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KANSAS DEPARTMENT OF HEALTH  
AND ENVIRONMENT  
AND  
CITY OF WICHITA

KDHE Approval  
Nov. 14, 1995

NORTH INDUSTRIAL CORRIDOR SITE

SETTLEMENT AGREEMENT FOR REMEDIAL INVESTIGATION AND  
FEASIBILITY STUDY AND FOR CERTAIN REMEDIAL ACTIONS TO BE  
DETERMINED FOLLOWING OPPORTUNITY FOR PUBLIC INVOLVEMENT

KDHE Case Number 95-E-0321



October 16, 1995

# WICHITA NORTH INDUSTRIAL CORRIDOR

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BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
Landon Building - 900 S.W. Jackson  
Suite 904  
Topeka, Kansas 66612-1290

IN THE MATTER OF: )  
 )  
CITY OF WICHITA, KANSAS )  
NORTH INDUSTRIAL CORRIDOR )  
SITE )  
Wichita, Kansas )  
 )  
Proceedings pursuant to )  
the Kansas Environmental )  
Response Act, K.S.A. 65-3452a, )  
65-3452, as amended and those )  
statutes cited below )  
\_\_\_\_\_ )

Case No. 95-E-0321

SETTLEMENT AGREEMENT FOR  
REMEDIAL INVESTIGATION AND  
FEASIBILITY STUDY, AND  
FOR CERTAIN REMEDIAL ACTIONS  
TO BE DETERMINED FOLLOWING  
OPPORTUNITY FOR PUBLIC  
INVOLVEMENT

INTRODUCTION

1  
2           1.       This Settlement Agreement is entered into voluntarily by the Kansas Department  
3 of Health and Environment ("KDHE") and the City of Wichita, Kansas ("City"), a municipal  
4 corporation. This Settlement Agreement ("Agreement") concerns the City's preparation of a  
5 remedial investigation and feasibility study ("RI/FS"), the performance of public involvement  
6 activities, and remedial activities ("RD/RA") to be determined following opportunity for public  
7 involvement at an area known as the "North Industrial Corridor Site" ("the N.I.C. Site") located  
8 in Wichita, Kansas which includes areas commonly known as 29th and Mead, 13th and  
9 Washington, and facilities identified in the Findings of Fact, and as further depicted on the Site  
10 map (Attachment 1).

11 JURISDICTION

12 2. This Agreement is pursuant to the authority of the KDHE which has general  
13 jurisdiction of matters involving hazardous substance cleanups under the authority of the Kansas  
14 Environmental Response Act (K.S.A. 65-3452a. et seq.), more specifically K.S.A. 65-3453(a)(6),  
15 as well as hazardous waste cleanups (K.S.A. 65-3430 et seq.) and has general authority and  
16 responsibility to protect waters and soils of the State under the authority of K.S.A. 65-161, et seq.  
17 The City agrees to undertake the actions required by the terms and conditions of this Agreement,  
18 and, in any action by the KDHE to enforce the terms of this Agreement, the City consents to and  
19 agrees not to contest the jurisdiction or authority of KDHE to enter into or enforce this  
20 Agreement, or to contest the validity of this Agreement.

21 3. The City enters into this Agreement in anticipation of the United States  
22 Environmental Protection Agency ("EPA") deleting the 29th and Mead site from the National  
23 Priorities List of Superfund sites, as provided in EPA's letter of April 7, 1995. In order to  
24 facilitate such deletion or any deletion which may be authorized by law, the City is entering into  
25 this agreement directly with the KDHE under KDHE jurisdiction to undertake the activities  
26 required herein in compliance with the current National Contingency Plan, 40 C.F.R. Part 300  
27 and as may be amended, with oversight by KDHE. Deletion of the 29th and Mead Site from the  
28 NPL enables KDHE and the City to undertake the activities herein under KDHE jurisdiction and  
29 is a condition subsequent of this Settlement Agreement.

30 PARTIES COVERED BY THIS AGREEMENT

31 4. This Agreement shall apply to and be binding upon the KDHE, the City, their  
32 agents, successors, assigns and officers. The signatories to this Agreement certify that they are  
33 authorized to execute and legally bind the parties they represent to this Agreement.

34 5. The City shall provide a copy of this Agreement to all contractors, subcontractors,

35 laboratories, and consultants retained to conduct work performed under this Agreement, within  
36 21 days after retaining the services of the party, or after entry of this Agreement, whichever is  
37 later.

38 STATEMENT OF PURPOSE

39 6. In entering into this Agreement, the objectives of the KDHE and the City are:

40 a. to determine the nature and extent of contamination and any threat to the  
41 public health, welfare or the environment caused by the release or threatened release of hazardous  
42 substances, pollutants or contaminants at or from the N.I.C. Site,

43 b. to determine and evaluate alternatives for remedial action (if any) to  
44 prevent, mitigate or otherwise respond to or remedy any release or threatened release of  
45 hazardous substances, pollutants or contaminants at or from the N.I.C. Site,

46 c. to conduct a public involvement exercise through an advisory committee(s)  
47 comprised of representatives of various public interest, academic and business groups who will  
48 provide expertise and advice on the conduct of the studies and other activities hereunder through  
49 the scheduling of such public meetings, hearings, notices, or other forms of communication as  
50 may be appropriate to advise the general public of developments under this Agreement and to  
51 provide an opportunity for participation under the National Contingency Plan, 40 C.F.R. Part 300  
52 as amended or other substantially equivalent means;

53 d. to implement the remedial options chosen by KDHE following the activities  
54 described above, and to assure that the entire process as well as the remedial projects selected  
55 meet the requirements of the KDHE and the National Contingency Plan, 40 C.F.R. Part 300 and  
56 as may be amended, or affected by any change of law or regulation to enable the City to fulfill  
57 the purposes of this Agreement to identify and recover costs from parties not released from  
58 liability by the terms of this Agreement.

