA05-82-D-0002, as modified; (f) Lease Agreement--Government-Owned Personal Property No. DAAA05-71-L-0006, original No. DA-05-021-AMC-43(A); (g) Group V Property Well Contract; (h)Department of the Army Lease No. DA-25-075-ENG-355; (i) Department of the Army Lease No. DA-25-073-ENG-1702; and (j) the Service Contracts.

3.16 "Confidential Information" means all records, reports, or information designated in accordance with Section 104(e)(7)(C) of CERCLA, 42 U.S.C. § 9604(e)(7)(C), or marked or stamped by an Organization or a Contractor with the legend "Confidential Information" that concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; and all other records, reports, or information that an Organization or a Contractor is required by law or contract to maintain confidential.

3.17 "Consent Decree" means any agreement approved and entered by the Court which wholly or partially resolves litigation concerning the Arsenal and which incorporates the terms of this Settlement Agreement and the Federal Facility Agreement.

3.18 "Contractor" means any commercial party not a part of Shell or the United States with which Shell or the United States contracts for the performance of work for which Reimbursable Costs are incurred pursuant to a Task Plan. Unless otherwise indicated, the term also includes a subcontractor retained by a prime Contractor or another subcontractor.

3.19 "Cost Documentation" means all appropriate supporting documentation for costs incurred on or after January 1, 1988, that shows the charges claimed as Reimbursable Costs, the Task Plan pursuant to which the charges were incurred, or evidence that the charges claimed were actually incurred.

3.20 "Court" means the United States District Court for the District of Colorado.

3.21 "Data Management Costs" means costs incurred by the Army or Shell for: the input, storage, and retrieval of information that identifies the presence, extent, and location of contaminants on or in the vicinity of the Site or that relates to Response Costs; the collection, storage, analysis, and reporting of information pertaining to the cleanup at the Site; software developed solely in connection with Response Actions at the Site; and costs incurred for the development of any new data management system implemented by the Army or Shell after the effective date of this Settlement Agreement, provided that a proposal to implement such system shall have been submitted to the other for review and comment.

3.22 "Designated Representative" means the person designated by a Party pursuant to the Financial Manual to carry out the duties set forth in the Financial Manual for a Designated Representative.

3.23 "Dispute Resolution" means the process for resolving disputes set forth in Section X and Section XXX of the Federal Facility Agreement.

3.24 "DOI" means the United States Department of the Interior and any successors and assigns thereof, and any Region, office or other subdivision thereof (including but not limited to the United States Fish and Wildlife Service); and includes the officers, employees and agents of DOI when acting within the scope of their authority.

3.25 "DOI Costs" means all Response Costs incurred by DOI or its Contractors on and after October 1, 1988, in performing the duties of DOI, as set forth in this Settlement Agreement or the Federal Facility Agreement.

3.26 "Emergency Action" means an action conducted by the Army pursuant to Section XXIII of the Federal Facility Agreement.

3.27 "EPA" means the United States Environmental Protection Agency and any successors or assigns thereof, and any Region, office or other subdivision thereof; and includes the officers, employees and agents of EPA when acting within the scope of their authority.

3.28 "EPA Certification" means the certification by EPA of completion of a Final Response Action or a Supplemental Response Action pursuant to paragraphs 34.23 and 34.24 of the Federal Facility Agreement.

3.29 "EPA Costs" means all costs incurred by EPA or its Contractors on or after October 1, 1987, in carrying out its responsibilities in providing technical assistance for any activity in connection with this Settlement Agreement or the Federal Facility Agreement. The term does not include any costs incurred by EPA solely to pursue an enforcement action or to defend against litigation brought by Shell.

3.30 "Federal Facility Agreement" means "The Federal Facility Agreement for the Rocky Mountain Arsenal," effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or supplements thereto).

3.31 "Final Response Action" means any Remedial Action for an Operable Unit, as set forth in the ROD for the Operable Unit.

3.32 "Finalization," with respect to a ROD, means the process by which the ROD is submitted to the Court, together with a certified Administrative Record in support of the ROD, and all changes, if any, required as a result of judicial

review are made. The process of Finalization is complete when either the time for judicial review has passed or judicial review has been completed.

3.33 "Financial Manual" means the document identified in paragraph 7.4 hereof.

3.34 "FRC" means the Final Review Committee, which is established pursuant to Section XVIII of the Federal Facility Agreement.

3.35 "Health Assessment" means an evaluation by ATSDR of data and information on the release of hazardous substances at or from the Site in order to: assess any current or future impact on public health; develop health advisories or other recommendations; and identify studies or actions needed to evaluate, and mitigate or prevent, human health effects.

3.36 "Health Effects Study" means research, investigation, or study performed by ATSDR to evaluate the health effects of hazardous substances released at or from the Site. This term includes, but is not limited to, epidemiological studies, exposure and disease registries, and health surveillance programs.

3.37 "In-House Costs" means all Response Costs incurred by the Army or Shell, except for costs of Contractors.

3.38 "Index" means the Gross National Product Implicit Price Deflator, published by the United States Bureau of Economic Analysis; or any other appropriate index agreed to by the EPA, the Army and Shell.

3.39 "Interest" means interest at the rate specified for investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

3.40 "IRA" means an Interim Response Action identified in Section XXII of the Federal Facility Agreement.

3.41 "Irondale License" means License No. DACA45-3-81-6144, as modified by Amendment No. 1 thereto.

3.42 "Irondale System" means the groundwater treatment system described in the Irondale License.

3.43 "JARDF" means the Joint Administrative Record and Document Facility established pursuant to the Federal Facility Agreement.

3.44 "Lead Agency" means the federal agency that has primary authority and responsibility under CERCLA, the NCP, and Executive Order 12580 for coordinating all Response Actions for an Operable Unit.

3.45 "Lead Party" means the Organization that is designated with responsibility, in accordance with paragraphs 24.1 and 24.4 of the Federal Facility Agreement, for conducting a Response Action, or any part thereof.

3.46 "Lease" means the Lease of the United States Property, Contract No. W-25-075-ENG-7886, dated February 1, 1947, between the United States and Julius Hyman & Co., and all supplemental agreements thereto entered into by the United States and Julius Hyman & Co. or Shell.

3.47 "License" means License No. DACA45-3-86-6002.

3.48 "Natural Resource Damages" means the amount of money to which the United States is entitled as compensation for injury to, destruction of, or loss of natural resources resulting from a release of hazardous substances at or near the Arsenal, determined in accordance with Section XXI and Section XLII of the Federal Facility Agreement.

3.49 "Natural Resource Damage Assessment Costs" means all costs incurred by the United States or Shell pursuant to Section XLII of the Federal Facility Agreement for assessing injury to, destruction of, or loss of natural resources, resulting from a release of hazardous substances at or from the Arsenal.

3.50 "Natural Resource Damage Assessment Plan" means a plan for the assessment of natural resource damages developed in accordance with the requirements and procedures of any applicable regulations promulgated by DOI pursuant to Section 301(c) of CERCLA, 42 U.S.C. § 9659(c), and the requirements and procedures of Section XLII of the Federal Facility Agreement.

3.51 "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan as set forth in 50 Fed. Reg. 47912 (1985) (effective February 18, 1986), and all amendments thereto which are not inconsistent with CERCLA and which are effective and applicable to any activity undertaken pursuant to this Settlement Agreement or the Federal Facility Agreement.

3.52 "Off-Post Area" means the area bounded by 80th Street, the South Platte River, Second Creek and the northerly and northwesterly boundaries of the Arsenal, together with the surface waters of Barr Lake and the surface waters of the O'Brian Canal and the Burlington Ditch from their confluence with Second Creek to Barr Lake. The Off-Post Area is the shaded area shown on Exhibit B.

3.53 "Off-Post Operable Unit" means the Remedial Action for the site necessary to respond to hazardous substances, pollutants or contaminants within (a) the Off-Post Area, but in any event only the area where hazardous substances, pollutants or contaminants originating from the Arsenal are found and which is subject to remedial action by the Army as Lead Agency in accordance with Executive Order 12580, and any

amendments thereto or modifications thereof, and the NCP; and (b) such area immediately adjacent thereto as is necessary for purposes of carrying out all Response Actions resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or from the Arsenal.

3.54 "Off-Post ROD" means the ROD for the Off-Post Operable Unit.

3.55 "On-Post Operable Unit" means the Remedial Action necessary to respond to contamination within the Arsenal.

3.56 "On-Post ROD" means the ROD for the On-Post Operable Unit.

3.57 "Off-Site Response Costs" means all costs incurred by the United States or Shell for any action not inconsistent with the NCP, or by any other person, excluding the State, for any action consistent with the NCP taken to respond to contamination located north of 80th Avenue and outside the boundaries of the Site for which Shell or the United States is judicially determined to be liable as a result of the release of a hazardous substance at or from the Arsenal, excluding all costs of Response Actions taken to respond solely to any release or threat of release of trichloroethene (trichloroethylene) at or from the Arsenal.

3.58 "Operable Unit" means a discrete portion of the Remedial Action for the Site.

3.59 "Organization" means the Army, EPA, Shell, and, subject to the terms of the Federal Facility Agreement, the State; "Organizations" means the Army, EPA, Shell, and, subject to the terms of the Federal Facility Agreement, the State.

3.60 "Party" means the United States or Shell; "Parties" means the United States and Shell.

3.61 "Past Costs" means all Response Costs incurred by the United States or Shell on or before December 31, 1984.

3.62 "Primary Cost Documentation" means all Cost Documentation for costs incurred on or after January 1, 1988, that the Army or Shell is required to file at the Central Repository pursuant to the Financial Manual.

3.63 "Private Employee Record" means any item, collection, or grouping of information about an individual that is maintained by an Organization or any Contractor, including, but not limited to, the individual's education, financial transactions, and criminal or medical history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, a voice print, or a photograph.

3.64 "Product" means one of the primary aspects of an Operable Unit for which a Product report is prepared in accordance with the Federal Facility Agreement. The term includes an On-Going or New Product, as defined in the Federal Facility Agreement.

3.65 "Program Management Costs" means all costs, including but not limited to labor costs, costs of materials and supplies and overhead, incurred for duties performed by the Program Manager's Office for the Army or by the Denver Project Site Team for Shell. The Program Manager's Office consists of the immediate office of the Program Manager, the Resource Management Division, the Remedial Planning Division, the Interim Response Division and the Technical Operations Division (formerly the Program Coordination Division, the Engineering Division and the Program Manager Staff Office) and the successors to any of the foregoing. The Denver Project Site Team consists of the manager of Shell's Denver Site Project, those technical professionals and support staff (excluding the JARDF and Central Repository Clerks) reporting to such manager of Shell's Denver Site Project and the functional representation as designated members of the Technical Management team, including managers from Shell Development Company and the Shell legal organization, and the successors to any of the foregoing. Program Management Costs also include all legal fees and litigation support costs and all auditing expenses, except for auditing expenses borne equally by the Parties pursuant to paragraph 7.9. Litigation support costs include all Contractors' costs incurred in support of a Party's lawyers primarily for purposes of litigation or in anticipation of litigation. Program Management Costs do not include Data Management Costs.

3.66 "Proposal for Other Deliverable" means a concise document that outlines the work plan for, and major elements of, an Other Deliverable not reflected in the Technical Program Plan.

3.67 "Quarterly Statement" means the document prepared quarterly pursuant to the Financial Manual and sent to each Party to invoice the appropriate Party for the net Reimbursable Costs due for the quarter just ended.

3.68 "Reimbursable Costs" means (a) all Allocable Costs; (b) all Shell-Only Response Costs incurred by the Army in accordance with paragraph 7.8; (c) all Army-Only Response Costs incurred by Shell in accordance with paragraph 7.8; (d) all salaries and any benefits of the clerk or clerks of the Central Repository and all office supplies used by them in the performance of their official duties; (e) all State Response Costs, if any; and (f) all other costs that the Army and Shell may agree in writing constitute Reimbursable Costs. The term does not include any stipulated penalties paid pursuant to the Federal Facility Agreement or the costs of any other remedy or sanction imposed for a violation of the Federal Facility Agreement.

3.69 "Remedy" or "Remedial Action" is defined as in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24).

3.70 "Remove" or "Removal" is defined as in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

3.71 "Report of Assessment" means a report of the assessment of natural resource damages, consisting of the preassessment screen determination, the Natural Resource Damage Assessment Plan, and all documentation supporting the determinations required in the injury determination phase, the quantification phase, and the damage determination phase, all in accordance with the requirements and procedures of any applicable regulations promulgated by DOI pursuant to section 301(c) of CERCLA, 42 U.S.C. § 9651(c), and the requirements and procedures of Section XXI and Section XLII of the Federal Facility Agreement.

3.72 "Report of Availability" means a document prepared by the United States pursuant to paragraph 44.8 of the Federal Facility Agreement in connection with any proposal to lease, grant a license, or otherwise provide for the use by any non-Federal party of the Arsenal or any portion thereof.

3.73 "Response" or "Response Action" has the same meaning as "Respond" or "Response" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

3.74 "Response Action Structure" means any building, equipment, or improvement constructed or placed at the Site in connection with a Response Action.

3.75 "Response Costs" means all costs of Response Actions incurred by the United States or by Shell as a result of the release of hazardous substances at or from the Arsenal (except for Program Management Costs and Basin F Interim Action Costs, and any profit that may be made by either Party in performing Response Actions) to the extent that such costs (a) are not inconsistent with the NCP, if incurred prior to January 1, 1988, and (b), are incurred in accordance with the provisions of this Settlement Agreement, and the Federal Facility Agreement, if incurred on January 1, 1988, or thereafter. The term also includes all costs incurred by the Army or Shell in participating in any activities pursuant to the Federal Facility Agreement or this Settlement Agreement (except for Program Management Costs and any profit that may be made by either Party in performing Response Actions), including costs incurred in providing technical assistance or technical support or in reviewing and commenting on such activities conducted by the other Party.

3.76 "RI/FS" means a remedial investigation and feasibility study, as defined in the NCP, performed for an Operable Unit.

3.77 "RMA Committee" means the entity established pursuant to Section XV of the Federal Facility Agreement.

3.78 "RMA Council" means the management body established pursuant to Section XVI of the Federal Facility Agreement.

3.79 "ROD" means the Record of Decision for an Operable Unit or a Supplemental Response Action, but does not include an IRA Decision Document.

3.80 "SAPC" means the Steering and Policy Committee, which is established pursuant to Section XVII of the Federal Facility Agreement.

3.81 "Secondary Cost Documentation" means all Cost Documentation for costs incurred on or after January 1, 1988, that the parties or their prime Contractors are required to retain pursuant to the Financial Manual.

3.82 "Service Contracts" means the following: (a) Negotiated Sewage Service Agreement, No. DAAA05-70-S-0009, original No. DA(S)-05-021-401-CML-10060, as modified; (b) Contract for Sale of Utilities Services, No. DAAA05-87-S-0001; (c) Negotiated Standby Fire Protection Service Contract, No. DAAA05-70-S-0015, as modified; and (d) Contract for Sale of Water, No. DAAA05-70-C-0004, original No. DA-S-05-021-CML-8, as modified.

3.83 "Settlement Agreement" means this document, the executed "Settlement Agreement between the United States and Shell Oil Company concerning the Rocky Mountain Arsenal" effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof and supplements thereto).

3.84 "Shell" means (a) Shell Oil Company and its successors and assigns, (b) the divisions thereof, including Shell Chemical Company, (c) Julius Hyman & Co., and (d) Shell Chemical Corporation; and includes the officers, employees and agents of Shell when acting within the scope of their authority.

3.85 "Shell Buildings and Equipment" means the buildings and equipment referred to in Items 1 and 2 of Exhibit D.

3.86 "Shell Invention" means any invention conceived or reduced to practice by Shell in the course of performance of Response Action work for the Site.

3.87 "Shell-Only Response Actions" means the Response Actions listed as Shell-Only Response Actions on Exhibit D.

3.88 "Shell-Only Response Costs" means all Response Costs for Shell-Only Response Actions.

3.89 "Site" means: (a) the land outlined on the plat attached hereto as Exhibit B, consisting of the Arsenal and the Off-Post Area; and (b) such area immediately adjacent thereto as is necessary for purposes of carrying out all Response Actions resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or from the Arsenal.

3.90 "Stipulated Penalties" means the stipulated civil penalties specified in Section XXIX of the Federal Facility Agreement.

3.91 "State" means the government of the State of Colorado and any successors and assigns thereof, and any department, agency, division, office, county, municipality, or other subdivision thereof; and includes the officers, employees and agents of the State when acting within the scope of their authority.

3.92 "State Claims" means all State Natural Resource Damages and State Response Costs.

3.93 "State Natural Resource Damages" means all damages, if any, that the State may be legally entitled to recover under sections 107(a)(4)(C) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and (f) or other authority, for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release of hazardous substances at or from the Arsenal.

3.94 "State Response Costs" means the costs of Response Actions heretofore or hereafter incurred by the State not inconsistent with the NCP (to the extent that any such costs are legally recoverable by the State). The amount of State Response Costs, if any, shall be determined by judgment or by a settlement signed by the United States, Shell, and the State. The term does not include State Natural Resource Damages or costs of assessing State Natural Resource Damages.

3.95 "Subproduct" means a secondary aspect of an Operable Unit for6which a Subproduct report is prepared in accordance with the RI/FS Process Document and which is used in the preparation of a Product report. The term includes On-Going and New Subproducts, as defined in the Federal Facility Agreement.

3.96 "Supplemental Response Action" means a Response Action selected after finalization of the ROD for the last Operable Unit pursuant to Section XXXIII of the Federal FAcility Agreement. The term does not include either an Emergency Action or modification of a ROD as provided in the Federal Facility Agreement.

3.97 "Task Plan" means (a) the Technical Program Plan for an Other Deliverable or a proposal for an Other Deliverable reviewed by the Organizations; (b) a Technical Plan for a Product or Subproduct; (c) the ROD identifying a Final Response Action or a Supplemental Response Action; (d) an IRA Decision Document for an IRA; (e) an IRA Implementation Document for an IRA; (f) a Design Scope of Work for a Final Response Action or a Supplemental Response Action; (g) a Final Design Document for a Final Response Action or a Supplemental Response Action; and (h) notifications and supporting documentation for an Emergency Action as described in paragraph 23.2 of the Federal Facility Agreement.

3.98 "Technical Program Plan" means the document developed pursuant to Section XX of the Federal Facility Agreement.

3.99 "Transition Costs" means (a) all Allocable Costs incurred by the Army or Shell between January 1, 1985, and December 31, 1987, inclusive, (b) all Allocable Costs incurred by EPA between January 1, 1985, and September 30, 1987, inclusive, (c) all Shell-Only Response Costs incurred between January 1, 1985, and December 31, 1987, inclusive, by the Army at Shell's written request, and (d) all Army-Only Responses Costs incurred between January 1, 1985, and December 31, 1987, inclusive, by Shell at the Army's written request.

3.100 "United States" means the Federal government, including any department, agency, Region, office or subdivision thereof (including but not limited to the Army, ATSDR, the United States Department of Defense, DOI and EPA); and includes the officers, employees and agents of the United States when acting within the scope of their authority.

IV. EFFECT OF COMPLIANCE WITH SETTLEMENT AGREEMENT

4.1 Compliance with the terms and conditions of this Settlement Agreement, and the Federal Facility Agreement shall constitute compliance with CERCLA, and all other environmental laws applicable through CERCLA, as to the Site. Execution of this Settlement Agreement, and the Federal Facility Agreement shall resolve all outstanding claims between the United States and Shell with respect to the pending litigation referred to in paragraphs 17.1 and 17.2, except for those indicated in Section XXI.

V. THE LEASE AND COLLATERAL CONTRACTS

5.1 (a) The Lease, the License, the Irondale License and the Service Contracts shall terminate on the effective date of this Settlement Agreement.

