

**AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE
AND
THE OHIO ENVIRONMENTAL PROTECTION AGENCY**

**RE:
THE KREJCI DUMP SITE
CUYAHOGA VALLEY NATIONAL PARK
BOSTON TOWNSHIP, SUMMIT COUNTY, OHIO**

ENTERED DIRECTOR'S JOURNAL

DEC 12 2002

OHIO E.P.A.

THIS AGREEMENT ("Agreement") is entered into this 11th day of DECEMBER, 2002, by and between the UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE ("Park Service"), represented by the Park Service Midwest Region Director, and the OHIO ENVIRONMENTAL PROTECTION AGENCY ("Ohio EPA"), represented by the Director of Environmental Protection, regarding the Krejci Dump Site, located in the Cuyahoga Valley National Park, at 814 West Hines Hill Road, Boston Township, Summit County, Ohio ("Site").

WHEREAS, the Site is owned by the United States under the jurisdiction of the Park Service;

WHEREAS, on April 15, 1991, the Park Service and Ohio EPA entered into an administrative consent order pursuant to which the Park Service agreed to conduct a Remedial Investigation and a Feasibility Study for the Site;

WHEREAS, on June 30, 2000, the Park Service submitted its Final Remedial Investigation Report for the Site to Ohio EPA. By letter dated July 17, 2000, Ohio EPA stated that it considered the Park Service's June 30th Report to be the final RI Report for the Site;

WHEREAS, on September 25, 2001, the Park Service submitted its Final Feasibility Study Report for the Site to Ohio EPA. By letter dated October 17, 2001, Ohio EPA stated that it considered the September 25th Report to be the final FS Report for the Site;

WHEREAS, on November 7, 2001, the Park Service submitted its Final Draft Proposed Plan for Cleanup of the Site to Ohio EPA. By letter dated November 13, 2001, Ohio EPA notified the Park Service of Ohio EPA's concurrence with the Proposed Plan;

WHEREAS, by letter dated April 4, 2002, the Park Service submitted to Ohio EPA a Draft Record of Decision for selection of the Remedial Action for the Site. By letter dated August 6, 2002, Ohio EPA notified the Park Service of Ohio EPA's concurrence with the

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

By: Zona L. Clements Date: 12/12/02

Record of Decision. Thereafter, on September 27, 2002, the Park Service issued the Record of Decision for selection of the Remedial Action for the Site;

WHEREAS, the Park Service and Ohio EPA wish to work cooperatively to ensure the Krejci Site Remedial Action is implemented in accordance with all applicable Federal and State requirements; and

WHEREAS, the Park Service and Ohio EPA wish to work closely to identify and resolve any Site Remedial Action issues.

NOW THEREFORE, the Parties agree as follows:

I. JURISDICTION

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

A. The Park Service enters into this Agreement consistent with the authorities found in sections 104 and 120 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. sections 9604 and 9620, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), and the authorities that have been delegated to the Secretary of the Interior by Executive Order 12580 (52 Fed. Reg. 2923, January 23, 1987) as amended. Such authorities have been further delegated by the Secretary to the Park Service through the Department of the Interior Manual. In addition, the Park Service enters into this Agreement consistent with the authorities relating to cooperative agreements found at 16 U.S.C. § 1g.

B. Ohio EPA administers the laws of Ohio relating to air and water quality, hazardous, solid and infectious wastes, hazardous substances, construction and demolition debris, sewage, industrial and other wastes, and the protection of human health and the environment, under Ohio Revised Code (“ORC”) chapters 3704, 3714, 3734, 3745, 3746, 3750, 3751, 3752, 3753, 6109 and 6111, and rules promulgated thereunder. Ohio EPA enters into this Agreement pursuant to ORC sections 3734.20 and 3745.01, and sections 120(f) and 121(f) of CERCLA.

II. PARTIES

A. The Parties to this Agreement are the United States Department of the Interior, National Park Service (“Park Service”) and the Ohio Environmental Protection Agency (“Ohio EPA”) (collectively “Parties” or individually “Party”). Each undersigned representative of a Party certifies that he or she is authorized to enter into the terms and conditions of this

Agreement and to legally bind such Party to this Agreement. The terms of this Agreement shall apply to and be binding upon the Park Service and the Ohio EPA.

B. Each Party shall notify the other Party of the identity and assigned tasks of each of its contractors performing work at the Site to achieve the purposes of this Agreement. Each Party shall notify its agents, employees and contractors for the Site, and all subsequent owners, operators and lessees of the Site, of the existence of this Agreement.

III. RELATIONSHIP OF PARTIES

A. No Agency

In the exercise of their respective rights and obligations under this Agreement, the Park Service and Ohio EPA each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. No Waiver

1. Except as otherwise expressly provided in this Agreement, this Agreement does not affect the authority of the Parties to carry out their respective statutory and regulatory responsibilities or exercise their authorities under State and Federal law, or the right of either Party to raise any defenses available under law in the case of any enforcement action, whether in an administrative or a judicial proceeding. Except as expressly provided in this Agreement, this Agreement does not relieve or alter any responsibility, commitment, or duty of either Party under any existing or future administrative or judicial order, or in any way limit or restrict any right or authority of either Party to enforce such order.

2. In the exercise of their respective rights and obligations under this Agreement, neither Party shall, without the consent of the other Party, provide any contractor with a release that waives or purports to waive any rights such other Party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other Party may have or for violation of any law.