59 e. to meet the requirements of the EPA as established in EPA's letter of April  
60 7, 1995, to enter a Settlement Agreement providing for response actions at the 29th and Mead  
61 Site so that EPA will commence and carry through actions necessary to remove the 29th and  
62 Mead Site from the NPL.

63 f. to remediate any economic impact upon the City of Wichita, other taxing  
64 subdivisions, the Wichita Metropolitan area, Sedgwick County, and the State of Kansas and  
65 certain owners, operators, lenders and successors in interest in property located within the North  
66 Industrial Corridor ("N.I.C.") as depicted on Attachment 1, that may have occurred or may occur  
67 in the future if this Agreement is not entered, which economic impact results from soil,  
68 groundwater and/or surface water contamination within the North Industrial Corridor ("N.I.C.")  
69 Site.

70 g. to eliminate potential impacts to property valuation or to the property tax  
71 base.

72 h. to enable certain owners, operators, lenders and successors in interest within  
73 the N.I.C. site area to obtain a Certificate of Release as provided by this Settlement Agreement,  
74 which releases such qualified parties from liability and provides an agreement by KDHE not to  
75 take action against them.

## 76 BACKGROUND

77 7. The N.I.C. Site is a commercial, industrial and residential area of approximately  
78 3,000 acres located in the north-central area of Wichita, Kansas in Sedgwick County, and is  
79 composed of an irregularly shaped area as more fully identified on Attachment 1. The N.I.C. Site  
80 includes areas commonly known as 29th and Mead, 13th and Washington and properties  
81 bordering those areas.

AREAS INCLUDED IN THE N.I.C. SITE

**13th and Washington Area**

8. The 13th and Washington area is located between the current boundaries of the 29th and Mead Site to the north and the Gilbert and Mosley Site to the south, and within the area now to be known as the N.I.C. Site. Land use in the approximately 1600 acre area is diverse, and includes industrial, commercial and residential properties. The area is defined for the purposes of this agreement as the area located south of 17th Street, north of 2nd Street, west of Hydraulic Street, and east of Waco Street. The legal description of the site includes all or parts of Sections 8, 9, 10, 16, 17, 20, 21, and 22, Township 27 South, Range 1 East.

9. In May, 1991, KDHE completed a Preliminary Assessment (PA) of ground water contamination in the 13th and Washington area. The PA was initiated after contamination was detected in a dewatering well used during a construction project at the St. Francis Regional Medical Center. The PA identified nine volatile organic compounds (VOCs) in the ground water within the 13th and Washington area and recommended additional investigation be performed.

10. The St. Francis Regional Medical Center entered into an agreement with the KDHE to perform a Remedial Site Evaluation (RSE) in order to assess their compliance with all applicable federal, state, and local environmental laws. This agreement, Case Number 92-E-139, was signed into effect in March, 1994.

11. In October 1992, the City of Wichita entered into an agreement, Case Number 92-E-222, with the KDHE to investigate potential downgradient impact of contamination south of the 29th and Mead Site. On June 15, 1993, the City of Wichita submitted a Draft Field Investigation Report in response to the agreement. The investigation performed between 17th Street on the north, Murdock Street to the south, I-135 to the east, and Waco Street on the west, indicated that ground water contamination extended downgradient of the 29th and Mead Site into the 13th and Washington area.

107           12.     In September 1993, KDHE completed an Expanded Site Inspection Report for the  
108     13th and Washington area. This study confirmed that the deep and shallow zones of the aquifer  
109     were contaminated with VOCs and that contamination from the 29th and Mead area has migrated  
110     south into the 13th and Washington area.

111     **29th and Mead Area**

112           13.     The 29th and Mead site is an industrialized area of north Wichita. This area is  
113     defined for purposes of this Agreement by the approximate geographic area of 37th Street on the  
114     north, 17th Street on the south, Broadway on the west and I-135 on the east, and within the area  
115     now to be known as the N.I.C. Site. The Area encompasses approximately 1440 acres consisting  
116     of Section 33, Range 1 East, Township 26 South; and, Section 4, and the North-half of the  
117     North-half of Section 9, all in Range 1 East, Township 27 South. The area name of Twenty-  
118     Ninth and Mead is taken from a street intersection in the approximate middle of the area.

119           14.     In 1983, an Environmental Protection Agency (EPA) investigation of potential  
120     groundwater contamination revealed the presence of volatile organic compounds (VOCs) in two  
121     industrial wells in the area.

122           15.     In November of 1984, investigations by the U.S. Geological Survey (USGS) under  
123     contract to KDHE focused on potential sources of groundwater contamination. The 1984 site  
124     investigations involved the installation of five monitoring wells on the site and one monitoring  
125     well upgradient of the site.

126           16.     Results of the groundwater samples taken by KDHE from wells in the area  
127     revealed the presence of contaminants in the groundwater. These contaminants included such  
128     VOCs as trichloroethylene (TCE), carbon tetrachloride (CCl<sub>4</sub>), toluene, benzene, ethylbenzene,  
129     methylene chloride, trans and/or 1,2-dichloroethylene, vinyl chloride and 1,1,1-trichloroethane  
130     (TCA) among others.

131 17. In 1985, additional area investigations were performed by the USGS under contract  
132 to KDHE. Seven more wells were installed in the area and analytical testing of those wells by  
133 KDHE showed concentrations of VOCs and other regulated chemicals.

134 18. In 1986, KDHE and USGS performed additional sampling in the area, which  
135 included a soil gas investigation of parts of the Twenty-Ninth and Mead area. Results of soil gas  
136 sampling by KDHE and USGS revealed the presence of the following VOCs: TCE, TCA, 1,1-  
137 dichloroethane (DCA), carbon tetrachloride, CCl 4, vinyl chloride, Trans 1,2-dichloroethylene  
138 (DCE), and trichloromethane (CHCl 3).