(b) After termination of the Lease and the License, Shell shall have use and occupancy of the buildings and Shell salvage yard as provided in Exhibit E, and access to other areas on the Arsenal, together with ingress thereto and egress therefrom, all as set forth in Exhibit E. After termination of the Irondale License, Shell and the United States shall have the rights and the obligations with respect to the Irondale System as set forth in Exhibit E.

(c) After termination of the Service Contracts, the United States shall provide utilities and services to Shell on the terms and conditions set forth in Exhibits F-1 and F-2. If the United States does not provide such utilities or services, it shall take such actions to provide access or easements as are necessary for Shell, at Shell's sole expense, to obtain the utilities or services from other sources.

5.2 The amount payable by Shell in accordance with paragraph 6.2 includes $3 million, which shall be in full satisfaction of all claims by the United States against Shell under the Lease and Collateral Contracts that accrued through the effective date of this Settlement Agreement and that were or could have been asserted by the United States in its Complaint in United States v. Shell Oil Co., Civil Action No. 83-C-2379, United States District Court for the District of Colorado, and as Crossclaims in State of Colorado v. United States and Shell Oil Co., Civil Action No. 83-C-2386, United States District Court for the District of Colorado, including, but not limited to: compensation for lost, damaged or worn leased property (including leased equipment); any amounts owed by Shell for rent or maintenance expenses; any amounts owed under the Service Contracts as of the effective date of this Settlement Agreement; and any amounts owed by Shell pursuant to paragraphs 3, 8, 9 and 10 of Supplemental Agreement No. 26 to the Lease and paragraph 3 of Supplemental Agreement No. 27 to the Lease. Except as otherwise provided in Section XXI, the provisions hereof resolve and fully satisfy all claims and counterclaims by either Party against the other that have been or could have been asserted in the above cited actions or under the Lease and Collateral Contracts and that have accrued through the effective date of this Settlement Agreement.

5.3 (a) If any Response Action requires that the buildings and equipment at the Arsenal be demolished and removed, Shell shall bear the cost of demolishing and removing Shell Buildings and Equipment, and the Army shall bear the cost of demolishing and removing Army Buildings and Equipment.

(b) The demolition and removal of the buildings and equipment at the Arsenal shall be accomplished as provided in the applicable ROD and resulting Task Plan(s). The Task Plan(s) shall include an appropriate method to allocate costs of demolition and removal between Army Buildings and Equipment and Shell Buildings and Equipment to the extent that both types of buildings and equipment are removed as one activity.

(c) If debris from the demolition and removal of buildings and equipment provided for in paragraph 5.3(b) is to be deposited in any disposal facility or facilities constructed on the Arsenal pursuant to the Final Response Action for the On-Post Operable Unit and if such facility or facilities are not large enough to hold all such debris, the volume of debris deposited in such facility or facilities shall be allocated between the Army and Shell, without regard to whether such debris is suitable for disposal in any such facility, in the same proportion as the volume of each of their debris from the buildings and equipment at the Arsenal bears to the total of such debris. Notwithstanding the preceding sentence, if it is determined that, due to the presence of contaminants resulting solely from the activities of either Shell or the Army, some of the debris is not suitable for disposal in such facility or facilities, and if, as a result of such determination, there is an excess of capacity in such facility or facilities, such capacity may be used by the other Party.

(d) If a disposal facility is not constructed on the Arsenal or such facility or facilities are not large enough to hold all such debris, the debris that cannot be deposited in such facility or facilities on the Arsenal shall be disposed of in a suitable facility or facilities off the Arsenal. All costs of disposal involving a facility or facilities off the Arsenal shall be allocated between the Army and Shell in the same proportion as the volume of each of their debris from the buildings and equipment at the Arsenal bears to the total of such debris, unless the costs of disposal of the debris are significantly impacted by the presence of contaminants resulting solely from the activities of either Party. If the costs of disposal are so impacted, the Task Plan(s) governing the disposal of the debris shall provide an appropriate method to allocate such costs.

VI. RESPONSE COSTS

(i) General Responses Costs Obligations

6.1 (a) The respective obligations of the United States and of Shell to pay Allocable Costs heretofore or hereafter incurred are as follows:

Cumulative Total of Allocable Costs	Share to Be Paid by the United States	Share to be Paid By Shell
First $500,000,000	50%	50%
Greater than $500,000,000 but not more than $700,000,000	65%	35%
Greater than $700,000,000	80%	20%

(b) All payments pursuant to paragraph 6.1(a) shall be due and owing only for costs that have actually been incurred and shall be made in accordance with Section VII. EPA Costs, ATSDR Costs, and DOI Costs shall be deemed to have been actually incurred for purposes of this paragraph when the Army pays EPA, ATSDR, or DOI in accordance with Sections XII, XIII and XIV respectively.

6.2 The United States has already paid its share of the first $52 million of Allocable Costs. Shell shall be deemed to have paid its share of the first $52 million of Allocable Costs upon payment to the United States of the sum of $20 million in accordance with the provisions of Section VII. This sum represents: Shell's share of Response Costs incurred by the United States through December 31, 1984; plus the amount to be paid by Shell to the United States pursuant to paragraph 5.2 above; less the United States' share of Response Costs incurred by Shell through December 31, 1984, and less amounts owed by the United States to Shell pursuant to the Lease and Collateral Contracts. Such payment shall be in full satisfaction of all Shell's and the United States' obligations under the Lease and Collateral Contracts, as provided in

paragraph 5.2, and in full satisfaction of all Response Costs incurred by either the United States or Shell through December 31, 1984.

6.3 The total amount and each Party's share of Transition Costs shall be determined in accordance with paragraph 6.1(a) and the provisions of the Financial Manual. If the amount of Transition Costs incurred by a Party is less than its share of the total Transition Costs incurred, that Party shall pay to the other the amount of such difference in accordance with paragraphs 7.3(b) or (c). Shell may apply all or any portion of its credit for Basin F Interim Action Costs (determined in accordance with paragraph 6.5) against the amount, if any, payable by Shell as the first payment of 1985 and 1986 Transition Costs. The total amount of Transition Costs shall be included in the first allocation tier of the cumulative total of Allocable Costs under paragraph 6.1(a).

6.4 The total amount and each Party's share of Reimbursable Costs incurred on and after January 1, 1988, shall be determined in accordance with paragraph 6.1(a) and the provisions of the Financial Manual. If the amount of Reimbursable Costs incurred by a Party with respect to any calendar quarter is less than its share of the total Reimbursable Costs incurred with respect to that quarter, that Party shall pay to the other the amount of such difference in accordance with paragraph 7.3(d).

6.5 The Basin F Interim Action Costs are not Allocable Costs, are not subject to allocation, and shall not be included in the cumulative total of Allocable Costs under paragraph 6.1(a). Notwithstanding the foregoing, Shell shall be entitled to a credit against the first Transition Costs payment made pursuant to paragraph 7.3(b) equal to 112% of the lesser of (a) the Basin F Interim Action Costs or (b) $5 million. If the amount of the credit for Basin F Interim Action Costs exceeds the amount of the first payment of 1985 and 1986 Transition Costs, Shell shall be entitled to a credit against the amount of costs included on subsequent Quarterly Statements equal to the difference between the amount of the credit for Basin F Interim Action Costs and the amount of the first Transition Costs payment.

(ii) Treatment of Disputed Emergency Action Response Costs

6.6 If the Army agrees, or it is determined by the Army, EPA and Shell members of the SAPC or the Regional Administrator of the EPA (if the Army, EPA, and Shell members fail to reach unanimity) that an action was not properly conducted as an Emergency Action or was conducted solely in response to a release or threat of release of a pollutant or contaminant, the costs of such action shall be Army-Only Response Costs. If the Army agrees, or the decision reached by the Army, EPA and Shell members of the SAPC or the Regional Administrator of the EPA (if the Army, EPA and Shell members fail to reach unanimity) is, that an Emergency Action was not implemented in whole or in part in accordance with the NCP, the costs of that portion of the action so determined to be inconsistent with the NCP shall be Army-Only Response Costs.

(iii) Shell's Obligation to Operate or Maintain Response Action Structures

6.7 Notwithstanding any other provision of this Settlement Agreement, Shell's obligation to operate or maintain a Response Action Structure, and its obligation to monitor the effectiveness of Response Action Structures, shall be contingent on the Army's annual certification that funds will be available to reimburse Shell for the cost of such activities to the extent that Shell will be entitled to such reimbursement pursuant to this section. However, nothing in this paragraph shall be construed to relieve Shell of any Shell obligations under this Settlement Agreement or the Federal Facility Agreement for the designated Shell-Only Response Actions in Exhibit D.

6.8 Unless the United States and Shell otherwise agree in writing: (a) each Response Action Structure constructed or placed on the Arsenal by Shell pursuant to this Section shall become the property of the United States upon acceptance of Shell's work of construction or placement of that Response Action Structure pursuant to the Memorandum of Understanding attached as Exhibit F; and (b) the Irondale System shall become the property of the United States upon finalization of the ROD for the On-Post Operable Unit.

VII. AUDIT AND PAYMENT

7.1 (a) All payments required to be made to the United States under Section VI of this Settlement Agreement shall be made by check payable to the order of The United States Treasurer and transmitted to Director of Centralized Pay Operations at the address specified in the Financial Mutual.

(b) All payments required to be made to Shell by the United States under Section VI shall be made by check payable to the order of Shell Chemical Company and transmitted to the address specified in the Financial Manual.

(c) All payments required to be made to the United States by Shell under Section XLII of the Federal Facility Agreement shall be made by check payable to the order of a payee designated pursuant to paragraph 21.2 and transmitted to the address specified in the Financial Manual.

(d) All Stipulated Penalties shall be made by check payable to the order of Hazardous Substance Response Trust Fund and transmitted to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251
Attn: Collection Officer for Superfund Accounting

A copy of the transmittal shall be sent to the members of the RMA Council.

(e) All payments required to be made to EPA pursuant to Section XII shall be payable to the order of U.S. Environmental Protection Agency and transmitted to:

Cincinnati Financial Management Center
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

(f) All payments required to be made to ATSDR pursuant to Section XIII shall be payable to the order of the United States Public Health Service and transmitted to the address specified in paragraph 13.3.

(g) All payments required to be made to DOI pursuant to Section XIV shall be payable to the order of the United States Fish and Wildlife Service and transmitted to the address specified in paragraph 14.4.

7.2 Except as provided in Section XXIX of the Federal Facility Agreement the United States has not sought to impose civil penalties for the matters covered by this Settlement Agreement. None of the payments made pursuant to Sections VI, VII, VIII, XII, XIII and XIV of this Settlement Agreement shall be considered payment of or in lieu of a fine or penalty of any kind.

7.3 (a) Payment to the United States for Past Costs pursuant to Section VI of this Settlement Agreement shall be due within 30 days of the execution of this Settlement Agreement.

(b) Payment for 1985 and 1986 Transition Costs shall be made in five equal annual installments (without interest), the first of which shall be payable on or before the date 30 days after the date of execution of this Settlement Agreement, with subsequent installments payable on or before June 1 of each year commencing June 1, 1989, or, at the option of the Party owing 1985 and 1986 Transition Costs, in one payment on or before the date 30 days after the date of the execution of this Settlement Agreement.

(c) Payment for 1987 Transition Costs shall be made in four equal annual installments (without interest), payable on or before April 1 of each year, commencing April 1, 1989.

(d) Payment for Reimbursable Costs that are not Past Costs or Transition Costs shall be due 30 days after receipt of the Quarterly Statement identifying those costs.

(e) All payments to EPA by the Army shall be due on the dates provided in paragraphs 12.2 and 12.3.

(f) Payment for Stipulated Penalties shall be due 30 days after receipt of EPA's written request therefor.

(g) All payments to ATSDR by the Army shall be due on the dates provided in paragraph 13.3.

(h) All payments to DOI by the Army shall be due on the dates provided in paragraph 14.3.

(i) Payment for Natural Resource Damages shall be due 30 days after receipt of written demand therefor pursuant to paragraph 21.2.

7.4 Shell and the Army have developed a mutually-acceptable Financial Manual that sets forth the financial, accounting, and auditing procedures binding on the Army and Shell to be followed for Transition Costs, State Response Costs, Response Costs, EPA Costs, ATSDR Costs, DOI Costs, Natural Resource Damage Assessment Costs, and Natural Resource Damages, if any, incurred by Shell or the United States pursuant to this Settlement Agreement.

7.5 The Army and Shell shall establish a Central Repository where Primary Cost Documentation shall be filed as provided in the Financial Manual.

7.6 (a) Shell and its employees, agents, and Contractors shall have access to the Central Repository and the JARDF, together with ingress thereto and egress therefrom, at all reasonable times, including normal business hours.

(b) Shell and the United States shall each have the right to review and audit all of the other Party's Primary Cost Documentation filed at the Central Repository and the other Party's Secondary Cost Documentation for all In-house Costs reflected on a Quarterly Statement for two years after the date the Quarterly Statement reflecting those costs is issued. A Party desiring to review and audit the other's Secondary Cost Documentation for In-House Costs will give the other Party at least 45 days prior written notice of its intent to conduct a review and audit. The Party receiving the notice shall notify the Party desiring to conduct the review and audit in writing within 30 days of receiving the notice whether it wishes to participate in the review and audit. The other Party will make the Secondary Cost Documentation for In-House Costs available to the Party desiring to conduct the review and audit. Except as provided in paragraph 7.9, all reviews and audits shall be at a Party's own expense.

(c) Each Party shall have the right to review and audit its own or the other Party's Contractors' costs for three years after the date the Quarterly Statement reflecting those costs is issued. This right is in no way intended to change or restrict the Parties' rights to review and audit their own Contractors for a longer period of time. It is at all times the sole responsibility of the contracting Party to try to recover inappropriately charged costs from its own Contractors, and the non-contracting Party

will have no right to try to recover costs from the other Party's Contractors. In no event, however, shall any refund be dependent upon the contracting Party's successful recovery from any of its Contractors.

(d) If either of the Parties wishes to review and audit a Contractor's costs, that Party shall notify the other of its intent so that the other Party may, if it so desires, participate in the review and audit. Such notification shall be as far in advance of the date the review and audit is to begin as possible, but in no event less than 45 days. The Party receiving the notice shall notify the Party desiring to conduct the review and audit within 30 days of receiving the notice whether it wishes to participate in the review and audit. If a Party performs a review and audit of a Contractor, it will provide to the other Party a copy of the resulting audit report.

7.7 Interest will be charged from the due date as specified in paragraph 7.3 through the date the check is sent for all Reimbursable Costs not paid in accordance with the provisions of Section VII and for all amounts refunded pursuant to paragraph 7.10.

7.8 The United States shall pay all Army-Only Response Costs and shall not be entitled to any credit or reimbursement therefor. Shell shall pay all Shell-Only Response Costs and shall not be entitled to any credit or reimbursement therefor. However, if, at Shell's written request, the United States performs any Shell-Only Response Action, the United States shall be entitled to reimbursement of all Response Costs incurred by the United States in performing the Shell-Only Response Action; or if, at the Army's written request, Shell performs any Army-Only Response Action, Shell shall be entitled to reimbursement of all Response Costs incurred by Shell in performing the Army-Only Response Action. In no event, however, shall any Shell-Only Response Costs or any Army-Only Response Costs be included in the cumulative total of Allocable Costs under paragraph 6.1(a), regardless of which Party does the work.

7.9 Shell hereby expressly waives any right to bring or to cause to be brought an action under 31 U.S.C. § 3730 against any corporation, business entity or person who is performing or has performed work under a contract with the United States in connection with Response Actions or a Natural Resource Damage Assessment undertaken at or in connection with the Arsenal. In consideration of this waiver, the United States shall pay one-half of Shell's audit costs (in addition to any refund to which Shell may be entitled as a result of the audit) if the amount recovered exceeds the costs of the audit.

7.10 If a Party is due a refund under this Settlement Agreement or the Financial Manual, then within 30 days after it is determined that the refund is due, the other Party shall refund the costs owed to the Party due the refund and pay that Party interest on those costs from the date the costs were originally paid by the Party entitled to the refund. Any adjustment to the applicable allocation tier necessitated by a refund shall be made as provided in the Financial Manual.

7.11 The Army shall establish a fund in which it shall deposit monies received for Response Actions performed pursuant to this Settlement Agreement. The fund shall be used by the Army only to pay for Response Costs which may be incurred by either Party in connection with the Arsenal, including but not limited to Army-Only Response Costs and the costs of a mediator incurred pursuant to the Financial Manual.

7.12 The Army and Shell shall resolve any dispute over costs in accordance with the provisions of the Financial Manual.

7.13 The Army and Shell may amend the Financial Manual as provided therein.

VIII. STATE CLAIMS

8.1 The Army and Shell shall bear any State Response Costs equally, except to the extent that any such costs were incurred by the State solely in connection with either an Army-Only Response Action or a Shell-Only Response Action, in which event the Army or Shell, respectively, shall solely bear those costs.

8.2 All State Natural Resource Damages, if any, shall be allocated between the Army and Shell (a) as determined by the Court after it is determined that State Natural Resource Damages are payable by Shell or the Army or both of them, (b) in any joint settlement among the Army, Shell and the State, or (c) as the Army and Shell may otherwise agree.

8.3 The Army and Shell shall cooperate with each other in the defense of all State Claims, including coordinating legal strategies; coordinating discovery, investigative, and any technical activities; cooperating with each other in all economic analyses of damages; consulting with each other as to the response to discovery requested by the State; consulting with each other prior to filing any motions and briefs in support thereof; coordinating the preparation for trial and the trial of any action brought by the State; and consulting in the negotiation and any settlement of State Claims. All fees, costs, and expenses incurred in connection with the defense of State Claims shall be paid by the Party incurring them, except as the Army and Shell may otherwise agree. Neither the Army nor Shell shall settle with the State as to any State Claims without first giving the other 30 days' prior written notice of the proposed terms of the settlement.

IX. CONTRACTOR INDEMNIFICATION

9.1 Nothing in this Settlement Agreement shall affect the right of the United States to indemnify a response action contractor pursuant to Section 119(c) of CERCLA, 42 U.S.C. § 9619(c).

X. DISPUTE RESOLUTION

10.1 The Army, EPA or Shell may invoke Dispute Resolution with respect to any issue subject to Dispute Resolution pursuant to this Settlement Agreement. For any dispute that is subject to Dispute Resolution pursuant to this Settlement Agreement, the Army, EPA and Shell shall make a good faith effort to resolve the dispute informally at the RMA Committee level. If the dispute cannot be resolved informally at the RMA Committee level, the decision of the Lead Agency shall be implemented unless the Army, EPA or Shell initiates Dispute Resolution pursuant to paragraph 10.2.

10.2 To initiate Dispute Resolution, the Army, EPA or Shell shall advise the RMA Committee members and DOI of its intent to invoke Dispute Resolution and shall give written notice to the RMA Council members and DOI of the dispute. The notice shall include a concise statement of the issue in dispute and an identification of any activities that the Army, EPA or Shell believes are affected by the dispute in such a way that they should not proceed during Dispute Resolution. If there is disagreement over which activities should or should not proceed during Dispute Resolution, that question shall also be subject to Dispute Resolution and shall be the first issue addressed during Dispute Resolution. Upon receipt of such notice, the RMA Council shall use its best efforts to resolve the dispute within the following 14 days. Promptly upon the conclusion of any RMA Council meeting at which a dispute is resolved by unanimous agreement of the voting members, EPA shall prepare and submit to the Army, EPA and Shell for their concurrence a written decision memorandum setting forth the decision and briefly explaining the basis for the decision. The decision memorandum shall be included in the Administrative Record when the Army, EPA and Shell have concurred that the decision memorandum accurately sets forth the decision and the basis for the decision.