IV. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, SARA, the National Oil and Hazardous Substances Pollution Contingency Plan, 40

CFR Part 300 (“NCP”), and the ORC shall control the meaning of the terms used in this Agreement. In particular, the following definitions shall apply:

A. “Agreement” shall refer to this document and all attachments to this document, which shall be appended to and made an integral part of this document.

B. “ARARs” shall mean applicable or relevant and appropriate requirements as those terms are used in CERCLA and the NCP.

C. “Attachments” shall mean documents attached to this Agreement, which are incorporated by reference herein.

D. “Authorized representative” may include, at each Party’s respective discretion, a Party’s contractors acting in any capacity, including an advisory capacity.

E. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Pub. L. 96-510, 42 U.S.C. section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

F. “Days” shall mean calendar days, unless business days are specified. Any submittal or written statement of dispute that under the terms of this Agreement would be due on a Saturday, Sunday or Federal holiday shall be due on the following business day.

G. “Documents” shall mean any record, photograph, video tape, computer disk or tape, or recorded or retrievable information of any kind, relating to the treatment, storage or disposal, or concerning the investigation and remediation of hazardous substances, contaminants or pollutants at or migrating from the Site. The term “document” shall be construed broadly to promote the effective sharing between the Park Service and Ohio EPA of information and views concerning the work to be done at the Site. However, the term “document” shall not include any document that is privileged under the attorney-client privilege or under any other privilege recognized by Federal or State of Ohio law.

H. “Feasibility Study” or “FS” shall mean the Park Service’s September 25, 2001 Final Feasibility Study Report for the Krejci Dump Site.

I. “Guidance” shall mean documents providing recommended procedures having general applicability issued by either U.S. EPA or Ohio EPA.

J. “Hazardous substance” and “pollutant or contaminant” shall, for purposes of this Agreement, have their respective meanings provided in CERCLA § 101 (14) and (33), 42

U.S.C. § 9601 (14) and (33).

K. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, as amended.

L. “Ohio EPA” shall mean the Ohio Environmental Protection Agency and its employees and authorized representatives.

M. “Operation and Maintenance” or “O&M” shall mean measures required to evaluate or maintain the effectiveness of the Site Remedial Action.

N. “Park Service” shall mean the United States Department of the Interior, National Park Service.

O. “Proposed Plan” shall mean the Park Service’s November 14, 2001 Proposed Plan for Cleanup of the Krejci Dump Site.

P. “Record of Decision” or “ROD” shall mean the Park Service’s September 27, 2002 Record of Decision documenting and supporting the selection of the Remedial Action for the Site. The ROD summarizes the problems posed by conditions at the Site, the remedial alternatives considered for addressing those problems, the comparative analysis of those alternatives in terms of the nine evaluation criteria established in the NCP, 40 CFR § 300.430, and the selected remedy for the Site and the rationale for that selection.

Q. “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment including abandonment or discarding of receptacles containing any hazardous substance, pollutant or contaminant.

R. “Remedial Action” shall mean those activities to be undertaken by or on behalf of the Park Service to implement the final cleanup remedy for the Site selected pursuant to the ROD.

S. “Remedial Design” shall mean the technical analysis and procedures that follow the selection of the remedy for the Site and result in a detailed set of plans and specifications for implementation of the remedial action.

T. “Remedial Design (“RD”) Work Plan,” “Remedial Action (“RA”) Work Plan,” “Intermediate Design,” and “Final Design” shall mean the documents submitted to Ohio EPA pursuant to Article X of this Agreement that contain a detailed set of plans and specifications for implementation of the Remedial Action.

U. “Remedial Investigation” or “RI” shall mean the Park Service’s June 30, 2000 Final Remedial Investigation Report for the Krejci Dump Site.

V. “Response Costs” shall mean all costs incurred by Ohio EPA in implementing this Agreement including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement-related costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items pursuant to this Agreement, and costs verifying the work to be performed at the Site pursuant to this Agreement.

W. “Site” shall mean the property located in the Cuyahoga Valley National Park, at 814 West Hines Hill Road in Boston Township, Summit County, Ohio, where the treatment, storage, disposal, release or threat of release of hazardous substances, contaminants or pollutants, or the discharge into waters of the state of industrial waste or other waste, has occurred, including any other area where such hazardous substances, contaminants, pollutants or wastes may have migrated.

X. “Submittal” shall mean every document, report, schedule, deliverable, work plan or other item to be submitted pursuant to this Agreement.

Y. “Work” shall mean all activities required to be performed by or on behalf of the Park Service under this Agreement.

V. PURPOSE OF AGREEMENT

A. The general purposes of this Agreement are to:

1. Ensure that the environmental impacts associated with past activities at the Site are addressed through appropriate Remedial Action to protect public health, safety, welfare and the environment;
2. Establish a procedural framework and schedule for developing, implementing, maintaining and monitoring appropriate Remedial Action at the Site in accordance with CERCLA/SARA, the NCP, Superfund guidance and policy, if appropriate, and applicable state law; and
3. Facilitate cooperation, exchange of information and participation of the Parties in such actions.