139 19. In 1987, KDHE notified the potentially responsible party group subsequently  
140 known as the Wichita North Industrial District Group ("WNID Group") that the groundwater  
141 under their properties was or might be contaminated with volatile organic compounds and  
142 provided information consistent with that recited in the above paragraphs. The WNID Group,  
143 including the City of Wichita, was organized and instituted an investigation of possible  
144 groundwater contamination in the area. That investigation included the retaining under contract  
145 the services of Groundwater Technology, Inc., a professional engineering and environmental  
146 consultation firm, to conduct an independent investigation of potential groundwater contamination  
147 in the area.

148 20. A survey of wells within a three mile radius surrounding the contaminated wells  
149 reveals in addition to industrial wells, five (5) Public Water Supply (PWS) wells which have in  
150 the past served the community of Bel Aire, approximately 328 private wells, and 10 irrigation  
151 wells. These wells are all upgradient of the area. The aquifer is capable of large yields. Bel  
152 Aire, which has a population of approximately 2,565, has contracted with the City of Wichita for  
153 its water supply needs and is now hooked up to the Wichita Water Department System under a  
154 "take or pay" contract. KDHE and the City believe that the contamination described in this  
155 Settlement Agreement does not pose a significant threat to the residents of Bel Aire, but

156 downgradient wells and the quality of surface water of the Arkansas River downgradient of the  
157 N.I.C. Site are or may be threatened by the continued movement of the contaminants being  
158 released from the site.

159 21. KDHE and the WNID Group entered a Consent Agreement on September 27,  
160 1989, providing for a Remedial Investigation and Feasibility Study and incorporating an approved  
161 Work Plan. The Consent Agreement was executed by each participant and the City agreed to  
162 become a participant in the Consent Agreement on September 12, 1989.

163 22. The 29th and Mead site was officially listed as a Superfund Site in February, 1990.

164 23. The WNID Group initiated field work at the site on June 20, 1990 and continued  
165 through 1992. A Remedial Investigation ("RI") Report was submitted to KDHE in late 1992, for  
166 review and approval. However, KDHE noted numerous data gaps in the report including areas  
167 to the north and south of the site. Consent Orders were signed with four additional potentially  
168 responsible parties to complete the additional investigative work required by KDHE in the data  
169 gap areas defined by the original RI report. Information from those investigations, if available,  
170 will be included in the final review of the RI report to be prepared by the City under this  
171 Settlement Agreement. Parties expected to provide additional information are identified below.

172 24. Through an Agreement with KDHE, the City of Wichita installed monitoring wells  
173 south of the 29th and Mead area to further define contamination migrating to the south.

174 25. In July, 1994, the City of Wichita officially petitioned EPA to remove the 29th  
175 and Mead Site from the NPL, to enable the City to negotiate this Settlement Agreement with the  
176 KDHE and to restore economic viability to the area by allowing property transactions and  
177 financing to occur, to restore the declining tax base in the area, and to facilitate the completion  
178 of RI/FS activities.

179 26. On April 7, 1995, the EPA advised that it would proceed to initiate Federal  
180 Register action to delete the 29th and Mead Site from the NPL if the City enters this Settlement

181 Agreement with KDHE and carries out the response actions required hereunder in compliance  
182 with the NCP (40 C.F.R. Part 300). If the City cannot meet the Conditions Subsequent hereunder  
183 or is unable or unwilling to complete the response actions described in this Settlement Agreement,  
184 then EPA will have no obligation to delete the 29th and Mead Site from the NPL.

185 **PARTIES WITHIN THE N.I.C. SITE UNDER CONSENT ORDERS OR**  
186 **AGREEMENTS WITH EPA AND/OR KDHE**

187 **Evcon (Coleman) Operable Unit of 29th and Mead**

188 27. In response to the threat of continued releases from the Coleman Operable Unit  
189 area, Coleman and Evcon entered into an Agreement with KDHE which became effective June  
190 14, 1991, in which they agreed to perform and subsequently commenced a RI/FS within the area  
191 designated as the Coleman "Operable Unit" as that term is defined in 40 C.F.R. § 300.430;

192 28. Coleman and Evcon completed the Remedial Investigation ("RI") Report for the  
193 Coleman Operable Unit in May 1992, and Coleman and Evcon completed a Feasibility Study  
194 ("FS") Report for the Coleman Operable Unit in July 1992;

195 29. The decision by EPA and KDHE on the remedial action to be implemented at the  
196 Coleman Operable Unit is embodied in a final Record of Decision ("ROD"), executed on  
197 September 29, 1992, in which the State concurred. The ROD includes a responsiveness summary  
198 to the public comments. Notice of the final plan was published in accordance with Section  
199 117(b) of CERCLA.

200 30. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §  
201 9621(f)(1)(F), EPA notified the State of Kansas (the "State"), through the Kansas Department of  
202 Health and Environment, on March 30, 1993, of negotiations with potentially responsible parties  
203 ("PRPs") regarding the implementation of the remedial design and remedial action for the  
204 Coleman Operable Unit.

205 31. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA  
206 notified the United States Department of the Interior ("DOI" or "Trustee") on November 1, 1992,  
207 of negotiations with PRPs regarding the release of hazardous substances that may have resulted  
208 in injury to the natural resources under Federal trusteeship.

209 32. The Coleman Company, Inc., now known as New Coleman Holdings, Inc.  
210 ("Coleman") and Evcon Industries, Inc. ("Evcon"), entered into a Consent Decree with EPA;  
211 however they do not admit any liability arising out of the transactions or occurrences alleged in  
212 the complaint prepared by EPA.