10.3 If the RMA Council does not resolve the dispute by unanimous agreement, the dispute shall be elevated to the SAPC for resolution at the close of the RMA Council's 14-day Dispute Resolution period.

10.4 Within 30 days of being notified of a dispute pursuant to paragraph 10.3, the SAPC shall meet and attempt to resolve the dispute. A dispute or policy issue shall be considered resolved by the SAPC only if the Army, EPA and Shell all agree. If at the conclusion of the SAPC's 30-day resolution period the dispute has not been resolved, the position of the EPA Regional Administrator will be implemented,

unless the matter is elevated to the FRC pursuant to paragraph 10.5. Promptly upon the conclusion of any SAPC meeting at which a dispute is resolved (either by the EPA Regional Administrator or through unanimous agreement of the voting members), EPA shall prepare and submit to the Army, EPA and Shell for their concurrence a written decision memorandum setting forth the decision and briefly explaining the basis for the decision. The decision memorandum shall be included in the Administrative Record when the Army, EPA and Shell have concurred that the decision memorandum accurately sets forth the decision and the basis for the decision.

10.5 A dispute that is not resolved by the SAPC shall be elevated to the FRC if the Army, EPA or Shell so notifies the others and the FRC members in writing within 5 days after the close of the SAPC's 30-day resolution period.

10.6 Within 30 days of the elevation to the FRC of a dispute, the FRC shall meet and attempt to resolve the dispute. At the conclusion of the FRC's 30-day resolution period, if the Army and EPA do not agree, then the position of the Administrator of EPA shall be the position of the United States. A matter shall be considered resolved by the FRC only if the United States and Shell concur in the resolution. If the United States and Shell do not concur, the decision of the United States shall be implemented. Promptly upon the conclusion of any FRC meeting at which a dispute is resolved (either by the Administrator of EPA or through unanimous agreement of the voting members), EPA shall prepare and submit to the Army and Shell for their concurrence a written decision memorandum setting forth the decision and briefly explaining the basis for the decision. The decision memorandum shall be included in the Administrative Record when the Army, EPA and Shell have concurred that the decision memorandum accurately sets forth the decision and the basis for the decision. The duties of the Administrator of EPA in Dispute Resolution shall not be delegated.

10.7 If the Army, EPA and Shell fail to resolve any dispute subject to this process, Shell shall have the right to obtain judicial review pursuant to Section XI of this Settlement Agreement of any dispute Shell is empowered to bring to Dispute Resolution pursuant to this Settlement Agreement. In any such judicial proceeding, except for an action to enforce any provision of this Settlement Agreement and for an action pursuant to paragraph 15.9, Shell may only raise issues that had been previously addressed by the FRC, or issues that bear a material and substantial relation to such issues. Shell may only raise an issue referred to in the previous sentence in a judicial challenge to the relevant ROD or IRA Decision Document, with the following exceptions (the timing of which shall be governed by paragraph 11.2): (a) a judicial proceeding that solely addresses Shell's obligation to pay penalties; (b) a judicial proceeding to enforce the Settlement Agreement or a proceeding in which other remedies or sanctions are sought against Shell for violating the Settlement Agreement; or (c) a dispute relating to the design or implementation of a Response Action which arises after the relevant ROD or IRA Decision Document has been finalized. Shell may seek judicial review of any other remedy or sanction sought by any person for

noncompliance with this Settlement Agreement not later than 15 days after the date such remedy or sanction is sought.

10.8 Subject to Section XI, if any Party believes that the other Party has failed to comply with any provision of this Settlement Agreement, it may give written notice thereof to the other Organizations. During the 30-day period following receipt of such notice, the RMA Committee, together with counsel, shall attempt to reach unanimous agreement on any of the matters set forth in the notice. Following such 30-day period, any Organization may seek judicial review to compel compliance with such provisions in accordance with paragraph XI.

10.9 The pendency of any dispute before the RMA Council, SAPC, or FRC shall not affect the responsibility of the Army, EPA or Shell to continue its involvement in the assessment, selection, and implementation of Final Response Actions that are not subject to such dispute or are not materially and substantially related to such dispute.

10.10 Statements made in the course of Dispute Resolution or at a meeting of the RMA Council, the SAPC, or the FRC, and documents prepared solely for use in Dispute Resolution (excluding decision memoranda prepared by EPA, and concurred in by the Army, EPA and Shell upon the conclusion of Dispute Resolution), shall be considered statements made in furtherance of settlement and entitled to the protection afforded such statements and documents by the Federal Rules of Evidence. Persons who participate in Dispute Resolution shall not be subject to deposition or other discovery concerning statements made during, in preparation for, or in connection with Dispute Resolution. The provisions of this paragraph shall be binding upon all Army, EPA or Shell.

XI. JUDICIAL REVIEW

11.1 Except for issues concerning (a) costs disputed pursuant to Section 9 of the Financial Manual, and (b) disputes concerning compliance with this Settlement Agreement, a Party may obtain judicial review only of issues which an Organization previously sought to resolve through Dispute Resolution or issues that bear a substantial and material relationship to such issues.

11.2 Judicial review may be obtained by any Party pursuant to this Settlement Agreement by motion filed in the Court within the following time periods: (a) for issues concerning Shell's obligation to pay penalties or any other remedy or sanction sought against Shell, within the appropriate period set forth in paragraph 10.8; (b) for all other issues that may be submitted to Dispute Resolution and are otherwise subject to judicial review, not later than 15 days after the end of the FRC's 30-day resolution period; (c) For all disputes arising under the Financial Manual, within the time periods specified in the Financial Manual; (d) to enforce compliance with any provision of this Settlement Agreement, not later than 15 days after the end of the 30-day period of informal dispute resolution provided for in paragraph 10.8.

11.3 For the following issues the scope of review shall be de novo, and the standard of review shall be the preponderance of the evidence: (a) the question of whether and to what extent stipulated penalties are due, (b) the question of whether and to what extent Response Costs were incurred pursuant to a Task Plan for which Shell invoked Dispute Resolution and did not prevail but on which Shell prevailed in a judicial challenge and (c) disagreement over costs that were disputed pursuant to Section 9 of the Financial Manual. For all other issues, including issues concerning compliance with this Settlement Agreement, the standard and scope of judicial review shall be as the Court determines to be appropriate.

11.4 Nothing in this Settlement Agreement shall be construed to authorize any person to seek judicial review of any action of the United States or Shell where such review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XII. EPA COSTS

12.1 Subject to the terms and conditions of paragraphs 12.2-12.5, the Army shall provide annual payments to EPA for EPA Costs. Such payment may only be used for the purposes specified in paragraph 3.29 and shall satisfy the obligations of the Army and Shell with respect to all Response Costs incurred by EPA after September 30, 1987 in connection with Final and Supplemental Response Actions, IRAs, and Emergency Actions at the Site and all costs for EPA Certification.

12.2 The Army has paid EPA $550,000 for EPA Costs incurred between October 1, 1987, and September 30, 1988. On October 1, 1988, and on October 1, 1989, the Army shall pay EPA $550,000 for EPA Costs.

12.3 On October 1, 1990, and every year for three years thereafter, the Army shall make annual payments to EPA for EPA Costs in the amount agreed upon by the Organizations pursuant to this paragraph. On or about June 1, 1990, and June 1 every three years thereafter, EPA, the Army and Shell shall confer and attempt to reach consensus on the annual amount to be paid to EPA for EPA Costs over the following three-year period. During such negotiations, EPA's actual expenditures of EPA Costs over the prior three years shall be considered. If EPA, the Army and Shell fail to reach unanimous agreement five days after commencement of any such negotiating sessions, the annual payment for the following three-year period shall be equal to $550,000 plus a percentage of $550,000 equal to the percentage increase in the Index between October 1, 1989, and the first day of the negotiating session.

12.4 The Army shall continue to make annual payments to EPA pursuant to the previous paragraph until EPA Certification that the Final Response Action for the last Operable Unit has been completed in accordance with the requirements of this Settlement Agreement. Following such certification, EPA need not refund any portion of the most recent payment. If at any time following such

certification, EPA believes that additional payments for EPA Costs are necessary and appropriate, EPA shall so notify the Army and Shell in writing. Promptly after receipt of such notice, the Army and Shell shall confer with EPA and attempt to reach unanimous agreement on whether such payments are necessary and appropriate and, if so, the timing and amount of such payments. If EPA, the Army and Shell fail to reach unanimous agreement, any one of them may invoke Dispute Resolution to resolve the question of whether, and to what extent, EPA should be entitled to further payments.

12.5 On October 1, 1988, and every six months thereafter until payments to EPA pursuant to this Section XII come to an end, EPA shall submit to the Army and Shell a concise written statement indicating how payments received by EPA pursuant to this Section were spent during the previous six-month period (except that the first such statement shall indicate how the initial payment was spent from the time it was received by EPA).

12.6 The Army and EPA agree that the execution of this Settlement Agreement by the Army and EPA shall constitute an obligation of all appropriated funds designated by the Army for transfer to EPA pursuant to this Settlement Agreement.

XIII. ATSDR COSTS

13.1 The role of ATSDR in the conduct of an Endangerment Assessment for an Operable Unit, and the responsibilities of the Organizations with respect to ATSDR's involvement in an Endangerment Assessment, are as set forth in Section IX of the Federal Facility Agreement. The respective roles of ATSDR and the Organizations in the conduct of any Health Assessment or Health Effects Study performed with respect to the Site are as set forth in Section XLI of the Federal Facility Agreement.

13.2 Subject to the terms and conditions of this paragraph and the following two paragraphs, the Army shall provide payments to ATSDR to be used to compensate ATSDR for the costs of any Health Assessment or Health Effects Study performed by or on behalf of ATSDR. Each payment to ATSDR pursuant to the following paragraph shall constitute Allocable Costs at the time such payment is made.

13.3 Payments to ATSDR by the Army pursuant to paragraph 13.2 shall be as follows:

(a) On October 1, 1988 and 1989, the Army shall pay ATSDR $40,000 for the fiscal year commencing on that date. Such payments shall be in full satisfaction of amounts owed to ATSDR by the Army or Shell pursuant to Section 107(a)(4)(D) of CERCLA, 42 U.S.C. § 9607(a)(4)(D) for costs incurred by ATSDR in developing one or more Health Assessments for the Site.

(b) If at any time after June 1, 1989, ATSDR believes additional payments beyond October 1, 1989, will be necessary, ATSDR shall so notify the Army,

EPA and Shell in writing. Promptly after receipt of such notice, the Army, EPA and Shell shall confer with ATSDR and attempt to reach unanimous agreement on the timing and amount of such payments. If no such agreement is reached with respect to ATSDR's request for additional payment, ATSDR may take appropriate action to recover costs that it incurs in performing one or more Health Effects Studies.

13.4 All payments made to ATSDR pursuant to paragraph 13.3 shall be made payable to the order of the United States Public Health Service, and delivered to the following address:

ATSDR
Chamblee, Building 27
1500 Clifton Road
Atlanta, Georgia 30333

XIV. DOI COSTS

14.1 The role of DOI in the RI/FS for the On-Post and Off-Post Operable Units, and the responsibilities of the Organizations with respect to DOI's involvement in such RI/FS are as set forth in Section VIII of the Federal Facility Agreement. In addition, DOI may participate in the preparation of the preassessment screens, Natural Resource Damage Assessment Plan, natural resource damage assessment and post assessment phase in accordance with Section XLIIof the Federal Facility Agreement and applicable regulations promulgated under Section 301(c) of CERCLA, 42 U.S.C. § 9651(c).

14.2 Subject to the terms and conditions of this Section, the Army shall provide payments to DOI to compensate DOI for its involvement in the RI/FS for the On-Post and Off-Post Operable Units. Each payment to DOI pursuant to the following paragraph shall constitute Allocable Costs at the time such payment is made.

14.3 Payments to DOI by the Army pursuant to the previous paragraph shall be as follows:

(a) On October 1, 1988 and 1989, the Army shall pay DOI $50,000 for use by DOI in the fiscal year commencing on that date. Such payments shall be made in full satisfaction of any amounts owed to DOI by the Army or Shell pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9706(a)(4)(A).

(b) If at any time after June 1, 1989, DOI believes additional payments beyond October 1, 1989, will be necessary, DOI shall so notify the Army, EPA and Shell in writing. Promptly after receipt of such notice, the Army, EPA and Shell shall confer with DOI and attempt to reach unanimous agreement on the timing and amount of such payments. If no such agreement is reached with respect to DOI's request for additional payment, the Army shall continue to make annual payments of $50,000 to DOI until the Finalization of the On-Post ROD.

14.4 All payments made to DOI pursuant to paragraph 14.3(b) shall be made payable to the order of the United States Fish and Wildlife Service at the following address:

Lake Plaza North Building
134 Union Boulevard
4th Floor
Lakewood, Colorado 80228

XV. LICENSES OF PATENT RIGHTS, TECHNICAL DATA AND COPYRIGHTED INFORMATION AND CONFIDENTIALITY

(i) Patents

15.1 (a) The Army shall have a nonexclusive, nontransferable, irrevocable, paid-up, Government Purpose license to practice any Shell Invention. Subject only to this license and paragraph 15.1(c), Shell shall own and control the entire right, title, and interest to any and all patent rights in the Shell Invention. The Army's license shall extend to any country wherein Shell has title to the Shell Invention.

(b) Shell agrees to disclose to the Army in appropriate detail each such Shell Invention within 6 months after Shell becomes aware that the Shell Invention has been conceived or reduced to practice in connection with the Response Action work for the Site.

(c) If Shell should elect not to pursue title to any United States patent rights covering any such Shell Invention, Shell shall provide the United States an opportunity to obtain title to the patent rights. In such event, Shell shall retain nonexclusive, royalty-free license to practice the Shell Invention, which shall be extendable by Shell to its affiliates. If Shell sells its title to any such patent rights in a Shell Invention and the United States does not purchase such title, Shell shall sell its title subject to the Army's license herein granted.

(d) Shell agrees to provide the United States with all instruments necessary to confirm the Army's rights in any Shell Invention. Subject to the understanding that Shell is not hereby obligated to obtain or maintain patent rights, Shell agrees to take such other reasonable steps as required to protect the interests of the Army in the Shell Invention.

15.2 "Government Purpose" includes but is not limited to the purposes of competitive procurement of goods or services by the Army, but does not include any commercial purpose, nor shall it extend to any government profit-making enterprise.

15.3 (a) Shell shall have a nonexclusive, nontransferable, irrevocable, paid-up, license to practice any Army Invention. Subject only to this license and

paragraph 15.3(c), the United States shall own and control the entire right, title, and interest to any and all patent rights in Army Invention.

(b) The Army agrees to disclose to Shell in appropriate detail each Army Invention within 6 months after the Army becomes aware that the Army Invention has been conceived or reduced to practice in connection with the Response Action work for the Site.

(c) If the United States sells its title to any such patent rights and Shell does not purchase such title, the United States shall sell its title subject to Shell's license herein granted.

(d) The Army agrees to provide Shell with all instruments necessary to confirm Shell's rights in any Army Invention. Subject to the understanding that the Army is not hereby obligated to obtain or maintain patent rights, the Army agrees to take such other reasonable steps as required to protect the interests of Shell in the Army Invention.

(ii) Technical Data

15.4 (a) The Army shall have nonexclusive, nontransferable, irrevocable, paid-up, Government Purpose license to use, duplicate or disclose any technical data (hereinafter "Shell Technical Data") as set forth below that is prepared or developed by Shell in the course of performance of Response Action work for the Site. This license shall include the right to use Shell Technical Data on any other Army design, construction or project. "Shell Technical Data" means any recorded information of a scientific or technical nature, whether in the form of computer software and its documentation, drawings, designs, specifications, notes or otherwise. Shell Technical Data includes:

(i) Data resulting directly from performance of experimental, developmental, or research Response Action work for the Site by Shell;

(ii) Data pertaining to articles, components thereof, processes or technologies resulting from Response Action work for the Site, including correction or changes to data that was originally developed by the Army;

(iii) Form, fit or function data sufficient to describe such articles, components, processes or technologies; and

(iv) Any incidental data necessary to enable the Army to make items or perform processes substantially developed by Shell in performing Response Action work at the Site. The Army shall not have rights in data regarding items or processes that have been previously developed by Shell and which require only minor adjustment, modification or refinement in application to Response Action work

for the Site. In such cases, the Army shall only have rights in the data regarding the adjustment, modification or refinement.

(b) To the extent that it is free of nondisclosure obligations to third parties, Shell agrees, upon written request of the Army, to disclose to the Army in appropriate detail any and all Shell Technical Data which is available to Shell in transferable form.

(c) Subject to the conditions in paragraph 15.10 the Army's right to receive, use, duplicate or disclose Shell Technical Data shall be effective regardless of any claim Shell may make regarding the proprietary or confidential nature thereof.

15.5 (a) Shell shall have nonexclusive nontransferable, irrevocable, paid-up, license to use, duplicate or disclose any technical data assigned to the United States, as represented by the Secretary of the Army (herinafter "Army Technical Data"), as set forth below that is prepared or developed by the Army in the course of performance of Response Action work at the Site. This license shall include the right to use Army Technical Data on any other Shell design, construction or project. "Army Technical Data" means any recorded information of a scientific or technical nature, whether in the form of computer software and its documentation, drawings, design, specifications, notes or otherwise. Technical data includes:

(i) Data resulting directly from performance of experimental, developmental, or research Response Action work for the Site by the Army;

(ii) Data pertaining to articles, components thereof, processes or technologies resulting from Response Action work at the Site, including correction or changes to data that was originally developed by Shell;

(iii) Form, fit, or function data sufficient to describe such articles, components, processes or technologies; and

(iv) Any incidental data necessary to enable Shell to make items or perform processes substantially developed by the Army in performing Response Action work for the Site. Shell shall not have rights in data regarding items or processes that have been previously developed by the Army and which require only minor adjustment, modification or refinement in application to Response Action work for the Site. In such cases Shell shall only have the rights in the data regarding the adjustment, modification or refinement.

(b) To the extent that it is free of nondisclosure obligations to third parties and to the extent that such data would normally be releasable under the Freedom of Information Act, 5 U.S.C. § 553 et seq., the Army agrees, upon written request of Shell, to disclose to Shell in appropriate detail any and all Army Technical Data which is available to the Army in transferable form.

(c) Subject to the conditions in paragraph 15.10, Shell's right to receive, use duplicate or disclose Army Technical Data and other enabling Army Technical Data shall be effective regardless of any claim the Army may make regarding the proprietary or confidential nature thereof.

(iii) Copyrighted Information

15.6 Shell further grants to the Army a nonexclusive, nontransferable, irrevocable, paid-up Government Purpose license under any copyright owned by Shell in any work of authorship prepared or developed by Shell as a result of Response Action work for the Site. This license includes the right for the Army to reproduce the work, to distribute copies, to prepare derivative works thereof, and to have others do so for Government purposes.

(iv) General

15.7 The Army shall not obtain rights in Shell patents, Shell copyrighted information, Shell Technical Data, or other tangible or intangible property (other than enabling data licensed pursuant to paragraph 15.4 in which Shell has a proprietary interest if:

(a) Shell developed or obtained the Shell patents, Shell copyrights, Shell Technical Data or other property through activities wholly unrelated to Response Action work for the Site; and

(b) No portion of the development costs was claimed by Shell under the procedures of the Financial Manual.

15.8 Shell shall not obtain rights in Army patents, copyrighted information, Army Technical Data, or other tangible or intangible property (other than enabling data licensed pursuant to paragraph 15.5) in which the Army has a proprietary interest if:

(a) The Army developed or obtained the Army patents, Army Technical Data or other property through activities wholly unrelated to Response Action work for Site; and

(b) No portion of the development costs was claimed by the Army under the procedures of the Financial Manual.