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

1. Evaluate Remedial Action alternatives to prevent, mitigate or abate the

release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA, the NCP and applicable state law;

2. Select and design an appropriate Remedial Action to prevent, mitigate or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA/SARA, the NCP and applicable state law;

3. Implement the selected Remedial Action, including any required operation and maintenance, in accordance with CERCLA/SARA, the NCP, applicable state law, the RD and RA Work Plans, and the Final Design; and

4. Ensure compliance with Federal and State hazardous waste and water pollution control laws and regulations for matters covered by this Agreement.

VI. SCOPE OF AGREEMENT

In accordance with Articles IX, X and XI of this Agreement, the Park Service shall:

A. Develop and issue a Proposed Plan for the Site;

B. Develop and issue a Record of Decision (“ROD”) for the Site;

C. Develop Remedial Design and Remedial Action (“RD/RA”) Work Plans and other remedial design documents for design and implementation of the selected Remedial Action for the Site;

D. Implement the selected Remedial Action for the Site.

In the event of any inconsistency between Articles I - XXXII of this Agreement and the Attachments to this Agreement, Articles I - XXXII of this Agreement shall govern unless and until the Agreement or the Attachments are duly modified pursuant to this Agreement. Ohio EPA agrees to provide the Park Service with guidance upon request and to assist the Park Service in the performance of the requirements under this Agreement.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Agreement shall be undertaken in

accordance with the requirements of all applicable Federal and State laws and regulations.

VIII. PERMITS

A. The Parties shall consult regarding whether the Site Remedial Action necessitates any permit(s), and if so, the requisite permit(s) shall be obtained prior to conducting the relevant portion of such Remedial Action. Upon request by Ohio EPA, the Park Service shall provide Ohio EPA copies of all such permit applications and any other documents related to the permit process.

B. The Park Service shall ensure that any hazardous substances, pollutants or contaminants removed from the Site shall be transported to an authorized facility for proper treatment, storage, reclamation, recycling or disposal.

IX. PROPOSED PLAN and RECORD OF DECISION

A. The Park Service has finalized an RI Report and an FS Report for the Site. The RI identified the nature and extent of contamination at the Site and the risks to human health and the environment from that contamination. The FS evaluated cleanup alternatives to address the contamination and risks at the Site.

B. The Park Service has also finalized a Proposed Plan and a Record of Decision for the Site. The ROD became final and effective upon signature by the Department of the Interior on September 27, 2002.

C. The ROD is incorporated as an attachment to this Agreement and made an enforceable part of this Agreement.

X. REMEDIAL DESIGN / REMEDIAL ACTION

A. A draft of the work plan for the design of the Remedial Action at the Site (the RD Work Plan) shall be submitted to Ohio EPA for review and comment in accordance with Article XI. The Park Service shall use its best efforts to have such draft Work Plan submitted to Ohio EPA within one hundred fifty (150) days of issuance of the ROD. The RD Work Plan shall include, but not be limited to, documentation of the overall management strategy for designing and performing the Site Remedial Action and appropriate schedules for implementation of RD/RA tasks. The RD Work Plan shall be developed in conformance with the ROD, CERCLA, the NCP, and, if appropriate, U.S. EPA guidance and additional guidance documents provided

by Ohio EPA.

B. Ohio EPA shall submit its comments on the draft RD Work Plan to the Park Service. The Park Service shall respond to Ohio EPA's comments and, if appropriate, a revised draft RD Work Plan shall be submitted to Ohio EPA for its review. Ohio EPA shall submit its comments on any revised draft RD Work Plan to the Park Service. In the event that Ohio EPA comments on any revised draft RD Work Plan, the Park Service shall respond to Ohio EPA's comments and, if appropriate, the document shall be modified. The Park Service shall seek to obtain Ohio EPA's concurrence on the RD Work Plan. Upon consultation with Ohio EPA and review of Ohio EPA's comments on the final version of the draft RD Work Plan, the RD Work Plan shall be finalized.

C. An Intermediate (60%) Design shall be submitted to Ohio EPA for review and comment in accordance with Article XI. Ohio EPA shall submit any comments on the Intermediate Design to the Park Service. The Park Service shall respond to such comments and a draft Final Design shall be submitted to Ohio EPA for review and comment. Ohio EPA shall submit any comments on the draft Final Design to the Park Service. Upon consultation with Ohio EPA and review of Ohio EPA's comments, the Final Design shall be finalized.

D. A draft of the work plan to accomplish the Remedial Action at the Site (the "RA Work Plan") shall be submitted to Ohio EPA for review and comment in accordance with Article XI. The RA Work Plan shall include, but not be limited to, a detailed description of the remediation and construction activities and appropriate schedules for implementation of RA tasks. The RA Work Plan shall be developed in conformance with the ROD, CERCLA, the NCP and, if appropriate, U.S. EPA guidance and any additional guidance documents provided by Ohio EPA. Ohio EPA shall submit any comments on the RA Work Plan to the Park Service. The Park Service shall respond to such comments and, if appropriate, a revised draft RA Work Plan shall be submitted to Ohio EPA for review and comment. Ohio EPA shall submit any comments on any revised draft RA Work Plan to the Park Service. Upon consultation with Ohio EPA and review of Ohio EPA's comments, the RA Work Plan shall be finalized.

E. All work shall be conducted in accordance with CERCLA, the NCP, applicable U.S. EPA guidance and Ohio EPA guidance provided by Ohio EPA, if applicable, and the requirements of this Agreement, including the standards, specifications, and schedules contained in the RD and RA Work Plans and the Final Design.