213 33. Coleman, RV Products and Evcon entered into a Consent Decree with the USEPA  
214 on September 7, 1993 to conduct a Remedial Design and Remedial Action at the Coleman  
215 Operable Unit.

#### 216 **Coastal Derby**

217 34. Coastal Derby has entered into a Consent Order with KDHE, for the facility  
218 located within the 29th and Mead area. This Consent Order is No. 86-E-145A and provides for  
219 certain environmental activities described therein.

#### 220 **Unocal Chemicals Division Distribution Facility**

221 35. The Unocal Chemicals Division Distribution Facility "Unocal" is located at 2100  
222 East 37th Street in Wichita, Kansas. The site is also described as being in the Southeast quarter  
223 of the Southwest quarter of Section 27, Township 26 South, Range 1 East.

224 36. Operations at Unocal generally included receiving bulk shipments of liquid  
225 chemicals, storage of liquid chemicals and distribution of liquid chemicals. The Unocal facility  
226 was originally constructed in 1953. Unocal handles a variety of chemicals which include, but are  
227 not limited to: toluene, methyl ethyl ketone, xylene, trichloroethylene and tetrachloroethylene.

228           37.    On November 3, 1989, an accidental release of approximately 150 gallons of  
229 tetrachloroethylene was reported to KDHE. Unocal initially contracted O.H. Materials to  
230 excavate the contaminated soil. However, it was determined that excavation operations would  
231 not completely remediate the area of contaminated soil.

232           38.    Unocal contracted Woodward Clyde Consultants to install an Interim Response  
233 Action vapor extraction system in the contaminated area. The system was put into operation on  
234 November 22, 1989.

235           39.    In March of 1990 a preliminary site characterization was conducted to identify and  
236 assess potential environmental concerns at Unocal. The conclusions of this investigation indicated  
237 that volatile organic chemicals ("VOCs") are present in groundwater and soil beneath the Unocal  
238 site.

239           40.    A second investigation was conducted at the Unocal facility on July 29 through  
240 August 6, 1991 to supplement data presented in the initial report. The conclusions of this  
241 investigation confirmed that VOCs were present in groundwater and soil beneath the Unocal site.

242           41.    The contamination of the groundwater beneath the Unocal Chemicals Division  
243 Distribution Facility and adjacent areas is causing or threatens to cause pollution of the waters  
244 of the State or is or threatens to become a hazard to persons, public health, or safety.

245           42.    KDHE initiated negotiation of a Consent Order with Unocal to conduct a Remedial  
246 Investigation/Feasibility Study (RI/FS) by correspondence dated December 4, 1991. In that  
247 correspondence, KDHE requested an extensive investigation be conducted to adequately  
248 characterize the ground water and soil contamination at the Unocal facility since information  
249 available at that time from an RI/FS in progress relative to the Twenty-Ninth and Mead  
250 Superfund Site indicated ground water contamination was migrating into the Superfund Site  
251 boundaries from an off-site source located to the northeast, which would be in the general area  
252 of the Unocal facility.

253 43. A Consent Order between Unocal and KDHE, Case No. 91-E-206, became  
254 effective on March 23, 1992. The Consent Order provides for Unocal to conduct a Remedial  
255 Investigation/Feasibility Study.

256 44. Unocal completed the first phase of a Remedial Investigation in 1993; KDHE  
257 approved the Phase I Remedial Investigation Report on November 30, 1993. KDHE approved  
258 a Phase II Remedial Investigation Work Plan on June 28, 1994. A draft Phase II Remedial  
259 Investigation Report submitted by Unocal is under review as of July, 1995.

260 45. In June, 1994, Unocal received approval from the KDHE to implement an  
261 additional Interim Remedial Measure (IRM) at the site. The IRM will provide for hydraulic  
262 containment of contaminated ground water primarily as a source control measure. Hydraulic  
263 containment will be accomplished by installation of ground water recovery wells. Unocal has  
264 implemented the IRM as of July, 1995.

265 46. Results from investigations conducted to date indicate soil and ground water  
266 contamination at the Unocal property, and ground water contamination emanating from the  
267 Unocal facility to the Coleman Northeast Plant which is located immediately southwest of the  
268 Unocal Site. The full extent of ground water contamination emanating from the Unocal Site has  
269 not been delineated.

#### 270 **Continental Tank Car Corporation**

271 47. The Continental Tank Car Corporation Site ("Site") is approximately 3.1 acres and  
272 is located at 1106 East 37th Street North in Wichita, Sedgwick County, Kansas. This location  
273 is legally described as: Lot 1 and the West Half of Lot 2, in North Wichita Gardens, Sedgwick  
274 County, Kansas, except beginning at a point on the South Line of Lot 2, and 15.2 feet West of  
275 the Southeast Corner of West Half of Lot 2; thence northerly to a point on North Line and 19.1  
276 feet West of the Northeast Corner of West Half of Lot 2; thence East 19.1 feet to the Northeast

277 Corner of West Half of Lot 2; thence South to Southeast Corner of Lot 2; thence West 15.2 feet  
278 to place of beginning.

279 48. The Continental Tank Car Corporation has leased this site to other occupants for  
280 purposes of conducting business. Records indicate that past occupants have included: Impala  
281 Industries a.k.a. Insto-Impala Industries and Great American Design Fabrication.

282 49. In September of 1988, the Continental Tank Car Corporation retained STRATA  
283 Environmental Service, Inc. to perform a preliminary investigation at the Continental Tank Car  
284 Corporation property. The purpose of the investigation was to determine the presence of  
285 groundwater contamination and if so, its migration from the site. Several volatile organic  
286 compounds "VOCs" were detected in one sampling location during this preliminary investigation  
287 and include: 1,1 dichloroethylene, 1,2 cis dichloroethylene, 1,1,1-trichloroethane and  
288 trichloroethylene.