15.9 Shell or the Army may seek to enforce any rights or obligations provided in this Section by forwarding a written notice of dispute to the other Organization's RMA Committee member. Shell's RMA Committee member and the Army's RMA Committee member shall meet and seek to resolve the matter within 14 days. Failing resolution of the dispute at the RMA Committee level, the matter shall be

elevated to Shell's and the Army's respective RMA Council members who shall meet and seek to resolve the dispute within 14 days of the close of the RMA Committee's 14-day resolution period. Failing resolution of the disagreement at the RMA council level, the matter shall be elevated to Shell's and the Army's respective SAPC members who shall meet, as appropriate, and attempt to promptly resolve the matter in dispute. Failing resolution of the disagreement at the SAPC level within 30 days, either the Army or Shell may seek judicial enforcement of such right or obligation.

(v) Confidential Information

15.10 (a) The United States and Shell, including their respective Designated Representatives and Contractors, and the Central Repository and JARDF clerk or clerks shall treat as highly confidential, and not publish, divulge, disclose, or make known in any manner or to any extent not authorized or required by law, any Confidential Information received by, or made available to, them in connection with any activities performed pursuant to this Settlement Agreement, the Federal Facility Agreement or the Financial Manual.

(b) The Parties, including their respective Designated Representatives and Contractors, and the Central Repository and JARDF clerk or clerks, shall use such Confidential Information only for the purposes of exercising their rights or meeting their obligations under this Settlement Agreement or the Financial Manual.

(c) Nothing herein shall prevent a Party from using Confidential Information of the other Party in connection with Dispute Resolution or judicial review pursuant to Section XI, provided that the Party gives the other Party at least 14 days prior written notice of its intent to use the Confidential Information for such purpose and takes all reasonable steps to limit to the maximum extent practicable the disclosure of such Confidential Information.

(d) No Party shall be required to provide or make available to the other Party any of the following:

(i) Materials, documents, or other information received from or exchanged with prospective bidders, potential government contractors, or any other person submitting bids or proposals, to the extent that the materials, documents, or other information are confidential in accordance with any applicable statutory or regulatory contracting, procurement or acquisition requirements of general applicability within the Army; and

(ii) Private Employee Records; provided, however, that if any Secondary Cost Documentation consists in whole or in part of Private Employee Records, the Party otherwise obligated to make such Secondary Cost Documentation available for purposes of review and audit in accordance with the Financial Manual shall furnish all financial information in the Private Employee Records necessary for normal

audit procedures, together with any appropriate designations for the employee that will enable the auditor to relate the financial information to relevant Cost Documentation but that will not enable the auditor to learn the identity of the employee.

(iii) Any other materials, documents or other information that is prohibited by law from being disclosed or that falls within one or more of the categories listed in paragraphs 21.1(a) and (b) of the Federal Facility Agreement.

(e) The provisions of this paragraph shall not limit (1) any rights either Party may otherwise have under applicable law to obtain or use any Confidential Information, or (2) any remedies either Party may have under applicable law or contract for disclosure or use by the other Party of any Confidential Information.

(f) Each Party shall include in all contracts with its Contractors the provisions required by paragraph 11.B of the Financial Manual.

XVI. PROTECTIVE ORDERS NOS. 1 THROUGH 4

16.1 The terms of Protective Order No. 1 (dated May 1, 1985), Protective Order No. 2 (dated October 1, 1985), Protective Order No. 3 (Dated June 12, 1985) and Protective Order No. 4 (dated May 6, 1987) are incorporated herein by reference and also shall be enforceable by the Parties in accordance with the terms of this Settlement Agreement.

XVII. RELEASE; CONTRIBUTION

17.1 Subject to paragraphs 17.3 and 17.4, upon the effective date of this Settlement Agreement, the United States: (a) releases and forever discharges Shell, its affiliates and the respective directors, officers, employees, agents and contractors of Shell and of its affiliates from all costs, expenses, damages (including without limitation Natural Resource Damages) and liabilities with respect to all claims, demands and causes of action at common law, under CERCLA or otherwise and requests for relief under or in any way relating to (i) the Complaint filed on December 9, 1983, in United States v. Shell Oil Co., Civil Action No. 83-C-2379, pending in the Court, or any of the allegations in the Complaint; or (ii), except insofar as they relate to any State Natural Resource Damages, the Federal Defendants' Answer to Complaint and Crossclaim for Indemnification and Contribution, filed April 25, 1985, in State of Colorado v. United States of America, Civil Action No. 83-C-2386, pending in the Court or any of the allegations in that Answer and Crossclaim; and (b) covenants not to sue Shell, any of its affiliates or any of the respective directors, officers, employees, agents and contractors of Shell and of its affiliates with respect to any claim, cause of action at common law, under CERCLA or otherwise or relief requested under or in any way relating to (i) the Complaint filed on December 9, 1983, in United States v. Shell Oil Co., Civil Action No. 83-C-2379, pending in the Court, or any of the allegations in that Complaint or (ii),

except insofar as they relate to any State Natural Resource Damages, the Federal Defendants' Answer to Complaint and Crossclaim for Indemnification and Contribution, filed April 25, 1985, in State of Colorado v. United States of America, Civil Action No. 83-C-2386, pending in the Court, or any of the allegations in that Answer and Crossclaim. Nothing in this paragraph shall have the effect of releasing Shell from any obligation or requirement to which Shell is subject under this Settlement Agreement or the Federal Facility Agreement. Nothing in the Federal Facility Agreement shall be construed as a release from liability.

17.2 Subject to paragraphs 17.3 and 17.4, upon the effective date of this Settlement Agreement, Shell: (a) releases and forever discharges the United States from all costs, expenses, damages (including without limitation Natural Resources Damages) and liabilities with respect to all claims, demands and causes of action at common law, under CERCLA or otherwise and requests for relief under or in any way relating to (i) the Answer and Counterclaims of Shell Oil Company filed on April 5, 1985, in United States v. Shell Oil Co., Civil Action No. 83-C-2379, pending in the Court or any of the allegations in Shell's Answer and Counterclaims or (ii), except insofar as they relate to any State Natural Resource Damages, the Answer and Crossclaims of Defendants Shell Oil Company and Shell Chemical Company, filed April 25, 1985, in State of Colorado v. United States of America, Civil Action No. 83-C-2386, pending in the Court, or any of the allegations in Shell's Answer and Crossclaims; and covenants not to sue the United States with respect to any claim, cause of action at common law, under CERCLA or otherwise or relief requested under or in any relating to (i) the Answer and Counterclaims of Shell Oil Company filed on April 5, 1985, in United States v. Shell Oil Co., Civil Action No. 83-C-2379, pending in the Court, or any of the allegations in Shell's Answer and Counterclaims; or (ii), except insofar as they relate to State Natural Resource Damages, the Answer and Crossclaims of Defendants Shell Oil Company and Shell Chemical Company, filed April 25, 1985 in State of Colorado v. United States of America, Civil Action No. 83-C-2386, pending in the Court, or any of the allegations in Shell's Answer and Crossclaims. Nothing in this paragraph shall have the effect of releasing the United States from any obligation or requirement to which the United States is subject under this Settlement Agreement or the Federal Facility Agreement.

17.3 Nothing in this Settlement Agreement shall be deemed to constitute (a) a release by the United States of Shell, its affiliates and the respective directors, officers, employees, agents and contractors of Shell and its affiliates from any liability to third parties or (b) a release by Shell of the United States from any liability to third parties.

17.4 Nothing in this Settlement Agreement or the Federal Facility Agreement shall be deemed to release Shell from any rights of contribution the United States may have against Shell with respect to any claims that any third party may have against the United States (including without limitation any State Natural Resource Damages, but excluding State Response Costs) or from any obligations of Shell under this Settlement Agreement, the Federal Facility Agreement or the Financial Manual.

Nothing in this Settlement Agreement shall be deemed to release the United States from any rights of contribution Shell may have against the United States with respect to any claims that any third party may have against Shell (including but without limitation any State Natural Resource Damages, but excluding State Response Costs) or any obligations of the United States under this Settlement Agreement, the Federal Facility Agreement or Financial Manual.

17.5 In any action for contribution, either Party may base its right to contribution in whole or in part upon any provision of the Lease or the Collateral Contracts, notwithstanding their expiration or termination and notwithstanding the provisions of paragraph 5.2. The designation of any Response Actions or Response Costs as "Army-Only" or "Shell-Only" shall not preclude the Army or Shell from seeking contribution from any third party with respect thereto.

XVIII. NOTIFICATION

18.1 Except for communications between counsel, notices pursuant to the Financial Manual (including Quarterly Statements and except for payments pursuant to Sections VI, or VII, all written notices or other written communications contemplated in this Settlement Agreement shall be deemed to have been duly given when personally delivered to the appropriate individuals indicated below or when actually received if sent by telefax, express delivery service with charges prepaid, or the United States Postal Service with postage prepaid to the address and individual indicated below for the Organization intended:

If to the Army:

Program Manager
Office of the Program Manager,
RMA Contamination Cleanup
Aberdeen Proving Ground,
Maryland 21010-5401
Attention: AMXRM-PM

with copies to:

Deputy Program Manager
RMA Contamination Cleanup
Rocky Mountain Arsenal
Building 111
Commerce City, Colorado 80022-2180

Department of the Army
Office of the Judge Advocate General
Environmental Law Division
Attention: DAJA-EL
Washington, D.C. 20310

If to ATSDR:

Agency for Toxic Substances and Disease Registry
c/o Environmental Protection Agency, Region VIII
One Denver Place
999 18th Street
Denver, Colorado 80202-2405
Attention: Michael McGeehan

with a copy to:

Director, Office of Health Assessments
ATSDR
1600 Clifton Road
Atlanta, Georgia 30333
Attention: Mark Bashor

If to DOI:

Regional Director
U.S. Fish and Wildlife Service
Region 6
P.O. Box 25486
Denver, Colorado 80225

If to DOI concerning Natural Resource Damages, a copy should also go to:

United States Department of the Interior
Office of Environmental Project Review
Denver Federal Center, Building 56, Room 1018
Denver, Colorado 80225
Attention: Regional Environmental Officer

If to EPA:

EPA's Coordinator for RMA
(8HWM-SR)
U.S. Environmental Protection Agency
Region VIII
One Denver Place
999 18th Street, Suite 1300
Denver, Colorado 80202-2413

If to Shell:

Shell Denver Site Project
c/o Holme Roberts & Owen
1700 Lincoln, Suite 4100
Denver, Colorado 80203
Attention: Manager of Denver Site Project

with a copy to:

Shell Oil Company
Legal Department
P.O. Box 2463
Houston, Texas 77252
Attention: General Attorney Environmental

If to the State:

Colorado Department of Health
4210 East 11th Avenue
Denver, Colorado 80220
Attention: CDH Coordinator for RMA

with a copy to:

CERCLA Litigation Section
Colorado Department of Law
One Civic Center Plaza
1560 Broadway, Suite 250
Denver, Colorado 80202
Attention: First Assistant Attorney General

18.2 All written notices or communications directed to the Coordinator or representative of the RMA Committee or to the Chairman or members of the RMA Council shall be sent in care of the addresses set forth in paragraph 18.1 for the appropriate Organization, and it shall be the responsibility of the recipient to forward the notice or communication to the appropriate individuals within the Organization.

18.3 By written notice pursuant to paragraph 18.1, any Organization may change the address, telefax number, or individual to which written notices or communications shall thereafter be directed.

XIX. SPECIAL EXEMPTIONS

19.1 Notwithstanding any other provisions of this Settlement Agreement, the United States reserves the right to take any action affecting the Arsenal that is not consistent with this Settlement Agreement, including use of the Arsenal for any purpose upon the occurrence of either of the following events: (a) a determination by the President that such action is of paramount importance, or (b) a determination by the United States Secretary of Defense or by the United States Secretary of the Army that such action is necessary and in the interest of national defense. The costs of any action, including any Response Action, taken by the United States pursuant to or as a result of a determination made in accordance with the previous sentence, shall be borne entirely by the United States.

XX. PUBLIC COMMENT

20.1 On or about February 21, 1989, the United States shall publish in at least one major Denver newspaper of general circulation that this Settlement Agreement is available for a 30-day period of public review and comment.

[PARAGRAPHS 20.2 AND 20.3 ARE RESERVED]

XXI. NATURAL RESOURCE DAMAGES

21.1 Natural Resource Damages shall be assessed as provided in Section XLII of the Federal Facility Agreement.

21.2 After Shell has agreed to the Report of Assessment or has completed Dispute Resolution, if invoked, the lead authorized official shall: (a) present a demand in writing to Shell (with a copy to the Army) for a sum certain equal to Shell's share of the Natural Resource Damages (which demand shall identify the amount of the Army's share of the Natural Resource Damages); (b) designate a payee; and (c) prepare a Restoration Plan. The allocation of Natural Resource Damages shall be made in accordance with paragraph 6.1(a).

21.3 Within 30 days after receipt of the demand letter referred to in paragraph 21.2, the Army and Shell shall deposit into a Federally-administered trust account an amount equal to their respective shares of the Natural Resources Damages, as specified in the demand letter. All funds in the trust account shall be used in accordance with Section 107(f) of CERCLA 42 U.S.C. § 9607(f), solely to restore, rehabilitate or acquire the equivalent of the damaged resources at the Arsenal.

XXII. AMENDMENT

22.1 Unless and until this Settlement Agreement is incorporated into a Consent Decree that has been entered by the Court, this Settlement Agreement may be amended at the request of a Party upon unanimous agreement of the Parties.

22.2 Upon incorporation of this Settlement Agreement into a Consent Decree that has been entered by the Court, this Settlement Agreement may be amended only by modifying the Consent Decree pursuant to the terms of that Decree.

22.3 Notwithstanding the preceding paragraph, if the United States Supreme Court declares any provision(s) in CERCLA unconstitutional, or if the United States elects not to appeal such a declaration by a lower federal court, any Party without approval of the other, may petition the Court to modify this Settlement Agreement in light of such declaration. Any modification to this Settlement Agreement shall be subject to public comment pursuant to Section XX.

XXIII. FUNDING

23.1 Any requirement for the payment or obligation of funds by the United States or any agency thereof, established by the terms of this Settlement Agreement shall be subject to availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. It is the expectation of the Parties that all obligations of the United States under this Settlement Agreement will be fully funded. The United States, or any agency thereof, shall take all necessary steps and make every effort within its authority to assure that timely funding is available to meet all obligations of the United States under this Settlement Agreement. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established for payment or obligation shall be appropriately adjusted. Notwithstanding any such

adjustment of the date established for payment, interest shall continue to accrue from and after the original due date pursuant to paragraph 7.7.

23.2 The Army shall submit an annual report to Congress which shall include, at a minimum: (a) a description of the Army's progress in planning, selecting, and implementing Response Actions at the Arsenal; and (b) the specific cost estimates and budgetary proposals anticipated by the Army over the following three-year period.

23.3 Notwithstanding any other provisions of this Settlement Agreement, Shell's obligation to incur costs pursuant to an agreement with the Lead Agency shall be contingent on the Army's certification that funds will be available to reimburse Shell for the cost of such Resonse Actions to the extent that Shell will be entitled to such reimbursement pursuant to Section VI; except that nothing in this Section shall be construed to relieve Shell of any Shell obligations under this Settlement Agreement or the Federal Facility Agreement for the designated Shell-Only Response Actions in Exhibit D.

XXIV. EFFECTIVE DATE

24.1 This Settlement Agreement is effective following execution by the United States and Shell, on February 17, 1989.

FOR THE UNITED STATES OF AMERICA

By the United States Department of the Army

Lewis D. Walker

LEWIS D. WALKER
Army Deputy for Environment, Safety
and Occupational Health

11/23/89
Date

By the United States Environmental Protection Agency:

J. WINSTON PORTER
Assistant Administrator for Solid
Waste and Emergency Response

11/23/89
Date

By the United States Environmental Protection Agency, Region VIII:

JAMES J. SCHERER
Regional Administrator
Region VIII

2-15-89
Date

By the United States Department of the Interior:

Becky Norton Dunlop

BECKY NORTON DUNLOP
Assistant Secretary for Fish,
Wildlife and Parks
U.S. Department of Interior

Feb 9, 1989
Date

By the United States Department of the Interior:

Galen Buterbaugh 1-24-85

GALEN BUTERBAUGH
Regional Director
Region 6
U.S. Fish and Wildlife Service

Date

By the Agency for Toxic Substances and Disease Registry, United States Department of Health and Human Services:

William F. Allen — 1/20/88
BARRY JOHNSON — Date
Associate Administrator
Agency for Toxic Substances
and Disease Registry
Department of Health and
Human Services

Paula L. Kocher — 1/20/89
PAULA L. KOCHER — Date
Senior Attorney
Office of the General Counsel
Agency for Toxic Substances
and Disease Registry
Department of Health and
Human Services

By the United States Department of Justice:

Myles E. Flint

MYLES E. FLINT
Deputy Assistant Attorney General

Feb. 4, 1989
Date

FOR SHELL OIL COMPANY

R.G. Dillard
R.G. DILLARD
Vice President

2/15/89
Date

A. Edgar Benton
HOLME ROBERTS & OWEN
A. Edgar Benton
Daniel S. Hoffman
Edward J. McGrath
Attorneys for Shell Oil Company
1700 Lincoln, Suite 4100
Denver, Colorado 80203

2/15/89
Date

EXHIBIT A

TO SETTLEMENT AGREEMENT

THE ARSENAL

THE ARSENAL

The Rocky Mountain Arsenal consists of the following described land in Adams County, Colorado:

1. In Township 2 South, Range 66 West of the Sixth Principal Meridian:

All of Sections 19, 20, 29, 30, 31 and 32;

2. In Township 2 South, Range 67 West of the Sixth Principal Meridian:

a. All of Sections 24, 25, 26, 34, 35 and 36; and

b. That portion of Sections 22, 23, 27, 28 and 33 lying Southeasterly of the Southeasterly Right-of-Way line of U.S. Highway No. 6;

3. In Township 3 South, Range 66 West of the Sixth Principal Meridian:

All of Sections 5, 6, 7 and 8;

4. In Township 3 South, Range 67 West of the Sixth Principal Meridian:

a. All of Sections 1, 2, 3, 4 and 11;

b. All of Section 9, excepting therefrom the East 660.00 feet of the West 1260.00 feet of the South 660.00 feet of the SW/4 of Section 9;

c. The East 50 feet, the North 50 feet, and the West 50 feet of Section 10; and

d. All of Section 12.*

---

* The following described tract of land in Section 12, T. 3 S., R. 67 W., 6th P.M. is owned by the United States and operated by the United States Army but was removed from the area officially designated as the Rocky Mountain Arsenal for other purposes in 1982: beginning at a point on the West line of said Section 12 which bears North 00°06'07" West, 155.00 feet from the Southwest corner thereof; thence North 00°06'07" East, 480.00 feet; thence South 89°49'34" East, 900.00 feet; thence South 00°06'07"
Footnote continued on next page.

The above described land contains 17,073.70 acres, more or less.

Footnote continued from previous page.
West, 480.00 feet; thence North 89°49'34" West, 900.00 feet to the Point of Beginning.