F. The RD and RA Work Plans and the Final Design are incorporated as attachments to this Agreement. Any modification of the RD Work Plan, the RA Work Plan, or the Final Design shall be implemented in accordance with Article XI (Consultation with Ohio EPA) and/or Article XII (Additional Work or Modification of Work).

XI. CONSULTATION WITH OHIO EPA

Review and Comment Process for Draft and Final Documents

A. Applicability:

1. The provisions of this Article establish the procedures that shall be used by the Park Service and Ohio EPA to provide the Parties with appropriate notice, review, comment and response to comments regarding the RD and RA documents specified herein.
2. The designation of a document as “draft” or “final” is solely for purposes of consultation with Ohio EPA in accordance with this Article. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as “final,” to the public for review and comment as required by law.

B. Meeting of the Project Managers:

The Project Managers shall meet or confer periodically, as necessary, to review and discuss the progress of work being performed at the Site.

C. Review and Comment on Draft Documents:

1. One (1) copy of each draft document and each final document shall be submitted to Ohio EPA.
2. Ohio EPA will use its best efforts to provide comments to the Park Service on draft documents within thirty (30) days of receipt of such documents. With respect to draft documents that require the review of Ohio EPA’s Division of Drinking and Ground Waters, Ohio EPA will use its best efforts to provide comments to the Park Service on such documents within forty-five (45) days of receipt of such documents. Review of any document by Ohio EPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by U.S. EPA or Ohio EPA. Comments by Ohio EPA shall be provided with adequate specificity so that the Park Service may respond to the comments and, if appropriate, changes to the draft document may be made. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the Park Service, Ohio EPA shall provide a copy of the cited authority or reference.
3. Representatives of each Party shall make themselves readily available to the other

Party for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response, unless otherwise agreed to by the Project Managers.

4. The Park Service will use its best efforts to respond to Ohio EPA comments within thirty (30) days of receipt of such comments. The Park Service shall give full consideration to all written comments on the draft documents submitted by Ohio EPA. A written response to such comments and, if appropriate, a revised document shall be submitted to Ohio EPA.

D. Finalization of Documents:

The draft or revised document shall serve as the final document upon the completion of consultation with Ohio EPA. If dispute resolution is invoked, the draft or revised document shall serve as the final document upon completion of the dispute resolution process if the Park Service's position is sustained. If the Park Service's position is not sustained in the dispute resolution process, the Park Service shall prepare a revised document which conforms with the result of the dispute resolution process. The Park Service shall use its best efforts to prepare the revised document within thirty (30) days of the resolution of the dispute.

E. Subsequent Modification of Final Documents:

Following finalization of any document pursuant to this Article, Ohio EPA or the Park Service may seek to modify the document, as provided in Subparagraphs 1 and 2 below.

1. The Parties may modify a final document for any reason upon agreement of the Parties, in accordance with the provisions of this Agreement. In addition, Ohio EPA or the Park Service may seek to modify a final document if either Party determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. Ohio EPA or the Park Service may seek such a modification by submitting a concise written request to the other Party. The request shall specify the nature of the requested modification and how the request is based on new information.

2. In the event that a consensus is not reached by the Project Managers on the need for a modification, either Ohio EPA or the Park Service may invoke dispute resolution to determine if such modification should be made. A document may be modified only upon a showing that: (a) the requested modification is based on significant new information; and (b) the requested modification is likely to be of significant assistance in protecting human health or the environment.

3. Nothing in this Article shall alter the Parties' ability to request the performance of additional work pursuant to Article XII (Additional Work or Modification of Work) which does not constitute modification of a final document.

XII. ADDITIONAL WORK OR MODIFICATION OF WORK

A. In the event that the Park Service or Ohio EPA determines that additional work, or modification of work, is necessary to accomplish the objectives of this Agreement, notification of such additional work or modification of work shall be provided to the other Party.

B. Within five (5) business days following the initial notification of the need for additional work or modification of work, the Party who recommended the additional work or modification of work shall submit to the other Party a written memorandum detailing the recommended additional work or modification of work and the reasons therefor.

C. Any additional work or modification of work must be approved by both Parties in order to be effective. In the event that agreement is not reached by the Project Managers on the need for the additional work or modification of work, either Party may invoke the dispute resolution process set forth in Article XXI to resolve the dispute. If the Parties reach agreement on the need for the additional work or modification of work, the Park Service shall implement the work in accordance with Paragraph D of this Article.

D. Additional work or modification of work agreed upon by the Parties shall be completed in accordance with the standards, specifications, and schedules established or identified in this Agreement. If such additional work or modification of work necessitates the amendment of the RD or RA Work Plans, the Final Design, a work schedule or other document, the Party requesting the additional work or modification of work shall provide a proposed written amendment to the other Party. Upon agreement by the Parties, the amendment shall be signed by the Project Managers for both Parties.

XIII. ABATEMENT OF DANGER

In the event that the Park Service or Ohio EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities at the Site, are creating a danger to public health or safety on the Site or in the surrounding area or to the environment, the Park Service, after verbal consultation with Ohio EPA, may stop further implementation of work at the Site pursuant to this Agreement for such period of time as needed to abate the danger.