289 50. The report indicates that certain solvents may have been disposed on the  
290 Continental Tank Car Corporation property and the extent of contamination has not been  
291 determined.

292 51. Information collected during a Remedial Investigation at the Coleman Operable  
293 Unit Site indicates that volatile organic contaminants including but not limited to trichlorethylene,  
294 1,1,1 trichlorethylene and 1,2 dichloroethylene are migrating onto the Coleman Operable Unit Site  
295 from a source area near Continental Tank Car Corporation property.

296 52. The contamination of the groundwater beneath the Continental Tank Car  
297 Corporation property and adjacent contaminated areas is causing or threatens to cause pollution  
298 of the waters of the State or is or threatens to become a hazard to persons, public health, or  
299 safety.

300 53. KDHE initiated negotiation of a Consent Order with Continental Tank Car  
301 Corporation to conduct a Remedial Investigation/Feasibility Study (RI/FS), by correspondence

302 dated December 6, 1991. KDHE indicated in the December 6, 1991, correspondence that the  
303 confirmed ground water contamination at the Continental Tank Car Corporation property may be  
304 migrating into the northern boundary of the Twenty-Ninth and Mead Superfund Site.

305 54. A Consent Order between KDHE and the Continental Tank Car Corporation, Case  
306 No. 92-E-206, became effective September 4, 1992 and provided for the Continental Tank Car  
307 Corporation to conduct a Remedial Investigation.

308 55. In February, 1993, KDHE approved a Remedial Investigation Work Plan for the  
309 Continental Tank Car Corporation Site. The Remedial Investigation was conducted following  
310 approval of the work plan. KDHE approved a Remedial Investigation report on May 12, 1995.

311 56. The Remedial Investigation concluded that a ground water contamination plume  
312 of chlorinated volatile organic hydrocarbons was emanating from the Continental Tank Car  
313 Corporation property and had migrated into the northern boundary of the Twenty-Ninth and Mead  
314 Superfund Site.

315 **U.S.D. 259**

316 57. The Kansas Unified School District No. 259 Property located at 3850 N.  
317 Hydraulic, Wichita, Kansas ("USD 259 Property") is generally located within an industrialized  
318 area of North Central Wichita. The site is used by the District as a School Service Center that  
319 services the entire School District.

320 58. Pursuant to an investigation performed by or on behalf of KDHE, concentrations  
321 of hazardous substances or hazardous waste including Trans or CIS 1,2, Dichloroethylene,  
322 Trichloroethylene, Trichloroethylene, Trans or CIS 1,2, Dichloroethylene, and Trichloroethylene  
323 in amounts that exceed reporting limit levels were found in the ground water underlying the  
324 property at that location.

325 59. Information collected during groundwater investigations conducted geographically

326 south of the USD 259 Distribution Center, in an area commonly referred to as Twenty-Ninth and  
327 Mead Superfund Site, indicates the presence of a chlorinated VOC groundwater plume which  
328 appears to be migrating within Twenty-Ninth and Mead Superfund boundaries from a source in  
329 the proximity of the USD 259 Distribution Center.

330 60. KDHE initiated negotiation of a Consent Order with USD 259 to conduct a  
331 Remedial Investigation/Feasibility Study (RI/FS) in December, 1991. KDHE requested an  
332 extensive investigation be conducted to adequately characterize the ground water and soil  
333 contamination at the USD 259 Distribution Center. The Consent Order, Case No. 92-E-221,  
334 became effective on March 15, 1993 and provided for USD 259 to conduct a Remedial  
335 Investigation. KDHE believes USD 259 contaminated water plume threatens to migrate into the  
336 northern portion of the east boundary of the 29th and Mead Superfund Site.

337 61. KDHE approved a Remedial Investigation Work Plan on November 17, 1993. The  
338 Remedial Investigation approach that was approved consisted of a phased investigation. USD 259  
339 is in the process of completing the first phase of the Remedial Investigation as of July, 1995.

#### 340 **Coleman Northeast Plant**

341 62. The Coleman Northeast Plant is located in the northwest quarter of Section 34,  
342 Township 26 South, Range 1 East in Sedgwick County. The plant and adjoining property occupy  
343 approximately 160 acres. The plant is the main factory for Coleman Outdoor Products, Inc., and  
344 was constructed in 1971.

345 63. Products manufactured at the plant include recreational equipment such as cook  
346 stoves, lanterns, coolers, and thermal beverage containers.

347 64. Pursuant to Coleman investigations, it has been reported that the groundwater  
348 underlying the property contains volatile organic compounds ("VOC's") including, but not limited  
349 to Trichlorethylene, and its degradation products (collectively referred to as "TCE".)

350           65.     Conclusions from the January 22, 1991 report indicate that primarily chlorinated  
351     VOCs have impacted the soils and groundwater at the Coleman Northeast Plant. In addition, the  
352     report indicates that the available data does not define the extent or degree of contaminated soil  
353     or groundwater and that further investigation is needed.

354           66.     KDHE initiated negotiation of a Consent Order with Coleman to conduct a  
355     Remedial Investigation/Feasibility Study (RI/FS) by correspondence dated December 4, 1991.  
356     In that correspondence, KDHE requested an extensive investigation be conducted to adequately  
357     characterize the ground water and soil contamination at the Coleman Northeast Plant since  
358     information available at that time from an RI/FS in progress relative to the Twenty-Ninth and  
359     Mead Superfund Site indicated ground water contamination was migrating into the superfund site  
360     boundaries from an off-site source located to the northeast, which would be in the general area  
361     of the Coleman Northeast Plant.