EXHIBIT B

TO SETTLEMENT AGREEMENT

THE SITE

EXHIBIT B

THE SITE

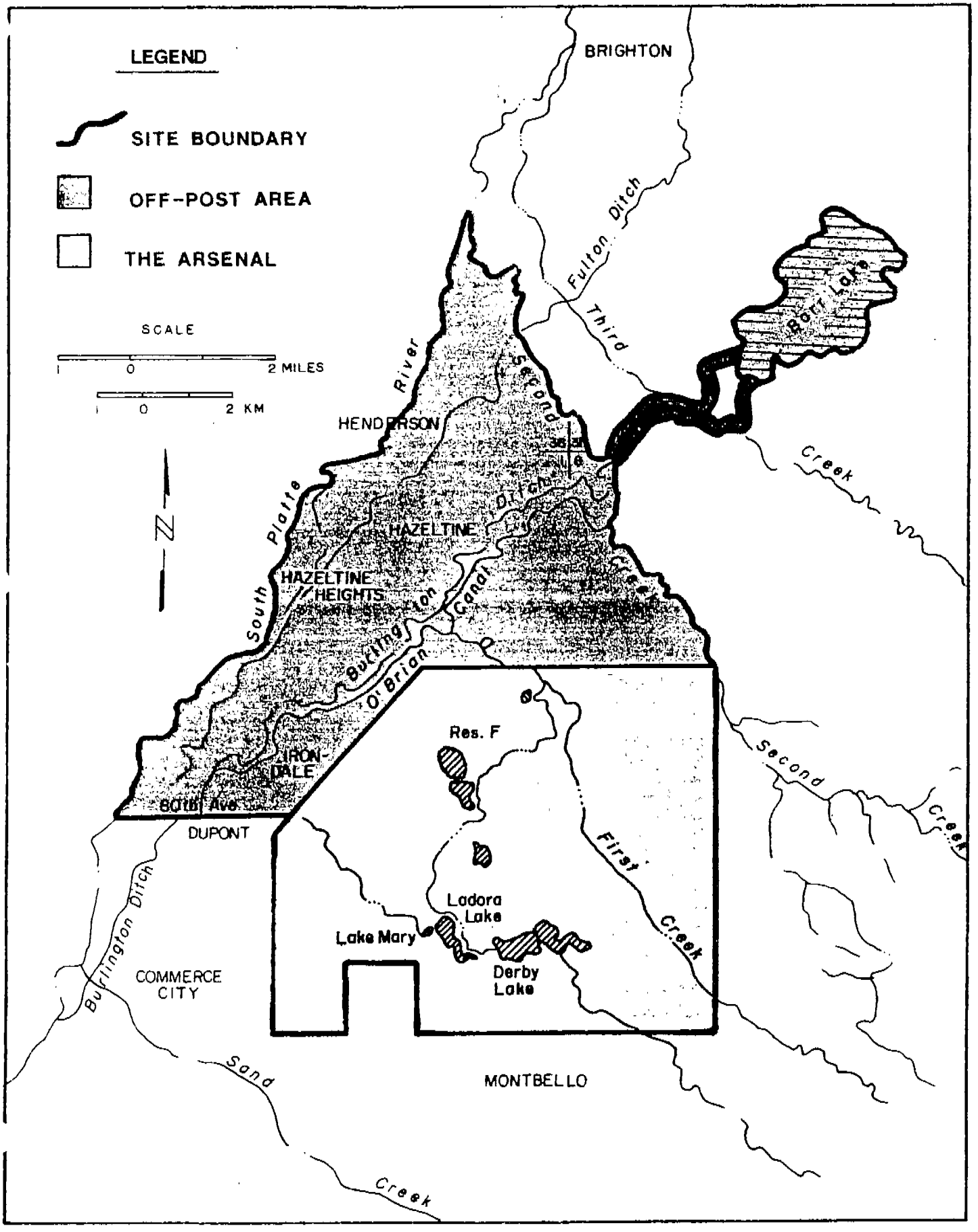

EXHIBIT C
TO SETTLEMENT AGREEMENT

ARMY-ONLY RESPONSE ACTIONS

ARMY-ONLY RESPONSE ACTIONS

1. Demolition, removal and disposal of all buildings and other structures, excluding earthen structures, on the Arsenal not listed in item 1 of the Shell-only Response Actions (Exhibit D).

2. Demolition, removal and disposal of all equipment on the Arsenal not included in item 2 of the Shell-only Response Actions (Exhibit D).

3. Identification, removal and disposal of unexploded ordnance (including all tech escort costs incurred) on the Arsenal.

4. Decontamination, removal, treatment and/or disposal of all soil (excluding any saturated soil which includes a Shell compound) in the following sections of the Arsenal:

5	20	29
7	22	31
8	23	32
9	27	33
19	28	34

5. Decontamination, removal, treatment and/or disposal of all soil (excluding any saturated soil which includes a Shell compound) in:

(a) Section 6, except for the eastern extension of Upper Derby Lake.

(b) Section 11, except for the areas where sludge from Lower Lakes dredging was disposed.

(c) Section 12, except for the area where sludge from Lower Lakes dredging was disposed and the Rod and Gun Club Lake.

(d) Section 24, except for the portion which is associated with the sanitary sewer line.

(e) Section 25, except for the portion of the northeast corner which is associated with the sanitary sewer line.

6. Removal and disposal of the chemical sewer leading from the GB Plant to Basin A.

7. Removal and disposal of the sanitary sewer segment leading from the GB Plant to the point of intersection with the sanitary sewer trunk line leading to sewage treatment plant.

8. Assessment activities associated with 1-7 above.

9. Employment of the Army representative(s) and staff at the Central Repository and JARDF and the clerk or clerks of the JARDF, and provision of their office equipment and supplies.

10. If the Central Repository and JARDF are located on the Arsenal, provision of all facilities and equipment for the Central Repository and JARDF, except (1) for the expense of the clerk(s)' salary, benefits (if any) and office supplies and (2) as provided in item 4 of the Shell-only Response Actions (Exhibit D).

11. Army activities associated with Dispute Resolution or judicial review pursuant to the Settlement Agreement or the Federal Facility Agreement.

12. Army activities associated with the Technical Review Committee pursuant to the Federal Facility Agreement.

13. Army's Program Management activities.

14. Actions taken solely to respond to any release of trichloroethene (trichloroethylene) from the Arsenal, which has migrated off the Arsenal.

15. Emergency Actions taken solely in response to a release or threat of release of a pollutant or contaminant.

16. Any action, including any Response Action, taken by the United States pursuant to a determination made in accordance with Section XXXVIII of the Federal Facility Agreement.

17. The preparation of a Report of Availability, lease, license or other instrument permitting the use of the Arsenal to a third party and the recordation of same as provided in paragraphs 44.8 and 44.10 of the Federal Facility Agreement.

EXHIBIT D

TO SETTLEMENT AGREEMENT

SHELL-ONLY RESPONSE ACTIONS

SHELL-ONLY RESPONSE ACTIONS

1. Demolition, removal and disposal of all buildings and other above-ground, man-made structures, excluding earthen structures on the Arsenal, owned by Shell or Julius Hyman & Co.

(a) The following is a list of these buildings and structures which have not been razed:

Numbered Structures

316A	Change House
459	Buildings Used to Produce Acetylene
459A	Lime slurry Pumphouse
459B	Acetylene Equipment Building
T-464A	55,000 barrel storage tank in South Tank Farm
T-464B	55,000 barrel storage tank in South Tank Farm
471B	Electrical Vault
471C	Refrigeration Building
472A	Maintenance Storage and Lunchroom
502	West Meter Pit
503	East Meter Pit
504	DET Generator
504A	DET Maintenance
505	DET Pretreatment Pumps
506	DET Control Room
507	DET Separator Pump House
508	DET Copper Recovery
509	DET Compressor/Liquifier for Methyl Chloride
510	MIC Refrigeration and Storage Unit
512A	Solvent Storage
514C	Pump House for Raw Materials
514D	Compressor Building
514E	MMA (Raw Material for Azodrin) Dilution
515A	Nudrin and Endrin Tank Building
516B	Electrical Vault
518A	Fire Pumphouse
519	Peroxide Storage
519A	Peroxide Pumphouse
520	Storage of Sample Pumps and pH Probes
521A	Refrigeration Building
521B	Compressor House Field Maintenance Shop
521C	Lunchroom and Field Foreman Office
525A	Refrigeration Building
534A	Shift Shack
534B	Planavin Unit Process Equipment
534C	Electric Vault
534D	Emergency Generator
557	Salvage Yard Shelter, Storage and Repair Shop

561	BCH Process Unit
571	Incinerated Waste Vent Gas
571A	Electric Vault
571B	Heavy and Light Organics Tank Room
724	DET Salt Handling Building
727	Electric, Auto and Carpentry Shop
T-26	Dowtherm Area Tank
T-64	Dowtherm Area Tank
T-1040	Dowtherm Area Tank
V-1001	6,000 gallon storage tank and foundation in area west of building 512
V-1002	6,000 gallon storage tank and foundation in area west of building 512

DET System Tanks

T-1500-1516
T-1566
T-1569
T-1570

Tank Farms

BCH Tank Farm	- East of building 561
514 Tank Farm	- East of building 541E
Planavin Tankage	- North of building 534C
515 Tank Farm	- Between buildings 534 and 510
471 Tank Farm	- South of building 472

Nonnumbered Structures

Dry Ice Liquifier House near building 561
Electrical vault located northwest of building 515
Toilet facilities located adjacent to and east of building 515
Solvent Storage Shed north of building 517 (Lean-to-addition attached to north side of building 517)
Small electrical vault adjacent to and directly south of building 471
Loading platform attached to south entrance of building 516
Gasoline storage tank with a capacity of 2000 gallons and an electrical pump and recording meter in the area west of building 729
Flare Tower - northwest of building 571B
Flare Tower - north of Lime Pond, east of building 472A

Hexachlor Plant - only 3 furnaces remain. Rest of plant has been razed.
Small metal building between buildings 241 and 254
Concrete retaining basin - Dowtherm Area south of building 514A

(b) The following is a listing of these buildings which have been razed:

Numbered Structures

316B	Temporary Building for Shell Contractor Storage
424A	Control Room Building and Lab for Aldrin
424B	Aldrin Unit Benzene Dryer Building
424C	Aldrin Filter Building
471A	Dowtherm Vaporizer Building - Heat Transfer to Building 471
526	Filter Building for Various Pesticides
561A	Acetylene Compressor for BCH

Nonnumbered Structures

Fireproof vault adjacent to building 518
Sample Storage Shed near building 433
Pump House, Salt Dryer House and Hex Filter House near building 422
Maintenance Building between buildings 241 and 254

2. Demolition, removal and disposal of all equipment in buildings and other structures listed in 1(a) above and in the Shell Salvage yard and all Army and Shell equipment in buildings which were leased by Shell under the Lease immediately before the effective date of the Settlement Agreement. The following is a listing of such leased buildings:

254, 255, 316, 317, 347, 422, 426, 427, 432, 434, 435, 451, 461, 462A, 463A through C and E-H, 471, 472, 473, 474, 475, 511, 511A, 512, 514, 514A, 515, 516, 517, 521, 523C through G, 525, 528, 529, 531, 532, 533, 534, 729 and 746.

3. Assessment activities associated with 1 and 2 above.

4. Employment of the Shell representative(s) and staff at the Central Repository and JARDF and provision of their office equipment and supplies and telephone services.

5. Shell activities associated with Dispute Resolution or judicial review pursuant to the Settlement Agreement or the Federal Facility Agreement.

6. Shell activities associated with the Technical Review Committee pursuant to the Federal Facility Agreement.

7. Shell's Program Management activities.

EXHIBIT E

TO SETTLEMENT AGREEMENT

ACCESS AND USE AGREEMENT

ACCESS AND USE AGREEMENT

I. DEFINITIONS

This Agreement is between the Department of the Army (the "Army"), on behalf of the United States of America, and Shell Oil Company ("Shell").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1.1 As used in this Agreement, the following terms have the meanings provided herein:

(a) "Army" means the United States Department of the Army and any successors or assigns thereof; and includes the officers, members, employees and agents of the Army when acting within the scope of their authority.

(b) "Arsenal" means the United States property known as the Rocky Mountain Arsenal and described more particularly on Appendix A hereto.

(c) "Basin F MOU" means the "Memorandum of Understanding Between the Department of the Army and Shell Oil Company with respect to Basin F Interim Action" executed by Shell and the Army on September 26 and 27, 1986, respectively (and any amendments or modifications thereof and supplements to).

(d) "Central Repository" means the document repository established pursuant to the Financial Manual.

(e) "Contractor" means any commercial party not a part of Shell or the Army with which Shell or the Army contracts for the performance of work pursuant to a Task Plan. Unless otherwise indicated, the term also includes a subcontractor retained by a prime Contractor or another subcontractor.

(f) "Denver Site Manager" means the Manager of Shell's Denver Site Project and shall include his duly appointed successors and authorized representatives.

(g) "Federal Facility Agreement" means the Federal Facility Agreement for Rocky Mountain Arsenal effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or suppplements thereto).

(h) "Financial Manual" means the document identified in paragraph 7.4 of the Settlement Agreement.

(i) "Irondale System" means the groundwater treatment system described in the Irondale License, No. DACA 45-3-81-6144, as modified by Amendment No. 1 thereto.

(j) "JARDF" means the Joint Administrative Record and Document Facility established pursuant to the Federal Facility Agreement.

(k) "Jurisdictional Officer" shall mean the District Engineer, U.S. Army Corps of Engineers, Omaha District and shall include his or her duly appointed successors and authorized representatives.

(l) "Lease" means the Lease of United States Property, Contract No. W-25-075-ENG-7886, dated February 1, 1947, between the United States and Julius Hyman & Co. and all supplemental agreements thereto entered into by the United States and Julius Hyman & Co. or Shell.

(m) "On-Post Operable Unit" means the remedial action necessary to respond to contamination within the Arsenal.

(n) "On-Post ROD" means the ROD for the On-Post Operable Unit.

(o) "Program Manager" means the U.S. Army Program Manager for Rocky Mountain Arsenal Contamination Cleanup and shall include his duly appointed successors and authorized representatives.

(p) "Response Action" has the same meaning as "Respond" or "Response" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

(q) "Settlement Agreement" means the "Settlement Agreement Between the United States and Shell Oil Company Concerning Rocky Mountain Arsenal" effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or supplements thereto).

(r) "Shell Buildings" means the structures, additions or betterments listed on Appendix B hereto.

(s) "Shell Equipment" means the equipment, machinery, tanks and fixtures, whether owned by the Army or Shell, described in Item 2 of Exhibit D to the Settlement Agreement.

(t) "Structures" means Building 316-A, Building 451, Building 727, Building 729 and the Shell salvage yard east of the southernmost tank farm in Section 1 of the Arsenal, as well as all equipment, machinery, tanks and fixtures therein or thereon, except for the Army-owned equipment in the Shell salvage yard. Structures also includes any necessary replacements for any of the foregoing if Shell's right to any Structure is terminated pursuant to paragraph 4.2.

(u) "Task Plan" means (a) the Technical Program plan for an Other Deliverable or a Proposal for an Other Deliverable reviewed by the Organizations; (b) a Technical Plan for a Product or Subproduct; (c) the ROD identifying a Final Response Action or a Supplemental Response Action; (d) an IRA Decision Document for an IRA; (e) an IRA implementation Document for an IRA; (f) a Design Scope of Work for a Final Response Action or a Supplemental Response Action; (g) a Final Design Document for a Final Response Action or a Supplemental Response Action; and (h) notifications and supporting documentation for an Emergency Action as described in paragraph 23.2 of the Federal Facility Agreement.

II. LEASED PROPERTY, SHELL BUILDINGS, STRUCTURES, AND SHELL EQUIPMENT

2.1 Shell shall leave all leased buildings, equipment and other items owned by the United States in an "as is" condition, except as otherwise provided for herein.

2.2 Shell shall at all times during the relevant terms hereof exercise due diligence to maintain the Structures in a safe and serviceable condition and to protect the Structures against damage or destruction by fire or other causes and to maintain the Shell Buildings and Shell Equipment in Shell Buildings in a safe condition; provided, however, that Shell's obligation to maintain the Shell Buildings or Shell Equipment in Shell Buildings shall be consistent with the standard employed by the Army with respect to its buildings and equipment on the Arsenal; and provided further that, instead of so maintaining the Shell Buildings and Shell Equipment in Shell Buildings, Shell may at its option elect to dismantle or demolish any or all of the Shell Buildings or Shell Equipment in Shell Buildings following prior notice to the Jurisdictional Officer and the Program Manager. Shell shall coordinate any such dismantling or demolition with the Program Manager, and the materials and debris resulting therefrom shall be removed from that location and disposed of pursuant to paragraph 5.3 of the Settlement Agreement.

2.3 At any time prior to the removal of the buildings as provided in paragraph 5.3 of the Settlement Agreement, Shell may remove Shell Equipment owned by Shell from the Arsenal following two weeks' prior written notice to the Jurisdictional Officer and the Program Manager.

III. RIGHT OF ACCESS

3.1 Pursuant to the terms and conditions of this Agreement, the Army authorizes and grants to Shell and its contractors, subcontractors and consultants, and any invitees of these, nonexclusive access to all areas and systems on the Arsenal (except those which the Program Manager informs Shell are restricted for security or safety reasons) to the extent necessary to conduct:

(a) activities pursuant to the Federal Facility Agreement or the Settlement Agreement relating to the RI/FS activities, including activities at the JARDF;

(b) the assessment, design and implementation of Interim Response Actions as provided in the Federal Facility Agreement or the Settlement Agreement;

(c) an Emergency Response Action as provided in the Federal Facility Agreement or the Settlement Agreement;

(d) the assessment, selection, design and implementation of Supplemental Response Actions as provided in the Federal Facility Agreement or the Settlement Agreement;

(e) the assessment, selection, design and implementation of Final Response Actions as provided in the Federal Facility Agreement or the Settlement Agreement;

(f) operation and maintenance activities as provided in the Federal Facility Agreement or the Settlement Agreement; or

(g) activities at the Central Repository as provided in the Financial Manual.

3.2 The nonexclusive access authorized and granted in paragraph 3.1 shall terminate upon mutual agreement of the parties.

IV. STRUCTURES, CENTRAL REPOSITORY AND JARDF

4.1 Pursuant to the terms and conditions of this Agreement, the Army authorizes and grants to Shell and its

Contractors, and any invitees of these, exclusive use and occupancy of the Structures, together with ingress thereto and egress therefrom, on a 24-hour-a-day, seven-days-a-week basis; provided, however, if access is needed other than during normal Arsenal hours, prior arrangements shall be made with the facilities engineer for the Arsenal. The inclusion of any of the Shell Buildings or the Shell Equipment in the definition of the Structures shall not be deemed to affect Shell's ownership of, or other rights to, the Shell Buildings and the Shell Equipment.

4.2 Shell's use of a Structure pursuant to this document shall terminate as required in connection with implementation of a Final Response Action for any operable unit which includes the Structure. If Shell advises the Army in writing that a replacement is needed for such Structure, the Army shall provide, if available, a suitable replacement then existing on the Arsenal. If a suitable replacement is not available, the Army shall provide, upon request by Shell, a tract of land, together with any necessary appurtenances, on which Shell can place a structure or trailer to replace such Structure. Notwithstanding any provision of this document to the contrary, Shell may relinquish its rights under this Agreement to use and occupy any Structure upon 30 days' prior written notice to the Jurisdictional Officer. Upon such termination or relinquishment, Shell shall have no further obligations hereunder with respect to such Structure.

4.3 Pursuant to the terms and conditions of this Agreement and the Financial Manual, the Army authorizes and grants to Shell and its Contractors, and any invitees of these, exclusive use and occupancy of the Shell offices at the Central Repository and non-exclusive use of the joint area at the Central Repository and the JARDF, together with ingress thereto and egress therefrom, on a 24-hour-a-day, seven-days-a-week basis; provided, however, if access is needed other than during normal Arsenal hours, prior arrangements shall be made with the facilities engineer for the Arsenal. The access authorized and granted in this paragraph shall terminate upon mutual agreement of the parties.