XIV. PROJECT MANAGERS

A. Ohio EPA and the Park Service shall each designate a Project Manager and an Alternate (hereinafter jointly referred to as Project Manager) for the purpose of overseeing the implementation of this Agreement. Within ten (10) days of the effective date of this Agreement, each Party shall notify the other Party of the name, address, telephone number, e-mail address and facsimile number of its Project Manager. A Party may change its designated Project Manager by notifying the other Party, in writing, within thirty (30) days of the change.

B. To the maximum extent possible, communications between the Parties concerning the terms and conditions of this Agreement shall be directed through the Project Managers as set forth in Article XV of this Agreement. Each Project Manager shall distribute communications from the other Project Manager.

C. The Park Service Project Manager shall have the authority vested in a remedial project manager/on-scene coordinator (RPM/OSC) by the NCP. The Ohio EPA Project Manager shall have the authority vested in a support agency coordinator by the NCP, and in an authorized representative of the Director of Ohio EPA by ORC chapters 3734 and 6111. Specifically, the Project Managers for the Park Service and Ohio EPA shall have the authority to:

1. Take samples, request split samples from the other Party's sampling events and ensure that work is performed properly and pursuant to CERCLA, the NCP, U.S. EPA and Ohio EPA protocols, if appropriate, and the Attachments incorporated into this Agreement. Any such Ohio EPA protocols shall be made available to the Park Service by Ohio EPA upon request;
2. Observe all activities performed pursuant to this Agreement, take photographs and make such other reports on the progress of the work as the respective Project Manager deems appropriate;
3. Review records, files and documents relevant to this Agreement; and
4. Recommend and request modifications to the work to be performed pursuant to this Agreement which are necessary to complete the project.

D. The Project Manager for the Park Service shall be physically present on the Site or reasonably available to supervise work performed at the Site pursuant to this Agreement, and shall be available to meet or confer with Ohio EPA, upon request or as needed, during implementation of this Agreement.

XV. NOTICES

A. Addresses

Any notice, request, demand, or other communication required or permitted to be submitted under this Agreement shall be deemed to have been duly submitted if in writing and either delivered personally or mailed by first-class, registered, or certified mail, or express delivery service, as follows:

If to Ohio EPA:

Ohio Environmental Protection Agency
Northeast District Office
Division of Emergency and Remedial Response
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn.: Krejci Dump Project Manager

If to the Park Service:

Robert E. McCaig
U.S. Department of the Interior
Bureau of Reclamation
P.O. Box 25007
Attn.: D-8580
Denver, Colorado 80225-0007

and

National Park Service
1050 Walnut Street, Suite 220
Boulder, Colorado 80302
Attn.: Shawn P. Mulligan

B. Changes

A Party may change the address to which such communications are to be directed by giving written notice to the other Party in the manner provided in this Article.

XVI. REPORTING REQUIREMENTS

A. Monthly Progress Reports. Commencing with the month following the issuance of the ROD or the effective date of this Agreement, whichever is later, written monthly progress reports shall be submitted to Ohio EPA. These reports shall: (1) describe the actions which have been taken toward implementing the Site Remedial Action during the previous month, including the volume of each type (i.e., hazardous waste, solid waste, liquid waste, etc.) of waste material removed from the Site during the previous month; (2) include all plans and procedures completed during the previous month, and an estimate of the percentage (%) of the work completed; (3) describe all actions, data and plans, including community relations activities, which are scheduled for the next month, and provide other information relating to the progress of construction if appropriate; and (4) include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of any work plan, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports shall be submitted to Ohio EPA by the tenth day of the month following the month being reported.

B. If the date for submission of any item or notification required by this Agreement falls upon a weekend or State or Federal holiday, the time period for submission of that item or notification is extended to the next business day following the weekend or holiday.

C. Upon occurrence of any event during performance of the work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, the Park Service shall within forty-eight (48) hours orally notify the Ohio EPA Project Manager. This notification is in addition to the reporting required by Section 103 of CERCLA. Within thirty (30) days of the onset of such an event, a written report shall be submitted to Ohio EPA setting forth the events which occurred and the measures taken, and those measures which will be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, a report shall be submitted to Ohio EPA setting forth all actions taken to respond thereto.

XVII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Parties shall make available to each other quality assured results of sampling, tests or other data generated by or on behalf of either Party with respect to the implementation of the Site Remedial Action. Upon request of either Party, the other Party shall submit raw data or results of any sampling, tests or other data.

B. At the request of either Project Manager, a Party taking samples shall allow split or duplicate samples to be taken by the other Party during sample collection conducted at the Site. A Party taking samples shall notify the other Party's Project Manager not less than five (5)

business days in advance of any sample collection.

XVIII. QUALITY ASSURANCE

The Park Service shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA QA/R5, EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations. Prior to the commencement of any sampling project under this Agreement, a Quality Assurance Project Plan (“QAPP”) shall be submitted to Ohio EPA that is consistent with the ROD, the Work Plans, the NCP, U.S. EPA QA/R5, and U.S. EPA QA/G5, EPA Guidance for Quality Assurance Project Plans. Ohio EPA will notify the Park Service of any recommended modifications of the QAPP(s) in accordance with Article XI. Upon any such notification by Ohio EPA of any recommended modifications, the Park Service shall respond to Ohio EPA and, as appropriate, such recommended modifications shall be made, subject to the dispute resolution provisions of Article XXI. The Park Service shall ensure that Ohio EPA personnel or authorized representatives are allowed access at reasonable times to any laboratory utilized by the Park Service in implementing this Agreement. In addition, the Park Service shall have a designated laboratory analyze samples submitted by Ohio EPA for quality assurance monitoring.