362           67.     Coleman entered into the Consent Order with the KDHE to perform a Remedial  
363     Investigation at the Coleman Northeast Plant. This agreement, Case No. 91-E-205, became  
364     effective on November 17, 1992.

365           68.     Coleman completed two phases of a Remedial Investigation (RI) as of November  
366     17, 1994, and is in the process of completing the third phase as of July, 1995. Results of the RI  
367     to date have confirmed contamination of soil and ground water with VOCs at the Coleman  
368     Northeast Plant, and ground water contamination has also been confirmed to extend off-site in  
369     a direction consistent with the confirmed southwesterly ground water flow in the area.

370           69.     In April, 1995, Coleman received conceptual approval from the KDHE to  
371     implement an Interim Remedial Measure (IRM) at the plant. The IRM will provide for hydraulic  
372     containment of the higher concentration VOC contaminated ground water as a source control  
373     measure. Hydraulic containment will be accomplished by installation of ground water recovery  
374     wells located on-site near source areas and the southwest property boundary of the plant.

375 Coleman is in the process of completing implementation of the IRM as of July, 1995. KDHE  
376 suspects the Coleman Northeast Plant VOC contaminated ground water plume may be migrating  
377 into the northern portion of the east boundary of the Twenty-Ninth and Mead Superfund Site.

378 FINDINGS OF FACT

379 70. Chlorinated organic compounds are among the principal hazardous contaminants  
380 found in the area of the N.I.C. Site, including among others; trans 1,2, DCE, TCE, CCl 4, MEK,  
381 toluene, benzene, ethylbenzene, vinyl chloride, TCA, 1,1-DCE, 1,2 cis DCE, 1,1,1, TCA, and  
382 1,1,1, TCE. Several of these compounds exceed established Drinking Water Standards.

383 71. The City has extended public water supply services to all affected areas of the  
384 N.I.C. Site which assures the availability of drinking water meeting EPA Drinking Water  
385 Standards to all residents within the site. If in the course of the activities required hereunder,  
386 residents not served by public drinking water are found, the City will make reasonable efforts to  
387 extend such services to those residents.

388 72. The investigations undertaken by the KDHE have resulted in concern by various  
389 lending institutions ("Banks") that the Banks might become responsible parties under provisions  
390 of environmental law because of their lending activities associated with properties located within  
391 the N.I.C. Site. As lenders, the Banks are concerned about the impact of the groundwater  
392 contamination on collateral values of property within the N.I.C. Site, and the continuing ability  
393 of the Banks to engage in prudent lending activities is critical to the economic viability of the  
394 area. Any discontinuance of lending activities in the N.I.C. Site has or will adversely impact the  
395 economic vitality of the area and will frustrate plans for its economic revitalization.

396 73. Contamination within the N.I.C. area and the effect such contaminants may have  
397 on lender liability within the N.I.C. Site has the potential to result in a devaluation of the  
398 properties and an eventual loss of tax base value to the City of Wichita, and other taxing

399 subdivisions thereby threatening the ability of the City and other taxing subdivisions to continue  
400 its present level of services to the citizens. A substantial amount of the assessed tax evaluation  
401 of the City's total property tax base exists within the N.I.C. Site area, and it is likely that a  
402 substantial portion of the tax revenues for the City and other taxing subdivisions from this area  
403 will be lost if the soils, groundwater and/or surface water contamination and other potential  
404 environmental threats are not addressed.

405 74. Contamination within the N.I.C. Site and the effect such contamination has on  
406 lending activities has the potential to negatively impact the owners and operators of property  
407 within the N.I.C. Site area, and the economy of the City of Wichita, the Wichita Metropolitan  
408 Area, Sedgwick County and the State of Kansas.

409 75. The City Council of the City of Wichita intends to adopt a resolution to facilitate  
410 the formation of a tax increment financing package for the N.I.C. Site area as a mechanism to  
411 generate funds with which to provide for additional studies and/or remedial actions at the N.I.C.  
412 Site area. The City has taken this action based upon its recognition that the existence of  
413 contaminated soils and groundwater in the area may pose a threat to the health and environment  
414 of the citizens of the City of Wichita and may pose an economic threat to the ability of the City  
415 and other taxing subdivisions to provide necessary services to residents and may have an  
416 economic impact upon owners and operators of property located within the N.I.C. site area, and  
417 upon the economy of the City of Wichita, the Wichita Metropolitan area, Sedgwick County and  
418 the State of Kansas. The amount of funds which may be raised through the tax increment  
419 financing will be determined through a Financial Feasibility Study which will be commenced by  
420 the City. The amount of funds may not be sufficient to assure full funding of all environmental  
421 response actions, and the City is entering this Settlement Agreement subject to this and other  
422 potential funding limitations described in the conditions subsequent paragraph of this Settlement  
423 Agreement.



448           83.    The facts above constitute:  
449                   a.    the discharge, abandonment, or disposal of hazardous substances or  
450    hazardous wastes;  
451                   b.    the pollution of the land or waters of the state or the threat of pollution of  
452    the land or waters of the state;  
453                   c.    a hazard to persons, property or public health or threatens to become a  
454    hazard to persons, property or public health.

455           84.    Under the facts as shown above, the KDHE has concluded, and the Secretary has  
456    confirmed, that there is a need for further investigation to determine whether response actions are  
457    required to prevent a continuing release or threat of release of hazardous substances and remove  
458    the pollution or hazard which may be found to exist.

459           85.    The investigation of such discharges is necessary to determine whether removal  
460    of the pollution or hazard is required to protect the public health and safety and the environment,  
461    giving rise to the authority of the Kansas Department of Health and Environment to enter this  
462    agreement. A necessary part of this investigation is the study of the nature (ie. sources, types and  
463    levels) and lateral and vertical extent of the threat to public health or welfare or the environment  
464    caused by the release or threatened release of hazardous substances, pollutants or contaminants  
465    from the site ("Remedial Investigation") and an evaluation of the alternatives for the appropriate  
466    extent of remedial action to prevent or mitigate the migration of the release or threatened release  
467    of hazardous substances, pollutants or contaminants from the site ("Feasibility Study").