V. IRONDALE SYSTEM

5.1 Pursuant to the terms and conditions of this Agreement, the Army authorizes and grants to Shell and its contractors, subcontractors and consultants, and any invitees of these possession of and access to certain land at or near the northwest boundary of the Arsenal for the purpose of operating and maintaining the Irondale System as outlined in red on Part I of Appendix C hereto and as described in Part II of Appendix C.

5.2 (a) Shell shall continue to operate and maintain the Irondale System in accordance with the permit(s) and design documents previously approved by the Army until the On-Post ROD is issued.

(b) After the On-Post ROD is finalized as provided in the Federal Facility Agreement, Shell may operate the Irondale System pursuant to Section XXXV of the Federal Facility Agreement.

(c) The operation and maintenance of the Irondale System shall continue until the United States and Shell determine that such operation and maintenance is no longer necessary as provided in Section XXXV of the Federal Facility Agreement.

VI. GENERAL PROVISIONS

6.1 Nothing in this Agreement shall be construed to modify, waive or affect in any way the rights, obligations and remedies available to the parties under (a) the Settlement Agreement, (b) the Federal Facility Agreement, (c) the Basin F MOU or (d) any other existing CERCLA-related agreement between Shell and the Army.

6.2 During the term of this Agreement, Shell shall maintain such insurance or self-insurance as is required by statute or regulation to cover any claims that may be made as a result of Shell's use of the Structures and the Irondale System pursuant to this Agreement. At a minimum, Shell, at its sole option, shall procure insurance, maintain insurance, or self-insure sufficiently to cover the following:

(a) Workers' compensation and occupational disease insurance in amounts sufficient to satisfy applicable state law;

(b) Employer's liability insurance in the minimum amount of $100,000 per occurrence; and

(c) Comprehensive general liability insurance for bodily injury, death, or loss of or damage to property of third persons in the minimum amount of $100,000 per occurrence.

Upon request, Shell shall promptly provide the Army with an affidavit that it is in compliance with this paragraph and shall, upon request, discuss with the Army the manner in which Shell will fulfill its obligations under this paragraph.

6.3 The exercise of the access, use and occupancy hereby granted shall be under the general supervision and subject to the approval of the Program Manager and subject also to such

regulations, including, but not limited to, the fire and safety requirements of the Arsenal Regulations and AMCR 385-100 and the security requirements of the Arsenal Regulations and AMCR 190-3, except as provided by the approved Task Plans, as may be prescribed by him or her from time to time. The Army shall furnish Shell with a copy of all such regulations on or before the effective date of the Federal Facility Agreement and shall furnish Shell with copies of changes to such regulations at the same time such changes are furnished to Army personnel or contractors on the Arsenal.

6.4 Except when damage or loss results directly from activities authorized by or taken pursuant to a Task Plan, any property of the United States or Shell damaged or destroyed by the other in connection with the exercise of the privileges herein granted shall be promptly repaired or replaced by the party responsible for the damage or destruction to the satisfaction of the party owning such property. The obligations of the United States to repair or replace Shell property shall be limited by and consistent with the provisions of statutes authorizing claims against the United States and implementing regulations. The obligations of Shell to repair or replace United States property shall be limited by any defenses Shell may have with respect to any such claim. If either party is of the opinion that such repair or replacement is not appropriate, it shall so notify the other, together with a proposed alternative. If the Program Manager and the Denver Site Manager cannot agree within 30 days, the party initiating the discussions may cause the matter to be submitted to dispute resolution pursuant to Section X of the Settlement Agreement.

6.5 The United States shall not be responsible for, and Shell shall hold the United States harmless from, any damages to property, injuries to persons (including illness, disease or death) that may arise from or be incident to Shell's exercise of the privileges herein granted to Shell, except as authorized by law.

6.6 Except as authorized by a Task Plan or otherwise, Shell and its Contractors shall not, as a consequence of activities after the effective date of this Agreement, release or discharge air emissions, waste, effluent, hazardous substances or contaminants in such a manner that the release or discharge will unlawfully pollute or contaminate the air, ground (including subsurface strata) or water (including groundwater) or become a public nuisance. Shell shall also pay damages, expenses of litigation and fines and penalties imposed by operation of law upon the United States that are related to or caused by any such nonauthorized release or discharge.

6.7 This right of access, use and occupancy is effective only insofar as the rights of the United States in the property involved are concerned, and Shell shall obtain such permission as may be necessary on account of any other existing rights.

6.8 Shell shall not discriminate against nor exclude from participation in its operations hereunder any person(s) on the basis of race, color, religion, national origin, sex, age, or handicap. Shell shall furnish as a part of this contract an assurance (Appendix D), that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241) as amended (42 U.S.C. 2000d) and Department of Defense Directive 5500.00 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, the Rehabilitation Act of 1973, as amended 929 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6102).

6.9 Notwithstanding any provisions of the Settlement Agreement, the Federal Facility Agreement or this Agreement, the Army reserves the right to take action affecting the Arsenal that is not consistent with the Consent Decree, including the use of the Arsenal for any purpose, upon the occurrence of either of the following events: (a) a determination by the President that such action is of paramount importance, or (b) a determination by the United States Secretary of Defense or by the United States Secretary of the Army that such action is necessary and in the interest of national defense. The costs of any action, including any Response Action, taken by the United States pursuant to or as a result of a determination made in accordance with the previous sentence, shall be borne entirely by the United States.

6.10 Shell shall report pesticide usage to the installation pest management coordinator not later than two working days before the pesticide is used. Only EPA-approved pesticides may be applied.

6.11 It is understood and agreed that Shell's rights with respect to the access, use and occupancy granted to Shell herein are without any representation or warranty whatsoever by the Army.

6.12 The right is hereby reserved to the Army and its Contractors to enter Shell Buildings, the Structures and the Irondale Facility for purposes of inspection, including inspection of Shell Equipment and investigations pursuant to CERCLA, during normal working hours after reasonable notice. Notwithstanding the foregoing, the Army reserves the right for the Army and its Contractors to enter Shell Buildings, the Structures and the Shell offices at the Central Repository at any

time in the event of an emergency, as reasonably determined by the Jurisdictional Officer or the Program Manager.

6.13 It shall be Shell's responsibility to pay to the proper authority, when and as the same become legally due and payable, all property taxes, assessments and similar charges that at any time during the term of this Agreement may be assessed or imposed upon the United States or Shell with respect to or upon the Structures, the Shell Buildings or the Shell-owned Shell Equipment.

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of the United States Department of the Army.

Date: 1/23/89 Lewis D. Walker

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of Shell Oil Company.

Date: _____ _____

time in the event of an emergency, as reasonably determined by the Jurisdictional Officer or the Program Manager.

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IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of the United States Department of the Army.

Date:_____ _____

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of Shell Oil Company.

Date: 2/15/89 _____

APPENDIX A

TO ACCESS AND USE AGREEMENT

THE ARSENAL

THE ARSENAL

The Rocky Mountain Arsenal consists of the following described land in Adams County, Colorado:

1. In Township 2 South, Range 66 West of the Sixth Principal Meridian:

All of Sections 19, 20, 29, 30, 31 and 32;

2. In Township 2 South, Range 67 West of the Sixth Principal Meridian:

a. All of Sections 24, 25, 26, 34, 35 and 36; and

b. That portion of Sections 22, 23, 27, 28 and 33 lying Southeasterly of the Southeasterly Right-of-Way line of U.S. Highway No. 6;

3. In Township 3 South, Range 66 West of the Sixth Principal Meridian:

All of Sections 5, 6, 7 and 8;

4. In Township 3 South, Range 67 West of the Sixth Principal Meridian:

a. All of Sections 1, 2, 3, 4 and 11;

b. All of Section 9, excepting therefrom the East 660.00 feet of the West 1260.00 feet of the South 660.00 feet of the SW/4 of Section 9;

c. The East 50 feet, the North 50 feet, and the West 50 feet of Section 10; and

d. All of Section 12.*

---

* The following described tract of land in Section 12, T. 3 S., R. 67 W., 6th P.M. is owned by the United States and operated by the United States Army but was removed from the area officially designated as the Rocky Mountain Arsenal for other purposes in 1982: beginning at a point on the West line of said Section 12 which bears North 00°06'07" West, 155.00 feet from the Southwest corner thereof; thence North 00°06'07" East, 480.00 feet; thence South 89°49'34" East, 900.00 feet; thence South 00°06'07"
Footnote continued on next page.

The above described land contains 17,073.70 acres, more or less.

Footnote continued from previous page.
West, 480.00 feet; thence North 89°49'34" West, 900.00 feet to the Point of Beginning.

APPENDIX B

TO ACCESS AND USE AGREEMENT

SHELL BUILDINGS

SHELL BUILDINGS

The following is a list of the buildings and structures on the Arsenal which were or are owned by Shell or Julius Hyman & Co. which have not been razed:

Numbered Structures

316A	Change House
459	Buildings Used to Produce Acetylene
459A	Lime slurry Pumphouse
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504A	DET Maintenance
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506	DET Control Room
507	DET Separator Pump House
508	DET Copper Recovery
509	DET Compressor/Liquifier for Methyl Chloride
510	MIC Refrigeration and Storage Unit
512A	Solvent Storage
514C	Pump House for Raw Materials
514D	Compressor Building
514F	MMA (Raw Material for Azodrin) Dilution
515A	Nudrin and Endrin Tank Building
516B	Electrical Vault
518A	Fire Pumphouse
519	Peroxide Storage
519A	Peroxide Pumphouse
520	Storage of Sample Pumps and pH Probes
521A	Refrigeration Building
521B	Compressor House Field Maintenance Shop
521C	Lunchroom and Field Foreman Office
525A	Refrigeration Building
534A	Shift Shack
534B	Planavin Unit Process Equipment
534C	Electric Vault
534D	Emergency Generator
557	Salvage Yard Shelter, Storage and Repair Shop
561	BCH Process Unit
571	Incinerated Waste Vent Gas
571A	Electric Vault

571B	Heavy and Light Organics Tank Room
724	DET Salt Handling Building
727	Electric, Auto and Carpentry Shop
T-26	Dowtherm Area Tank
T-64	Dowtherm Area Tank
T-1040	Dowtherm Area Tank
V-1001	6,000 gallon storage tank and foundation in area west of building 512
V-1002	6,000 gallon storage tank and foundation in area west of building 512

DET System Tanks

T-1500-1516
T-1566
T-1569
T-1570

Tank Farms

BCH Tank Farm	- East of building 561
514 Tank Farm	- East of building 541E
Planavin Tankage	- North of building 534C
515 Tank Farm	- Between buildings 534 and 510
471 Tank Farm	- South of building 472

Nonnumbered Structures

Dry Ice Liquifier House near building 561
Electrical vault located northwest of building 515
Toilet facilities located adjacent to and east of building 515
Solvent Storage Shed north of building 517 (Lean-to-addition attached to north side of building 517)
Small electrical vault adjacent to and directly south of building 471
Loading platform attached to south entrance of building 516
Gasoline storage tank with a capacity of 2000 gallons and an electrical pump and recording meter in the area west of building 729
Flare Tower - northwest of building 571B
Flare Tower - north of Lime Pond, east of building 472A
Hexachlor Plant - only 3 furnaces remain. Rest of plant has been razed.
Small metal building between buildings 241 and 254
Concrete retaining basin - Dowtherm Area south of building 514A

APPENDIX C, PART I

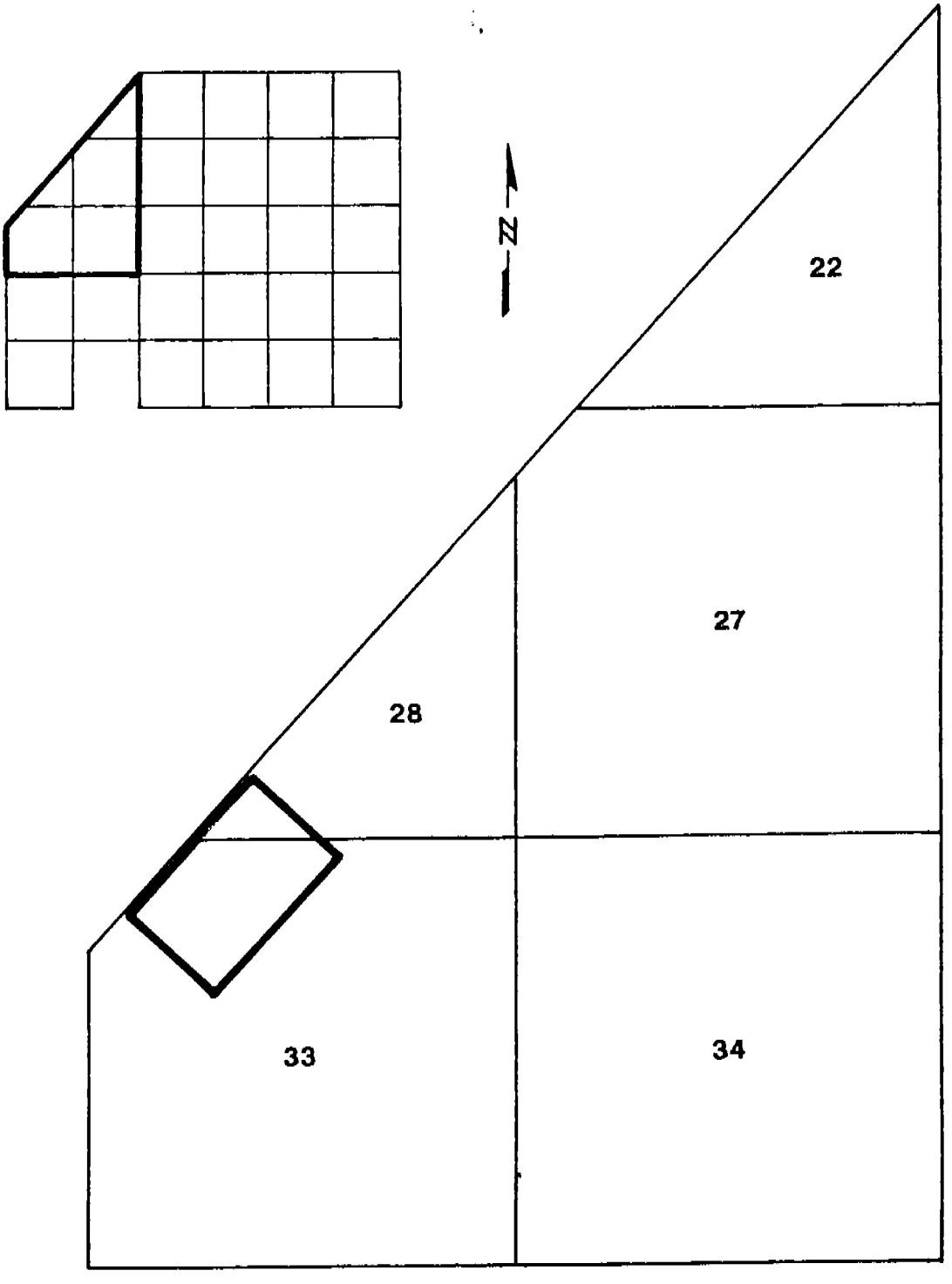
TO ACCESS AND USE AGREEMENT

THE IRONDALE SYSTEM

PLAT

APPENDIX C, PART 1

IRONDALE PLAT



DETAIL OF OUTLINED AREA

APPENDIX C, PART II

TO ACCESS AND USE AGREEMENT

THE IRONDALE SYSTEM

LEGAL DESCRIPTION

THE IRONDALE SYSTEM

LEGAL DESCRIPTION

A parcel of land located in Sections 28 and 33, Township 2 South, Range 67 West of the 6th Principal Meridian, County of Adams, State of Colorado, being more particularly described as follows: (For the purpose of this legal description the south line of said Section 33 bears N89°36'31"E)

Beginning at the southeast corner of said Section 33; thence N47°31'03"W, a distance of 5006.19 feet to a point 10.00 feet northeasterly from the centerline of an existing railroad spur track, which point is the TRUE POINT OF BEGINNING and which point is also known as Corner No. 1; thence N46°15'08"W parallel with and 10.00 feet northeasterly from the centerline of said spur track, a distance of 1453.60 feet to a point on the southeasterly right of way line of Colorado State Highway No. 2, which point is also known as Corner No. 2; thence N41°22'46"E along said southeasterly right of way line, a distance of 2137.82 feet to a point which is know as Corner No. 3; thence S48°42'15"E, a distance of 1448.52 feet to a point which is known as Corner No. 4; thence S41°16'46"W, a distance of 2200.00 feet, more or less, to the TRUE POINT OF BEGINNING. Containing 3,145,807.32 square feet, more or less, or 72.2178 acres, more or less.

	COORDINATES	
CORNER NO.	NORTH	EAST
1	183901.73	2169336.16
2	184906.88	2168286.10
3	186510.98	2169699.28
4	185555.04	2170787.57

APPENDIX D

TO ACCESS AND USE AGREEMENT

ASSURANCE REGARDING NONDISCRIMINATION

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND SUBSEQUENT ACTS

Shell Oil Company
(Name of Recipient)

P. O. Box 2463, One Shell Plaza
(Address)

Houston, Texas 77252
(City or County) (State and ZIP Code)

(hereinafter called "Applicant-Recipient") HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964, P. L. 88-352 (42 U.S.C. 2000d), and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300, issued as Department of Defense Directive 5500.11, December 28, 1964, as amended) issued pursuant to that title; the Age Discrimination Act of 1975 (42 U.S.C. 6102); Section 504 of P.L. 93-112, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); Section 111 of P.L. 93-516 (29 U.S.C. 706, 780, 790); and Section 119 of P.L. 95-602 (sec 794, Note 29, U.S.C.), to the end that, in accordance with Title VI of that Act, the Directive, the Age Discrimination Act and the Rehabilitation Act, no person in the United States shall, on the ground of race, color, age, sex, religion, handicap, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from the Department of the Army, and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

UAC8802603

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by the Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant-Recipient for the period during which it retains ownership or possession of the property, whichever is longer. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by the Department of the Army.

DA representatives will be allowed to visit recipient facilities to ensure that there are no barriers to impede the handicapped's accessibility in either programs or activities. THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangement for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this

assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant-Recipient.

January 26, 1988	Shell Oil Company
(Date)	(Applicant or Recipient)
R. G. Dillard, Vice President	R G Dillard
("By" name, title, and signature of authorized official)	

DATA REQUIRED BY THE PRIVACY ACT OF 1974

1. AUTHORITY

Title VI of the Civil Rights Act of 1964 (42 USC 2000d-1; 78 Stat. 252); Age Discrimination Act of 1975 (42 USC 6102); Rehabilitation Act of 1973, as amended (29 USC 794)

2. PRINCIPAL PURPOSE(S)

To assure that every application of Federal financial assistance to carry out a program or to provide a facility, as authorized under laws administered by any component of the Department of Defense, shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the applications, contain or be accompanied by an assurance that the program will be conducted or the facility operated in such a manner that no person in the United States shall, on the ground of race, color, age, sex, religion, handicap or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any such program or activity.

3. ROUTINE USES

Information secured from completed MRO Form 1277 is used in determining whether or not the recipients of nominal or no consideration grants are in continuing compliance with the requirements or Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and the Rehabilitation Act of 1973. A register of compliance is maintained from reports submitted and checked by field inspectors.

4. MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION

If there appears to be a failure or a threatened failure to provide the necessary information, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States or any assurance or other contractual undertaking, and (2) any applicable under State or local law.

EXHIBIT F-1

TO SETTLEMENT AGREEMENT

CONTRACT FOR SALE OF UTILITIES SERVICES

CONTRACT FOR SALE OF UTILITIES SERVICES

For use of this form, see AR 430-41; the proponent agency is the Office of the Chief of Engineers.