XIX. ACCESS

Without limitation on any authority conferred on Ohio EPA by statute or regulation, Ohio EPA’s authorized representatives shall have the authority to enter the Site at all reasonable times for purposes consistent with this Agreement upon oral or written notification to the Park Service’s Project Manager.

XX. RETENTION AND AVAILABILITY OF INFORMATION

A. The Park Service shall make available to Ohio EPA and shall retain, during the pendency of this Agreement and for a period of three (3) years after its termination, at least one copy of all documents in its possession, custody, or control which relate to the performance of this Agreement. If at any time prior to the conclusion of this document retention period Ohio EPA requests any such documents, the Park Service shall deliver such documents or copies thereof to Ohio EPA.

B. Information, records, or other documents received or produced by the Park Service or Ohio EPA pursuant to this Agreement shall be available to the public except: (1) those that could be withheld by the Park Service pursuant to any applicable legal authority, including the

Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the Park Service; and (2) those that could be withheld by Ohio EPA pursuant to the Ohio Public Records Act, unless expressly authorized for release by Ohio EPA. Documents or information so identified shall be handled in accordance with those statutes. If no confidentiality claim accompanies information submitted to the Party requesting it, the information may be made available to the public without further notice to the originating Party.

XXI. DISPUTE RESOLUTION

Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Article shall apply. The Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Article shall be implemented to resolve the dispute.

A. Within thirty-five (35) days after the occurrence of any action which gives rise to a dispute, the disputing Party shall submit to the other Party a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position.

B. Prior to a Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution between the Project Managers, their immediate supervisors, and/or any other representative of either Party designated by the respective Project Manager. During this informal dispute resolution period, the Parties shall meet or confer by telephone as necessary to discuss and attempt to resolve the dispute.

C. If the dispute cannot be resolved within an initial thirty (30) day informal dispute resolution period, the disputing Party shall submit the written statement of dispute to the Remediation Managers Committee (RMC) for formal resolution within five (5) days after the end of the thirty (30) day period. Failure to submit the written statement to the RMC within the thirty-five (35) day period specified above shall constitute a waiver of the disputing Party's right to challenge the matter that gave rise to the dispute.

D. The RMC, a forum for resolution of disputes not resolved through informal dispute resolution, shall consist of one representative of each Party. Ohio EPA's representative is the Manager of the Division of Emergency and Remedial Response (DERR) for the Northeast District Office. The Park Service's designated member is the Team Leader of the Park Service's Environmental Management Program. Following receipt of a written statement of dispute, the RMC shall have thirty (30) days to resolve the dispute and issue a written decision.

The RMC shall confer, meet and exert its best efforts to resolve the dispute. If the RMC is unable to resolve the dispute within this thirty (30) day period, the written statement of dispute and the respective positions of the Parties shall be forwarded to the Senior Executive Committee (SEC) within five (5) days after the end of the thirty (30) day period.

E. The SEC, the forum for resolution of disputes not resolved by the RMC, shall consist of one representative of each Party. Ohio EPA's representative on the SEC is the Chief of the Division of Emergency and Remedial Response ("DERR"). The Park Service's representative on the SEC is the Chief of the Park Service's Park Facility Management Division. Following receipt of a written statement of dispute, the SEC shall have thirty (30) days to resolve the dispute and issue a written decision. The SEC shall confer, meet and exert its best efforts to resolve the dispute. If the SEC is unable to resolve the dispute within this thirty (30) day period, the written statement of dispute and the respective positions of the Parties shall be forwarded to the signatories of this Agreement or their successors within five (5) days after the end of the thirty (30) day period.

F. Upon escalation of a dispute to the signatories of this Agreement pursuant to Paragraph E. of this Article, the signatories or their successors or designees shall review the written statement of dispute and the respective positions of the Parties, shall meet or confer, and shall issue a written decision regarding the dispute within thirty (30) days after receipt of the written statements of dispute and positions.

G. Failure of a Party to submit the written statement of dispute or elevate the dispute to the next level of this dispute resolution process within the applicable period shall constitute a waiver of such Party's right to challenge the matter that gave rise to the dispute, and such Party shall be deemed to have agreed with the position of the other Party.

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

I. When dispute resolution is in progress, work affected by the dispute may be discontinued if a Party's Project Manager requests, in writing, that work related to the dispute be stopped because, in the Project Manager's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy implementation process. To the extent possible, the Party seeking a work stoppage shall consult with the other Party prior to initiating a work stoppage request. After stoppage of work, if the other Party

believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Project Managers shall meet to discuss the work stoppage. Following this meeting, and further consideration of the issues, the Park Service's Project Manager will issue a written decision with respect to the work stoppage. The written decision may be subject to formal dispute resolution, and may be submitted directly to the signatories of this Agreement or their designees or successors.

J. The Park Service shall incorporate the resolution and final determination of a dispute pursuant to the procedures specified in this Article into any appropriate plan, schedule or procedures. The Park Service shall use its best efforts to prepare any necessary revised document within thirty (30) days of resolution of the dispute.