468           86.    The KDHE has concluded, and the secretary has confirmed, that there may be a  
469    need for "interim measures", in addition to those already taken, to minimize the spread of  
470    contamination or the possibility of additional source control measures, taking into account known  
471    source control measures, and that the City and KDHE have agreed to coordinate interim measures  
472    as described in this Settlement Agreement or Work Plan(s), and those which have been or may

473 be developed in the future by parties undertaking such action under a Settlement Agreement with  
474 KDHE, and as may be consistent with any final remedy that may result from the remedial  
475 investigation and feasibility study, and that such actions are consistent with the authority of  
476 K.S.A. 65-3453, 65-164, K.S.A. 65-3430, et seq., and believed to be consistent with the  
477 Environmental Protection Agency National Contingency Plan, 40 C.F.R. Part 300, et seq.

478 87. The KDHE has concluded, and the Secretary has confirmed, that the Secretary is  
479 authorized by K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq., and the  
480 regulations issued pursuant thereto, to enter into this Agreement providing for the completion of  
481 appropriate remedial actions by the City of Wichita following public participation in the  
482 recommendations of the remedial investigation and feasibility study, and the approval of the  
483 appropriate recommended remedial action by the Secretary.

484 88. The KDHE has concluded, and the Secretary has confirmed, that the KDHE has  
485 authority to enter this agreement, and to make the findings of fact and conclusions of law stated  
486 herein.

487 89. The Secretary of Health and Environment is authorized by K.S.A. 65-3453, K.S.A.  
488 65-164, et seq., K.S.A. 65-3430, et seq. and the regulations issued pursuant thereto to enter an  
489 order confirming the agreement of the parties, and ordering that the actions and obligations  
490 required hereunder be achieved.

491 NOW, THEREFORE, in consideration of the foregoing findings of fact and conclusions  
492 of law, the Parties agree to the following activities and commitments:

493 WORK TO BE PERFORMED

494 90. The KDHE and the City acknowledge and agree that investigative activity is being  
495 completed at several areas within the N.I.C. Site. These investigations are being implemented  
496 by various potentially responsible parties under separate Consent Agreements with the KDHE.

497 In an effort to integrate results from the various investigations it is hereby agreed that pursuant  
498 to this Consent Order the following work must be performed:

499 WORK PLAN

500 91. KDHE has developed a "Scope of Work for Remedial Investigations and  
501 Feasibility Studies" which is attached hereto as Attachment 2 and incorporated by reference  
502 herein. The City of Wichita shall submit a draft Work Plan to KDHE for review and approval  
503 for the N.I.C. Site which is consistent with Attachment 2 with a courtesy copy to EPA and to  
504 other PRP's who have entered into separate Consent Orders with KDHE as described herein and  
505 have requested such information. All references hereafter to review or concurrence by KDHE  
506 on submittals by the City of Wichita shall be deemed to incorporate therein any comments or  
507 concurrences of EPA if any. The N.I.C. Site Work Plan must include the following components:

508 **29th and Mead Area: RI Completion**

509 92. The Remedial Investigation as defined by Consent Agreement (Case Number 89-E-  
510 111) for the area formerly known as "29th and Mead" must be completed by the W.N.I.D. Group  
511 in accordance with KDHE's recommendations except as such responsibility is otherwise agreed  
512 to by the City and the W.N.I.D. Group. Additional work, required by KDHE prior to  
513 completion, must be coordinated with further RI work being performed under this Agreement.  
514 A plan to define any additional field work required by KDHE to complete the Remedial  
515 Investigation must be submitted for KDHE review and approval. This plan must be a component  
516 of the N.I.C. Site Work Plan.

517 **13th and Washington Area: RI Activity**

518 93. A Remedial Investigation must be completed on the area formerly known as "13th

519 and Washington". A plan following the Scope of Work for a RI (Attachment 2) must be  
520 submitted and approved by KDHE prior to implementation. This plan must be a component of  
521 the N.I.C. Site Work Plan.

522 **Continuation of Active Source Controls and Operable Units: Investigation**

523 94. KDHE and the City enter this Settlement Agreement in the expectation that  
524 individual Source Controls/Operable Unit investigations will continue as defined by their  
525 respective Consent Orders for the following sites: Coleman Northeast (Case Number 91-E-205),  
526 Unocal (Case Number 91-E-206), USD #259 (Case Number 91-E-212) and Continental Tank Car  
527 Corporation (Case Number 91-E-209). All final RI reports must be approved and coordinated  
528 by KDHE. The N.I.C. Site Work Plan must define methods to incorporate available data from  
529 these investigations, to the extent such data is available.

530 **Future Source Controls/Operable Units**

531 95. Any other potentially responsible party identified by the activities described herein,  
532 or at any time during the life of this Consent Agreement, may be required by KDHE and/or the  
533 City to implement Source Controls/Operable Unit actions consistent with this Settlement  
534 Agreement. The N.I.C. Site Work Plan must define procedures to identify and transfer pertinent  
535 data to KDHE concerning new source areas in an expeditious manner.

536 **Baseline Risk Assessment:**

537 96. A Baseline Risk Assessment ("BRA") must be completed for the N.I.C. Site. At  
538 the mutual agreement of the parties, the BRA may be performed by KDHE or the City. KDHE  
539 recognizes that other risk assessments may have been conducted and or completed by PRPs for  
540 Source Control/Operable Units and/or other areas within the site. Upon KDHE approval, data

541 from these risk assessments can be utilized in generating an overall Baseline Risk Assessment for  
542 the Site. Scoping meetings must be scheduled between KDHE, KDHE's contractor and the City's  
543 contractor prior to performance of a Baseline Risk Assessment.