Contract No. TBD
Estimated Annual
Cost to Purchaser $ N/A

THIS CONTRACT, entered into as of the 1st day of February, 1988 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the Army Deputy for Environment, Safety and Occupational Health and Shell Oil Company, P.O. Box 2463, Houston, TX 77252-2463 (hereinafter called the "Purchaser").

WITNESSETH THAT:

WHEREAS, the Government has established a Federal Reservation near Commerce City, CO known as Rocky Mountain Arsenal (RMA), and owns, maintains and operates facilities for the furnishing of electricity, natural gas, potable/processed water, sewage, and steam service and

WHEREAS, the Purchaser desires to obtain electricity, potable water, sewage, and steam service from the Government, as required for operations on Rocky Mountain Arsenal, and which cannot be readily obtained from any other source; and

WHEREAS, construction of facilities in connection with the sale of such service to the Purchaser will not hinder the construction of public or private utility service facilities of a like nature;

WHEREAS, pursuant to 10 U.S.C. 2481 the Government is authorized to sell utility service required by the Purchaser;

NOW, THEREFORE, in consideration of the premises and the mutual agreement herein contained, to be performed by the parties hereto respectively, it is agreed as follows:

GENERAL PROVISIONS

1. SERVICES TO BE RENDERED. From and after the effective date of this contract, the Government will furnish, subject to the limitations hereinafter provided, and the Purchaser will receive and pay for such utility services as described in Special Provisions A(S), C(S), D(S), and E(S) attached hereto and made a part hereof.

2. PAYMENTS. For and in consideration of the performance of the stipulations of this contract, the Purchaser shall pay the Government for service herein contracted for, at the rates and under the terms and conditions set forth in attached Special Provisions.

3. USE OF SERVICE. The Government, by reason of this contract, is not obligated to permanently supply the Purchaser with utility service. The service described herein is temporarily supplied as an accommodation to Purchaser as the Government service is presently available, service is not otherwise readily obtainable by the Purchaser, and the furnishing of such service under the existing conditions is deemed to be in the public interest. Purchaser's use of such service is limited to such time as service can be supplied by the Government as surplus to its own needs, the Government has facilities and personnel available to supply the service and the service is not readily available to the Purchaser from another source. Purchaser shall use the services provided herein in such a manner as not to in any way disrupt or interfere with the requirements of the Government or any other Purchaser that may be served by the Government. Such services shall be for use by Purchaser and shall not be purchased for resale. If the Government cannot or will not furnish utilities, it will provide access or easements as are necessary for Shell to obtain the utilities from other sources.

4. CHANGE OF RATES. The rates for service to be charged the Purchaser shall be the local prevailing rates, if any, for similar service, provided that the rates shall at all times produce a revenue which is not less than the cost to the Government of supplying the service, including losses, overhead and capital charges. If during the life of this contract there should be an appreciable change in the applicable local prevailing rates or in the cost to the Government, the contract rates set forth herein will be adjusted as required to conform therewith and the Government agrees to furnish, subject to the conditions set forth herein, and Purchaser agrees to take and pay for, such service at the adjusted rates from and after the date when such adjusted rates are made effective. The rates and charges applicable to the service or services contemplated herein will be reviewed annually, or more often if necessary, in compliance with the above requirements.

5. LIABILITY. The Purchaser shall hold and save the Government, its officers, agents and employees, harmless from liability of any nature or kind, for or on account of any claim or action that may be asserted in connection with the services furnished under this contract. The Government will not be held liable for failure to provide continuous service and will not guarantee

quality or quantity of service to be supplied nor will the Government be made liable for termination of services.

6. TERMINATION. Services under this contract may be terminated by either party by written notice not less than thirty days in advance of the effective date of termination; provided that in the event of a national emergency proclaimed by the President, the Government may terminate this contract immediately without such advance notice. It is further mutually agreed that this contract will be terminated at such time as:

a. The service contemplated herein becomes readily available from another source, or

b. The installation furnishing said service becomes inactive, or

c. The Government no longer has facilities and/or personnel available to supply the service, or

d. The Government can no longer supply such service as surplus to its own needs.

e. The service is no longer necessary under the Federal Facility Agreement and the Settlement Agreement.

The termination of any one service being provided does not automatically terminate the provision of any other service being provided.

7. RECAPTURE. In the event this contract is terminated in accordance with the terms hereof the Government shall have the right to recapture immediately any utility facility it may have furnished in connection with the sale of any utility service to the Purchaser.

8. FACILITIES TO BE PROVIDED. The Government shall not be obligated in any way for the cost of making connections for Purchaser's service. Purchaser shall at Purchaser's expense, install, maintain and operate all new facilities required for obtaining service, including suitable metering and regulating equipment and service connections to Government's utility system. Plans for all such facilities shall be subject to the approval of the Utilities Sales Officer and the installation of such facilities shall be subject to his supervision. Notwithstanding the foregoing, the Purchaser may include such costs in its cost claims as provided for in the Settlement Agreement and the Financial Manual.

9. LICENSE FOR FACILITIES. The Government hereby grants to the Purchaser and any supplier of the Purchaser a license to enter upon and use a site or sites to be agreed upon between the parties hereto upon which the Purchaser shall install, operate and maintain the Purchaser's new facilities to be located on Government property for obtaining service, and such license shall continue in effect until termination of this contract. Facilities installed by the Purchaser on a Government installation will be removed promptly at the expense of the Purchaser upon termination of the service contemplated herein. Government land and facilities will be restored to their original condition at the expense of the Purchaser. If the Purchaser fails to so remove such facilities within ninety (90) days they will be deemed to be abandoned and become Government property.

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

11. COVENANT AGAINST CONTINGENT FEES. The Purchaser warrants that no person or selling agency has been employed or retained to solicit or secure this contract 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 Purchaser for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to require the Purchaser to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12. DISPUTES. (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Utilities Sales Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Purchaser. The decision of the Utilities Sales Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Purchaser mails or otherwise furnishes to the Utilities Sales Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals 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 necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the

Purchaser 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 Purchaser shall proceed diligently with the performance of the contract and in accordance with the Utilities Sales Officer's decision.

(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 contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

13. DEFINITIONS. As used throughout this contract, the following terms shall have the meanings set forth below:

a. The term "Federal Facility Agreement" means the Federal Facility Agreement for Rocky Mountain Arsenal effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or suppplements thereto).

b. The term "Financial Manual" means the document identified in paragraph 7.4 of the Settlement Agreement.

c. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Utilities Sales Officer) authorized to act for the Secretary.

d. The term "Settlement Agreement" means the "Settlement Agreement Between the United States and Shell Oil Company Concerning Rocky Mountain Arsenal" effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or supplements thereto).

e. The term "Utilities Sales Officer" means the officer or civilian employee who is a properly designated Utilities Sales Officer for the Rocky Mountain Arsenal; and the term includes, except as otherwise provided in this contract, the authorized representative of a Utilities Sales Officer acting within the limits of his authority.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

BY _____
LEWIS D. WALKER
Army Deputy for Environment, Safety and Occupational Health

SHELL OIL COMPANY

BY _____
R.G. DILLARD
Vice President

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

BY _____
LEWIS D. WALKER
Army Deputy for Environment, Safety and Occupational Health

SHELL OIL COMPANY

BY _____
R.G. DILLARD
Vice President

Attached to and made
a part of Contract No. TBD

SPECIAL PROVISIONS A (5)
ELECTRIC SERVICE

For use of this form, see AR 420-41; the proponent agency is the Office of the Chief of Engineers

1. ESTIMATED SERVICE REQUIREMENTS.

Estimated Maximum Demand N/A kw
Estimated annual consumption 149,609 kwh
(The parties hereto are not obligated to deliver or receive, nor are they restricted to, the above amounts.)

2. POINT OF DELIVERY. The point of delivery of service shall be at the primary meter.

3. DESCRIPTION OF ELECTRIC SERVICE. The Government will supply three (3) phase, VIA 3 wire overhead distribution wire sixty (60) cycle, alternating current at 13,800 volts.

4. RATES. The rates to be charged the Purchaser by the Government for the electric service described herein, are as follows:

149,609 KWH @ $0.0985 per KWH = $14,736.00 annually

5. METERING AND BILLING. Service will be measured at 13,800 volts by Class 10,120v, 3 wire type V-63-S watt-hour meter(s) and zero (0) demand meter(s) to be furnished, installed and maintained by the Purchaser. The meter(s) will be read by the Utilities Sales Officer, or his authorized representative, and bills will be rendered monthly to the Purchaser by the Government. All such bills will be due and payable 15 days after receipt thereof by the Purchaser.

6. ALTERATIONS AND ADDITIONS:

N/A

Attached to and made
a part of Contract No. TBD

SPECIAL PROVISIONS C (S)
WATER SERVICE

For use of this form, see AR 420-41; the proponent agency is the Office of the Chief of Engineers

1. ESTIMATED REQUIREMENTS.
Estimated daily maximum demand N/A
Estimated annual consumption 60,000 gallons
(The parties hereto are not obligated to deliver or receive, nor are they restricted to, the above amounts.)

2. POINT OF DELIVERY. The point of delivery of water shall be the point of connection with the Government's water main, and located on "D" Street, south of December 7th Avenue.

3. QUALITY OF WATER. The Government will supply the same quality of potable water as supplied to Rocky Mountain Arsenal by means of its water system located at the said Federal Reservation and supplied at the Southwest Metering Station by the Denver Board of Water Commissioners.

4. RATES. The rates to be charged the Purchaser by the Government for the water service described herein, are as follows:

60 K gallons @ $3.76 per K gallons = $226.00 annually

5. METERING AND BILLING. Water will be measured by two (2) inch meter(s) to be furnished, installed and maintained by the Purchaser. The meter(s) will be read by the Utilities Sales Officer, or his authorized representative, and bills will be rendered monthly to the Purchaser by the Government. All such bills will be due and payable 15 days after receipt thereof by the Purchaser.

6. ALTERATIONS AND ADDITIONS.

N/A

K = 1000

DA Form 2103-R, 1 Jun 76 Edition of 1 Aug 69 is obsolete.

Attached to and made
a part of Contract No. TBD

SPECIAL PROVISIONS D (5)
SEWAGE SERVICE

For use of this form, see AR 420-41; the proponent agency is the Office of the Chief of Engineers.

1. ESTIMATED REQUIREMENTS.
Estimated annual volume 42,000 gallons

(The parties hereto are not obligated to deliver or receive, nor are they restricted to, the above amounts.)

2. POINT OF DELIVERY. The sewage shall be delivered to the government by the Purchaser at north of December 7th Avenue, approximately 2100 feet east of "D" Street.

3. SERVICE TO BE RENDERED. The sewage to be received, carried and disposed hereunder shall be such as is customarily received at the Government's disposal plant, and shall not contain any material which would cast an unusual burden upon the said sewage disposal plant or interfere with the operation of the Government's sewage system.

4. RATES. The rates to be charged the Purchaser by the Government for the sewage service described herein are as follows:

42 K gallons @ $1.50 per K gallons = $63.00 annually

5. METERING AND BILLING.
(Note: Either of the provisions (a) or (b) below may be used, whichever is applicable.)
a. The sewage received by the Government will be measured by a NOT USED type meter to be furnished, installed, and maintained by the Purchaser.
b. The quantity of sewage received by the Government will be taken as seventy (70) percent of the metered quantity of water used by the Purchaser.

The meter(s) will be read by the Utilities Sales Officer, or his authorized representative, and bills will be rendered monthly to the Purchaser by the Government. All such bills will be due and payable 15 days after receipt thereof by the Purchaser.

6. ALTERATIONS AND ADDITIONS.

N/A

Attached to and made
a part of Contract No. TBD

SPECIAL PROVISIONS E (5)
STEAM SERVICE

For use of this form, see AR 420-41; the proponent agency is the Office of the Chief of Engr

1. ESTIMATED REQUIREMENTS.
Estimated Hourly Maximum Demand N/A
Estimated Annual Consumption 1,900,000 pounds
(The parties hereto are not obligated to deliver or receive, nor are they restricted to, the amounts.)

2. POINT OF DELIVERY. The point of delivery of steam shall be the point of connection Government's steam main, and located in the main power plant, Building No.

3. DESCRIPTION OF STEAM SERVICE. The Government will supply the same quality of as supplied to Rocky Mountain Arsenal
by means of its steam plant and distribution system located at the said Building No.
The steam pressure will be that normally maintained in Government's steam main at point of delivery, approximately seventy (70) pounds per square inch. Any deviation from above described pressure that may be required for Purchaser's use, will be obtained by pressure regulating equipment furnished, installed and maintained by the Purchaser.

4. RATES. The rates to be charged the Purchaser by the Government for the steam service cribed herein, are as follows:

1,900 K pounds @ $17.61 per K lbs = $33,459.00 annually

5. METERING AND BILLING. Steam will be measured by Orifice
(Condensate)
(Flow) meter(s) furnished, installed a
maintained by the Purchaser. Where condensate meters are used, Purchasers facilities for ing and use of steam shall be so constructed and operated that no steam will escape and the condensate from all steam supplied to the Purchaser will pass through the meter. The meters shall be read by the Utilities Sales Officer, or his authorized representative, and bills will be rendered monthly to the Purchaser by the Government. All such bills will be due and payable 15 days after receipt thereof by the Purchaser.

6. ALTERATIONS AND ADDITIONS.

N/A

EXHIBIT F-2

TO SETTLEMENT AGREEMENT

STANDBY FIRE PROTECTION SERVICE CONTRACT

STANDBY FIRE PROTECTION SERVICE CONTRACT

Contract No. TBD
Estimated Annual
Cost to Purchaser $27,000

THIS CONTRACT, entered into as of the 1st day of February 1988, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the Army Deputy for Environment, Safety and Occupational Health executing this contract, and SHELL OIL COMPANY (hereinafter called the "Purchaser").

WITNESSETH THAT:

WHEREAS, the Department of the Army has entered into an Access and Use Agreement (Exhibit E to the Settlement Agreement) with the Purchaser whereby Purchaser will use the Structures at Rocky Mountain Arsenal; and in order for the Purchaser to adequately operate such Structures, it is necessary that the Purchaser obtain certain services from the Government; and

WHEREAS, the Government owns, maintains, and operates an established Fire Department for the furnishing of Standby Fire Protection Services; and

WHEREAS, the Purchaser desires to obtain Standby Fire Protection Services from the Government, as required for protection of the Structures and the Shell Buildings against damage or destruction by fire, and which cannot be readily obtained from any other source; and

WHEREAS, it is deemed to be in the best interest of the Government to furnish such services; and

WHEREAS, pursuant to 10 U.S.C. 2667, the Government is authorized to provide such service required by the Purchaser.

NOW, THEREFORE, in consideration of the promises and the mutual agreement herein contained, to be performed by the parties hereto respectively, it is agreed as follows:

GENERAL PROVISIONS

1. SERVICE TO BE RENDERED. From and after the effective date of this contract, the Government will furnish, subject to the limitations hereinafter provided, and the Purchaser will receive and pay for such Standby Fire Protection Service as described in

Special Provisions, Standby Fire Protection Service, attached hereto and made a part hereof.

2. PAYMENT. For and in consideration of the performance of the stipulations of the contract, the Purchaser shall pay the Government for service herein contracted for, at the rate and under the terms and conditions set forth in the attached Special Provisions, Standby Fire Protection Service.

3. USE OF SERVICE. The Government, by reason of this contract, is not obligated to permanently supply the Purchaser with Standby Fire Protection Service. The service described herein is temporarily supplied as an accommodation to Purchaser as the Government service is presently available, service is not otherwise readily obtainable by the Purchaser, and the furnishing of such service under the existing conditions is deemed to be in the public interest. Purchaser's use of such service is limited to such time as service can be supplied by the Government as surplus to its own needs, the Government has facilities and personnel available to supply the service, and the service is not readily available to the Purchaser from another source. Purchaser shall use the services provided herein in such a manner as not to in any way disrupt or interfere with the requirements of the Government or any other Purchaser that may be serviced by the Government. Such services shall be for use by Purchaser and shall not be purchased for resale. If the Government cannot or will not furnish the service, it will provide access or easements as are necessary for Shell to obtain the service from other sources.

4. CHANGE OF RATES. The rate for service to be charged the Purchaser shall be the rate that shall at all times produce a revenue which is not less than the cost to the Government of supplying the service, including direct labor, overhead and capital charges (depreciation). If, during the life of this contract, there should be an appreciable change in the cost to the Government, or in the percentage of square footage of building space occupied by the Purchaser, the contract rate set forth herein will be adjusted as required to conform therewith, and the Government agrees to furnish, subject to the conditions set forth herein, and the Purchaser agrees to take and pay for, such services at the adjusted rate from and after the date when such adjusted rate is made effective. The rate applicable to the service contemplated herein will be reviewed annually, or more often if necessary, in compliance with the above requirements.

5. LIABILITY. The Purchaser shall hold and save the Government, its officers, agents, and employees, harmless from liability of any nature or kind, for or on account of any claim or action that may be asserted in connection with the services furnished under

this contract. The Government will not be held liable for failure to provide continuous service and will not guarantee quality or quantity of service to be supplied nor will the Government be made liable for termination of services.

6. TERMINATION. Services under this contract may be terminated by either party by written notice not less than thirty days in advance of the effective date of termination, provided that, in the event of a national emergency proclaimed by the President, the Government may terminate this contract immediately without such advance notice. It is further mutually agreed that this contract will be terminated at such time as:

a. The service contemplated herein becomes available from another source, or

b. The installation becomes inactive, or

c. The Government no longer has facilities and/or personnel available to supply the service, or

d. The Government can no longer supply such service as surplus to its own needs, or

e. The service is no longer necessary under the Federal Facility Agreement and the Settlement Agreement.

The termination of any one service being provided does not automatically terminate the provision of any other service being provided.

7. RECAPTURE. In the event this contract is terminated in accordance with the terms hereof, the Government shall have the right to recapture immediately any facility it may have furnished in connection with the furnishing and sale of service to the Purchaser.

8. FACILITIES TO BE PROVIDED. The Government shall not be obligated in any way for the cost of making connections for Purchaser's service. Purchaser shall, at Purchaser's expense, install, maintain, and operate all new facilities required for obtaining service, including suitable communication and alarm equipment and service connections to the Government's system. Plans for all such facilities shall be subject to the approval of the Utilities Sales Officer and the installation of such facilities shall be subject to his supervision. Notwithstanding the foregoing, the Purchaser may include such costs in its cost claims as provided for in the Settlement Agreement and the Financial Manual.

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

10. COVENANT AGAINST CONTINGENT FEES. The Purchaser warrants that no person or selling agency has been employed or retained to solicit or secure this contract 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 Purchaser for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

11. DISPUTES. (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Utilities Sales Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Purchaser. The decision of the Utilities Sales Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Purchaser mails or otherwise furnishes to the Utilities Sales Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals 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 necessarily to imply bad faith, or not supported by substantial evidence, in connection with any appeal proceeding under this clause, the Purchaser 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 Purchaser shall proceed diligently with the performance of the contract and in accordance with the Utilities Sales Officer's decision.