K. Resolution of a dispute pursuant to this Article constitutes a final resolution of any dispute arising under this Agreement, subject to the provisions of Article XXVII (Covenant Not to Sue/Reservation of Rights). The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Article.

XXII. EXTENSIONS

A. A timetable, deadline or schedule may be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by either Party shall be submitted in writing to the other Party and shall specify:

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

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

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

good cause.

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

D. Within fifteen (15) days of receipt of a request for an extension of a timetable, deadline or schedule, the receiving Party shall advise the requesting Party in writing of its position on the request. If the receiving Party does not concur with the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

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

F. Within thirty (30) days of receipt of a statement of nonconcurrence from the receiving Party regarding the requested extension, the requesting Party may invoke dispute resolution, provided, however, that the requesting Party may at its option bypass the initial thirty (30) day informal dispute resolution period.

XXIII. FORCE MAJEURE

A. A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or pipelines despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; failure of a third party to meet contractual or court-imposed requirements; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Park Service; 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 Park Service shall have made timely request for such funds as part of the budgetary process as set forth in Article XXIV (Park Service Funding) of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of the Remedial Action, whether or not anticipated at the time such Remedial Action was initiated.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, a Party shall orally notify the other Party's Project Manager within forty-eight (48) hours of when the Party first knew that the event might cause a delay. Within ten (10) business days of the event(s) which the notifying Party contends is responsible for the delay, such Party shall provide a written statement to the other Party describing the reasons for and anticipated duration of such delay, the measures taken and to be taken by the notifying Party to prevent or minimize the delay, and the timetable for the implementation of such measures. Failure to give written explanation in a timely manner shall constitute a waiver of any claim of Force Majeure.

C. If the Parties agree that the event constitutes a force majeure, the schedules affected thereby shall be amended by the Parties in accordance with Article XXII. If the Parties disagree that the event constitutes a force majeure, the dispute resolution procedures may be implemented to resolve the dispute.

XXIV. PARK SERVICE FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of the Park Service arising under this Agreement will be fully funded. The Park Service shall take all necessary steps and make its best efforts to obtain timely and sufficient funding to meet its obligations under this Agreement. Upon request of Ohio EPA, the Park Service shall inform Ohio EPA of its efforts to obtain funding necessary to implement this Agreement.

B. Any requirement for the payment or obligation of funds by the Park Service established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

C. Notwithstanding the foregoing, failure of the Park Service to obtain adequate funds or appropriations from Congress to fully fund the obligations of the Park Service under this Agreement shall not, in any way, release the Park Service from its obligations under this Agreement or applicable federal or state law or regulation.

D. In cases where the Park Service believes that payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the Park Service may notify Ohio EPA thereof and may request an extension of a timetable, deadline or schedule in accordance with Article XXII (Extensions) . If appropriated funds are not available to fulfill the Park Service's obligations under this Agreement, Ohio EPA reserves the right to initiate any other action which may be appropriate absent this Agreement.

XXV. REIMBURSEMENT OF OHIO EPA'S RESPONSE COSTS

A. The Park Service shall reimburse Ohio EPA for all Response Costs incurred by Ohio EPA under this Agreement. This obligation shall be subject to the conditions and limitations set forth in this Article and Article XXIV (Park Service Funding).

B. Response costs shall include, but are not limited to, expenditures by Ohio EPA in conducting the following activities under this Agreement:

1. Technical review and substantive comment on reports, documents, plans or studies prepared by or on behalf of the Park Service and submitted to Ohio EPA, or any other technical review under this Agreement;
2. Identification and explanation of State requirements applicable to federal facilities in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs);
3. Site visits and other activities intended to ensure that the Remedial Action is implemented in accordance with CERCLA and the NCP, applicable state law requirements, and agreed upon conditions between Ohio EPA and the Park Service that are established in the framework of this Agreement. These activities may include review of draft data in order to analyze and provide input on fieldwork;
4. Participation with the Park Service and other parties in the conduct of community relations activities, in accordance with Federal and State requirements for public involvement. The Park Service shall provide Ohio EPA with at least fifteen (15) business days advance notice of public meetings;
5. Preparation for and participation in technical meetings: the Park Service shall provide Ohio EPA with at least five (5) business days advance notice of meetings to be held in the State of Ohio, and at least twenty-one (21) days advance notice of any meetings to be held outside the State of Ohio;
6. Sampling and Monitoring Activities: characterization, sampling and monitoring activities; waste packaging, transportation and in-state disposal, reclamation or recycling activities; Remedial Action activities; and laboratory costs incurred as a result of split sampling performed in order to validate the Park Service's Remedial Action sampling;
7. Administration of this Agreement, including the provisions for reimbursement of Ohio EPA's Response Costs; and

8. Other activities specified in this Agreement.

C. Ohio EPA shall submit an annual itemized statement of its Response Costs for the previous calendar year, together with Standard Form 270 (Request for Reimbursement or Advance), to the Contracting Officer, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102, Attention: Theora McVay. Within sixty (60) days of receipt of such an itemized statement from Ohio EPA, the Park Service shall remit payment to Ohio EPA as follows:

1. Payment shall be made by check, payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049 or by alternate electronic means as agreed to by the Parties;

2. A copy of the transmittal letter and evidence of payment shall be sent to:

a. Ohio EPA, Northeast District Office, DERR, 2110 East Aurora Road, Twinsburg, Ohio 44087, ATTN: Krejci Dump Project Manager; and

b. Ohio EPA, Legal Office, P.O. Box 1049, 122 S. Front Street, Columbus, Ohio 43216-1049 ATTN.: Supervising Attorney.

D. Ohio EPA's performance of its obligations under this Agreement shall be excused if its response costs as defined herein are not paid as required by this Article. Ohio EPA reserves any right it may have to seek or obtain reimbursement of any costs incurred or funds expended by Ohio EPA at the Site to the extent authorized by CERCLA or state law. Nothing herein shall prejudice Ohio EPA's ability to exercise any right to reimbursement provided for by CERCLA or state law.

XXVI. PROPERTY TRANSFER

In the event the Park Service decides to enter into any contract for the sale or transfer of any portion of the Site, the Park Service shall comply with the requirements of CERCLA Section 120(h), 42 U.S.C. § 9620(h), in effectuating that sale or transfer, including all notice requirements. In addition, the Park Service shall include notice of this Agreement to any subsequent owner of any portion of the Site, and shall notify Ohio EPA of any such sale or transfer at least ninety (90) days prior to such transfer. No change in ownership of the Site or any portion thereof, or notice pursuant to Section 120(h)(3)(B) of CERCLA, 42 U.S.C. § 9620(h)(3)(B), shall relieve the Park Service of its obligation to perform pursuant to this Agreement.

XXVII. COVENANT NOT TO SUE/RESERVATION OF RIGHTS

A. In consideration of the Park Service's compliance with this Agreement and based on the information known to the Parties on the effective date of this Agreement, Ohio EPA agrees not to initiate any administrative, legal or equitable proceedings or seek any civil remedies against the Park Service, its employees, contractors, agents or their employees, available to Ohio EPA under current law, regarding the currently known releases or threatened releases of hazardous substances, pollutants or contaminants at the Site which are the subject of the RI/FS and which will be addressed by the Remedial Action provided for under this Agreement. Nothing in this Agreement shall preclude Ohio EPA from pursuing any administrative, legal or equitable remedies available to require additional response action by the Park Service or any other party in the event that: (1) conditions previously unknown or undetected by Ohio EPA arise or are discovered at the Site; or (2) Ohio EPA receives additional information not previously available concerning the Site, and the implementation of this Agreement is no longer protective of human health or the environment.

B. After selection of a remedial action and notwithstanding Paragraph A. above and any other provision of this Agreement, nothing in this Agreement shall preclude the State of Ohio from pursuing claims against responsible parties not signatory to this Agreement under Federal or State law for natural resource damages or the costs of a natural resource damage assessment at the Site.

XXVIII. OTHER CLAIMS

Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action, of demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, contaminants or pollutants, found at, taken to, or taken from the Site; provided, however, that the Parties shall consult with each other prior to either Party issuing any administrative order or bringing any administrative or judicial action against any person or entity regarding the Site. Ohio EPA shall not be considered a party to, and shall not be held liable under, any contract entered into by the Park Service to implement the requirements of this Agreement. This Agreement shall not restrict either Party from taking any action for any matter except as expressly provided in this Agreement.

XXIX. PUBLIC PARTICIPATION

A. The activities performed pursuant to this Agreement shall be implemented in

compliance with the public participation and administrative record requirements of CERCLA, including sections 113 and 117 of CERCLA, 42 U.S.C. § 9613 and 9617, and the NCP.

B. The Park Service has established an administrative record at or near the Site in accordance with Section 113(k) of CERCLA. The administrative record developed by the Park Service shall be updated as required by CERCLA and the NCP. The Park Service will notify Ohio EPA of any such administrative record updates.

XXX. EFFECTIVE DATE

This Agreement is effective upon signature by the authorized representatives for both Parties.

XXXI. AMENDMENT OF AGREEMENT

The terms of this Agreement may be amended at any time by mutual agreement of the Parties. Any such amendment shall be in writing and signed by the signatories of this Agreement, or their successors. If a Party requests the Agreement to be amended but the other Party does not concur, a Party may invoke the dispute resolution process in Article XXI. If no resolution is reached after the matter is referred to the signatories of this Agreement or their designees or successors in office, the Agreement shall not be modified.

XXXII. TERMINATION

The provisions of this Agreement shall be deemed satisfied and terminated upon mutual agreement of the Parties in writing that all terms of this Agreement have been completed.

The provisions of this Agreement that require performance after the termination of this Agreement shall remain in force notwithstanding the termination of this Agreement.

THE UNITED STATES
DEPARTMENT OF THE INTERIOR

OHIO ENVIRONMENTAL
PROTECTION AGENCY

BY: _____
William Schenk
Midwest Region Director

BY: _____
Christopher Jones
Director

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THE UNITED STATES
DEPARTMENT OF THE INTERIOR

OHIO ENVIRONMENTAL
PROTECTION AGENCY

BY: David N. Owen
William Schenk
Midwest Region Director
National Park Service

BY: Christopher Jones
Christopher Jones
Director
Ohio EPA

DATE: 11/14/02

DATE: 12-11-02

Approved for contracting bases:

Theora McVay
Theora McVay, Contracting Officer
Midwest Regional Office
National Park Service