(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 contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

12. DEFINITIONS. As used throughout this contract, the following terms shall have the meanings as set forth below:

a. The term "Federal Facility Agreement" means the Federal Facility Agreement for Rocky Mountain Arsenal effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or suppplements thereto).

b. The term "Financial Manual" means the document identified in paragraph 7.4 of the Settlement Agreement.

c. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Utilities Sales Officer) authorized to act for the Secretary.

d. The term "Settlement Agreement" means the "Settlement Agreement Between the United States and Shell Oil Company Concerning Rocky Mountain Arsenal" effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or supplements thereto).

e. The term "Utilities Sales Officer" means the officer or civilian employee who is a properly designated Utilities Sales Officer for the Rocky Mountain Arsenal; and the term includes, except as otherwise provided in this contract, the authorized representative of a Utilities Sales Officer acting within the limits of his authority.

f. The term "Shell Buildings" means the structures, additions or betterments listed on Appendix B to the Access and Use Agreement.

g. The term "Structures" means Building 316-A, Building 451, Building 727 and the Shell salvage yard east of the southernmost tank farm in Section 1 of the Arsenal, as well as equipment, machinery, tanks and fixtures therein or thereon, except for the Army-owned equipment in the Shell salvage yard. Structures also include any necessary replacements for any of the foregoing if Shell's right to any Structure is terminated pursuant to paragraph 4.2 of the Access and Use Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

BY Lewis D Walker
LEWIS D. WALKER
Army Deputy for Environment, Safety and Occupational Health

SHELL OIL COMPANY

BY _____
R.G. DILLARD
Vice President

THE UNITED STATES OF AMERICA

BY _____
LEWIS D. WALKER
Army Deputy for Environment,
Safety and Occupational
Health

SHELL OIL COMPANY

BY _____
R.G. DILLARD
Vice President

Attached to and made a part of
Contract No. TBD

SPECIAL PROVISIONS

STANDBY FIRE PROTECTION SERVICE

1. DESCRIPTION OF SERVICE. The Government will maintain an organized, trained, and equipped Fire Department, such as is customarily maintained for protection of Government-owned and Government-operated premises, for the benefit of the Purchaser. The Government shall utilize such fire fighting and damage control equipment with personnel, that may be available at Rocky Mountain Arsenal for the benefit of the Purchaser, in case of fire, explosion, or other disaster on the premises, or in the immediate vicinity of the area covered by the Access and Use Agreement and any supplements thereto. The utilization of such equipment and personnel as may be required shall be under the direction of the Commanding Officer and/or the Fire Marshal or Fire Chief of Rocky Mountain Arsenal to whom such duties may be delegated.

2. RATE. The rate to be charged the Purchaser for the Standby Fire Protection Service described herein is as follows:

a. A flat rate of $2,262.00 per month.

b. It is agreed that the above rate is based on the Purchaser's occupancy of 91,099 square feet or 3.8 percent of the total Rocky Mountain Arsenal square footage of building space.

c. It is further agreed that the rate will contain the following cost elements: direct costs, administrative expense, and capital investment depreciation.

3. REVIEW AND REVISION OF RATE. With reference to General Provision No. 4, entitled, "Change of Rates," the rate established herein shall be subject to review and revision annually hereafter and upon the occurrence of any material change in the Government's costs or the percentage of square footage of building space occupied by the Purchaser. Any revision of the rate made as the result of the annual review provided herein shall be effective on 1 July.

4. BILLING. Bills will be rendered monthly to the Purchaser by the Government. All such bills will be due and payable 15 days after receipt thereof by the Purchaser.

EXHIBIT G

TO SETTLEMENT AGREEMENT

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF THE ARMY AND SHELL OIL COMPANY WITH RESPECT TO RESPONSE ACTION WORK CONDUCTED PURSUANT TO THE FEDERAL FACILITY AGREEMENT

I. PARTIES

This Memorandum of Understanding ("MOU") specifies the cooperative undertakings which are to occur between the Army (a potentially responsible party under CERCLA) and Shell (a potentially responsible party under CERCLA) with respect to any Scope of Work developed pursuant to the Federal Facility Agreement now or hereafter attached as an exhibit to this MOU.

II. PURPOSE

The purpose of this MOU is to provide an appropriate basis pursuant to the Federal Facility Agreement for Shell to participate in the expeditious (a) assessment, selection, design and implementation of an IRA or (b) operation and maintenance of any Response Action Structure.

III. DEFINITIONS

The following terms, used in the MOU, shall have the meanings indicated:

(a) "Army" means the United States Department of the Army, and any successors or assigns thereof, and any agency, office or other subdivision thereof; and includes the officers, members, employees and agents of the Army when acting within the scope of their authority.

(b) "Arsenal" means the United States property known as the Rocky Mountain Arsenal and described more particularly on Exhibit A hereto.

(c) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(d) "Contractor" means any commercial party not a part of Shell with which Shell contracts for the performance of Response Action work pursuant to this MOU. Unless otherwise indicated, the term also includes a subcontractor retained by a prime Contractor or another subcontractor.

(e) "Federal Facility Agreement" means the Federal Facility Agreement for Rocky Mountain Arsenal, effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or supplements thereto).

(f) "Financial Manual" means the document identified in paragraph 7.4 of the Settlement Agreement.

(g) "Force Majeure" means any event arising from causes beyond the control of an Organization that causes a delay in or prevents the performance of any obligation under this MOU. "Force Majeure" includes, but is not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe, despite diligent maintenance; adverse weather conditions which could not be reasonably anticipated; unusual delay in transportation; earthquake; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses as a result of the action or inaction of any governmental agency or authority other than the Army; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Army shall have made timely request for such funds as part of the budgetary process. "Force Majeure" also includes any strike or labor dispute, whether or not within the control of the Organization affected thereby, but shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

(h) "IRA" means an Interim Response Action identified in Section XXII of the Federal Facility Agreement.

(i) "Lead Party" means the Organization that is designated with responsibility, in accordance with Section XLIII of the Federal Facility Agreement, for conducting a Response Action, or any part thereof.

(j) "MOU" or "Memorandum of Understanding" means to this entire document and any amendments or modifications hereof and supplements hereto, and all documents incorporated herein by reference.

(k) "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, 50 Fed. Reg. 47912 (1985) (effective February 18, 1986), and all amendments thereto which are not inconsistent with CERCLA and which are effective and applicable to any activity undertaken pursuant to this MOU.

(l) "Organization" means the Army, EPA or Shell.

(m) "Party" means the Army or Shell; "Parties" means the Army and Shell.

(n) "Response Action" has the same meaning as "Respond" or "Response" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

(o) "Scope of Work" means a document identified in Part VI by which any Response Action work for which Shell is the Lead Party shall be conducted.

(p) "Settlement Agreement" means the "Settlement Agreement Between the United States and Shell Oil Company Concerning Rocky Mountain Arsenal," effective February 17, 1989, including all exhibits thereto (and any amendments or modifications thereof or supplements thereto).

(q) "Shell" means (a) Shell Oil Company and its successors and assigns, (b) the divisions thereof, including Shell Chemical Company, (c) Julius Hyman & Co., and (d) Shell Chemical Corporation; and includes the officers, employees and agents of Shell when acting within the scope of their authority.

All other capitalized terms used in this MOU shall have the same meaning as in the Federal Facility Agreement or the Settlement Agreement or the meaning specified in an executed Scope of Work.

IV. SCOPE OF MOU

This MOU, the Federal Facility Agreement and the Settlement Agreement constitute the entire understanding between the Army and Shell with respect to Shell's assisting the Army in the Response Action work described in an executed Scope of Work, except for any subsequently executed Scope of Work which the Parties may execute with respect to such Response Action work; constitute the sole conditions controlling Shell's participation in such Response Action work; and with respect to such Response Action work, supersede any other agreement(s) between the Parties. In the event a conflict between the provisions of the Federal Facility Agreement and the Settlement Agreement and this MOU, the provisions of the Federal Facility Agreement and the Settlement Agreement shall govern.

V. OPERATION OF MOU

By their execution of this MOU, each of the Parties acknowledges and agrees as follows:

(a) The provision of the Response Action work pursuant to this MOU is a reasonable and appropriate contribution to the assessment, selection, design and implementation of Response Actions that are protective of the present and future public health and the environment.

(b) The Army's actions under this MOU are not inconsistent with the NCP.

(c) Shell's actions under this MOU, to the extent certified by the Army pursuant to Subpart VI.E., are consistent with the NCP.

(d) This MOU does not operate to establish or to excuse any Shell or Army liability under any law, the Federal Facility Agreement or the Settlement Agreement, except to the extent provided in this MOU.

(e) This MOU does not operate to render Shell or any of its Contractors a CERCLA response action contractor.

(f) This MOU does not operate to expand or limit any of the rights and obligations of the Army as Lead Agency or Shell as Lead Party under any law or the Federal Facility Agreement.

(g) Unless otherwise provided in a Scope of Work, upon acceptance of the Response Action work pursuant to Subpart VI.E, title to any Response Action Structure including all related systems and facilities constructed as a part of that Response Action work shall pass to the United States.

(h) The Army shall be solely responsible for obtaining necessary permits, if any, and for establishing substantive compliance with all permitting requirements pursuant to Section 121(e) of CERCLA, 42 U.S.C. 9621(c), for any activities conducted pursuant to this MOU. However, Shell shall provide any necessary technical support necessary for the Army to obtain such permits.

(i) This MOU has no precedential or controlling effect with respect to any matter which is not expressly the subject of this MOU.

(j) This MOU does not create or impose any obligations or responsibilities on the Parties or relieve them of any obligations or responsibilities, except to the extent expressly provided herein.

VI. SHELL'S PERFORMANCE OF RESPONSE ACTION WORK

A. Development of Scope of Work: Pursuant to Section XLIII of the Federal Facility Agreement, the Army and Shell shall develop Scopes of Work by which Response Action Work for which Shell is the Lead Party shall be conducted. A Scope of Work shall include any required data or specifications for the Response Action work to be performed, a projected schedule for completion and a statement as to the appropriate limits of insurance to be maintained by Shell pursuant to Part VII.

B. Incorporation into this MOU: Any Scope of Work developed pursuant to Subpart VI.A and executed by the Army and Shell, and all the terms and conditions therein are incorporated by reference into this MOU.

C. Performance of Work: Upon execution of the Scope of Work by the Army and Shell, Shell shall immediately commence, in consultation and cooperation with the Army, as provided in the Consent Decree, to perform the Response Action work described in the Scope of Work.

D. Hiring of Contractor: Subject to the approval of the Army, Shell may hire at its sole expense, subject to Part VII, a Contractor to perform any Response Action work described in a Scope of Work. A Contractor may be terminated by Shell with the approval of the Army, which approval shall not be unreasonably withheld. Any disagreement with respect to such termination not resolved informally shall be resolved in accordance with the provisions of Part XIII.

E. Acceptance of Work: 1. If Shell performs the Response Action work in accordance with the specifications set forth in the applicable Scope of Work, the Army shall accept Shell's work pursuant to this MOU. The Army shall act promptly to accept Shell's work, and acceptance shall not be unreasonably withheld. Should the Army decline acceptance, it shall promptly notify Shell in writing, stating with specificity the factual, technical and legal bases for such nonacceptance.

2. If Shell concludes that the Army is in error for treating Shell's performance as incomplete or unacceptable for any other reason, Shell shall give notice in writing, within ten business days of the receipt of the Army's written notification, that Shell disagrees. Any such disagreement, if not resolved informally, shall be resolved in accordance with the provisions in Part XIII.

VII. SHELL INSURANCE OBLIGATIONS

Shell shall maintain such insurance or self-insurance as is required by statute or regulation to cover any claims which may reasonably be anticipated to be made as a result of Response Action work done pursuant to any Scope of Work attached as an exhibit to this MOU. At a minimum, Shell shall, at its sole option, procure insurance, maintain insurance or self-insure sufficiently to cover the following:

1. Worker's compensation and occupational disease insurance in amounts sufficient to satisfy applicable state law;

2. Employer's liability insurance in the minimum amount of $100,000 per occurrence; and

3. Comprehensive general liability insurance for bodily injury, death or loss of or damage to property of third persons in the minimum amount of $100,000 per occurrence.

Upon this MOU becoming effective, Shell shall promptly provide the Army with an affidavit that Shell is in compliance with the minimum requirements of this Part. Upon the signing of a Scope of Work, Shell shall promptly provide the Army with an affidavit that Shell is in compliance with this Part as to that Scope of Work. Upon request, Shell shall discuss with the Army the manner in which Shell will fulfill its obligations under this Part.

VIII. ARMY SUPPLEMENTATION OF SHELL INSURANCE

If the Response Action work being performed is an Army-Only Response Action, as defined in the Settlement Agreement, the Army shall release, defend, indemnify and hold harmless Shell from all losses, fines, penalties, claims, suits, liabilities, judgments, or expenses (including expenses of litigation or settlement) (collectively hereinafter in this Part VIII, "claim") with respect to any death or injury to any person or loss of or damage to property to the extent that these result from the construction, operation, collapse, rupture or failure of any Response Action Structure, or any part thereof, after the Army's acceptance pursuant to Subpart VI.E. or the operation, collapse, rupture, failure or ineffectiveness of the Response Action Structure as a result of the construction, operation, collapse, rupture or failure of the Response Action work when such claim is not compensated by insurance or self-insurance, to the extent provided below:

(a) Shell is not in material breach of this MOU with respect to the Scope of Work pursuant to which such Response

Action work was performed or such Response Action Structure was constructed;

(b) Any claim which is within the deductible amounts of Shell's insurance shall not be subject to this Part;

(c) Shell shall not be reimbursed for any claims (including expenses incidental to such claims) to the extent that they result, in whole or in part, from willful misconduct or recklessness by Shell;

(d) The Army may discharge its obligations under this Part by making payments directly to Shell or directly to any party to whom Shell may be liable upon obtaining a release from that party, which release provides adequate protection for Shell.

(e) If insurance coverage maintained in accordance with Part VII is reduced below the minimums specified in that Part without the Army's knowledge or approval, the liability of the Army under this MOU shall not be increased by reason of such reduction;

(f) To the extent that any claim against Shell may reasonably be expected to involve indemnification under this Part, Shell shall:

(1) promptly notify the Army of such claim against Shell;

(2) furnish evidence or proof of any claim covered by this Part in the manner and form reasonably requested by the Army; and

(3) immediately furnish the Army with copies of all pertinent papers received by Shell.

(g) To the extent that the amount of the claim is not determined to be in excess of the limits set forth in Part VII or to the extent that the amount of the claim cannot reasonably be determined to be or not to be in excess of those limits, Shell and the Army shall conduct a joint defense or settlement. Once it is determined that the amount of the claim is in excess of the limits set forth in Part VII, the Army shall direct and control such defense or settlement, with assistance by Shell as is acceptable to both Parties, and Shell shall execute any authorizations which the Army reasonably requires in connection with such settlement.

(h) Reimbursement for any claims under this Part shall not exceed appropriations available during the time that

such claims are represented by final judgments or by settlements approved in writing by the Department of Justice. This agreement to reimburse Shell for certain claims shall not be interpreted as implying that Congress shall, at a later date, appropriate funds sufficient to meet any deficiencies. During all times that claims remain unreimbursed due to lack of appropriated funds, the Army shall exert its best efforts to obtain appropriations for such reimbursement.

IX. TREATMENT OF COSTS INCURRED BY SHELL PURSUANT TO THIS MOU

Any costs incurred by Shell pursuant to this MOU are Reimbursable Costs and shall be governed by the Settlement Agreement and the Financial Manual.

X. DELAY OR PREVENTION OF PERFORMANCE

A. As provided in the Consent Decree, if a Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this MOU, then upon that Party's giving written notice as provided in Subpart XI.C., the obligations of that Party, so far as they are affected by the event of Force Majeure therein specified, shall be suspended during the continuance of such cause, but for no longer period, and such cause shall be remedied so far as possible with all reasonable dispatch.

B. The settlement of a strike or other labor dispute shall be entirely within the discretion of the Party involved with such strike or labor dispute, and the requirement that any event of Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of a strike or labor dispute by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the Party involved with such strike or labor dispute.

C. When circumstances are occurring or have occurred that delay the completion of any obligation, and a Party believes such circumstances constitute an event of Force Majeure, such Party shall notify the other Organizations in writing within 15 days after the notifying Party obtains information indicating that a delay will occur. Such notice shall include a detailed explanation of the reason(s) for and anticipated duration of the delay, the measures taken and to be taken to prevent or minimize the delay, and a schedule for implementation of such measures. Failure to provide notice in accordance with this paragraph within the required 15-day period shall constitute a waiver of any claim of Force Majeure with respect to any event of Force Majeure for which notice was not timely given.

D. If the Organizations cannot agree whether a delay is or was attributable to an event of Force Majeure, any Organization may invoke Dispute Resolution pursuant to Section X of the Settlement Agreement.

E. Scope of Work Modification: If performance of this MOU is delayed because any Party finds it necessary to make modifications to address an unanticipated occurrence which may cause a delay of more than two weeks, such modifications shall be developed and implemented by Shell in consultation and cooperation with the Army. Any disputes not resolved informally shall be resolved pursuant to the provisions of Part XIV. Further, if Shell anticipates the delay resulting from any such modifications will necessitate the extension of a Deadline, it shall request such an extension in accordance with Section XXVI of the Federal Facility Agreement.

F. Unaffected Activities: To the extent that the unanticipated occurrence does not necessitate delay in any discrete portion(s) of the activities provided in Part VI, such portion(s) of the activities shall proceed as originally provided in the MOU irrespective of the need for modification of other parts of the MOU.

XI. SHELL ACCESS TO ROCKY MOUNTAIN ARSENAL

Shell and its Contractors shall be afforded access to all relevant portions of the RMA in order to perform its obligations under the MOU pursuant to the terms and conditions of the Access and Use Agreement attached as Exhibit E to the Settlement Agreement until such time as the Army and Shell execute an applicable superseding agreement.

XII. DISPUTE RESOLUTION AND JUDICIAL REVIEW

A. Dispute Resolution: Any dispute which arises in connection with this MOU may be submitted for resolution pursuant to Section X of the Settlement Agreement. Prior to any such submission, Shell and the Army shall meet and attempt to resolve the dispute informally.

B. Judicial Review: 1. Judicial review of issues arising in connection with this MOU shall be obtained pursuant to Section XI of the Settlement Agreement.

2. The pendency of any dispute shall not affect the responsibility of the United States or Shell to continue their involvement in the assessment, selection, design and implementation of Response Actions, or discrete portions of Response Actions, not subject to such dispute.

XIII. GENERAL

A. Term: This MOU shall continue in effect as to a specific Scope of Work until the Army, pursuant to Subpart VI.E., accepts Shell's work pursuant to this MOU, and the reimbursement or payment has been made pursuant to Part IX.

B. Modification: Any provision of this MOU or of any Scope of Work may be modified at any time by both Parties' agreement. Any modification must: (1) be in writing; (2) show the date signed by the Parties; (3) specify that it is intended to modify this MOU; (4) state the provisions of the MOU to be modified; (5) state the new provisions; and (6) state when the new provisions are to be effective.

C. Effect of Execution: This MOU shall become effective on the later of its execution by the Parties or the entry of the Consent Decree. A Scope of Work shall become effective, final and binding upon its execution.

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of the United States Department of the Army.

Date: 1/23/89

Lewis D. Walker
Deputy for Environment, Safety and Occupational Health

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of Shell Oil Company.

Date: _____

R.G. Dillard
Vice President

MIS/BWO

XIII. GENERAL

A. Term: This MOU shall continue in effect as to a specific Scope of Work until the Army, pursuant to Subpart VI.E., accepts Shell's work pursuant to this MOU, and the reimbursement or payment has been made pursuant to Part IX.

B. Modification: Any provision of this MOU or of any Scope of Work may be modified at any time by both Parties' agreement. Any modification must: (1) be in writing; (2) show the date signed by the Parties; (3) specify that it is intended to modify this MOU; (4) state the provisions of the MOU to be modified; (5) state the new provisions; and (6) state when the new provisions are to be effective.

C. Effect of Execution: This MOU shall become effective on the later of its execution by the Parties or the entry of the Consent Decree. A Scope of Work shall become effective, final and binding upon its execution.

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of the United States Department of the Army.

Date: _____

Lewis D. Walker
Deputy for Environment, Safety and Occupational Health

IN WITNESS WHEREOF, I have hereunder set my hand as an authorized representative of Shell Oil Company.

Date: 2/15/89

R.G. Dillard
Vice President

MIS/BWO