544 **Community Relations Plan:**

545 97. A Community Relations Plan must be developed by the City, approved by KDHE,  
546 and implemented at the Site. All community relations activities must be coordinated between  
547 KDHE and the City. The City may use a citizens technical review committee or such other group  
548 as it desires to provide advice and comment on the activities on the Site.

549 **Summary of RI:**

550 98. A summary RI report must be prepared and submitted for KDHE approval  
551 providing a description of work to be undertaken by the City, with an index and brief description  
552 of all RI activity for the entire N.I.C. Site, including all RI activities undertaken by third parties  
553 under the scope of this Agreement, which may consist of a brief description of the RI activities  
554 of such third parties followed by an attachment of any available RI report prepared by such third  
555 parties.

556 **Feasibility Study:**

557 99. A feasibility study must be prepared for the N.I.C. Site to address area wide  
558 ground water, soil, and/or surface water contamination. The feasibility study must be approved  
559 by KDHE. Additionally, Source Controls/Operable Unit Remedial Investigations/ Feasibility  
560 Studies being performed within the Site by other parties, in accordance with a KDHE Order, must  
561 be coordinated with the City. Source Controls/ Operable Unit Feasibility Studies within the Site  
562 will be developed to identify remedial actions that will be consistent with the final remedial

563 action for the Site.

564 The N.I.C. Site Work Plan, when approved by KDHE will be incorporated into this  
565 Agreement and shall become a part hereof as Attachment 6.

566 **Corrective Action Decision**

567 100. KDHE will develop and present for public comment a Draft Corrective Action  
568 Decision which describes the proposed remedial alternatives selected for the Site and any Source  
569 Controls/ Operable Units within the Site. KDHE will respond to public comments and make a  
570 final determination of the remedial alternatives for the Site and/or Source Controls/ Operable  
571 Units within the N.I.C. Site. Final Corrective Action Decisions will be submitted for public  
572 record.

573 **Agreements for Source Controls/Operable Units**

574 101. A Consent Agreement must be signed by KDHE and the identified responsible  
575 party prior to implementation of a KDHE approved remedial alternative at any Source Controls/  
576 Operable Units. That Consent Agreement will define the Remedial Design and Remedial Action  
577 for the Source Controls/Operable Units. Any such Consent Agreement must be consistent with  
578 the requirements of the Coordination With Other PRP's paragraph hereof.

579 **Remedial Design and Remedial Action**

580 102. A Remedial Design must be completed for the Site in accordance with the Scope  
581 of Work for a Remedial Design and Remedial Action (Attachment 3); similarly a Remedial  
582 Design for any Source Controls/Operable Units within the site must be completed in accordance  
583 with the Consent Agreement executed by KDHE and the identified responsible party. Remedial  
584 Design Plans for the Site and any Source Controls/ Operable Units must be approved by KDHE

585 prior to implementation. Any such Remedial Design must be consistent with the requirements  
586 of the Coordination With Other PRP's paragraph hereof.

587 Remedial Action must be completed for the Site and any Source Controls/ Operable Units  
588 within the Site in accordance with the Attachment 3. Remedial Action Work Plans for the Site  
589 and any Source Controls/ Operable Units must be approved by KDHE prior to implementation.

590 103. KDHE has developed a "Scope of Work for Work Plan" which is attached hereto  
591 as Attachment 3 and incorporated by reference herein. The City of Wichita shall submit a draft  
592 Work Plan which is consistent with this Scope of Work with a courtesy copy to EPA, to KDHE  
593 for review and approval by the date set forth on the Deliverable Schedule which is Attachment  
594 4 in the Work Plan. All references hereafter to review or concurrence by KDHE on submittals  
595 by the City of Wichita shall be deemed to incorporate therein any comments or concurrences of  
596 EPA if any.

597 104. The Work Plan, when approved by KDHE is incorporated into this Agreement and  
598 shall become a part hereof as Attachment 6.

599 105. Any reports, plans, specifications, schedules and attachments required by this  
600 Agreement are, upon approval by KDHE, incorporated into this Agreement.

601 106. All Work Plans shall include a time and deliverable schedule.

602 107. Within 60 days after KDHE approval of the respective Work Plan, the City shall  
603 begin implementation of said Work Plan.

#### 604 SUBMISSIONS REQUIRING AGENCY APPROVAL

605 108. After review of any plan, report or other item which is required to be submitted  
606 for approval pursuant to this Agreement, KDHE shall: (a) approve, in whole or in part, the  
607 submission; (b) approve the submission upon specified conditions; (c) modify the submission to  
608 cure the deficiencies; (d) direct that the City of Wichita modify the submission; (e) disapprove,

609 in whole or in part, the submission, notifying the City of Wichita of deficiencies; or (f) any  
610 combination of the above.

611 109. In the event of approval, approval upon conditions, or modification by KDHE, the  
612 City of Wichita shall proceed to take any action required by the plan, report, or other item, as  
613 approved or modified by KDHE subject only to the City's right to invoke the Dispute Resolution  
614 procedures set forth in the Dispute Resolution section with respect to the modifications or  
615 conditions made by KDHE.

616 110. Upon receipt of a notice of disapproval or a notice requiring a modification, the  
617 City of Wichita shall, within 30 days or such other time as specified by KDHE in such notice,  
618 correct the deficiencies and resubmit the plan, report, or other item for approval.  
619 Notwithstanding the notice of disapproval or a notice requiring a modification, the City of  
620 Wichita shall proceed, at the direction of KDHE, to take any action required by any non-deficient  
621 portion of the submission.

622 111. In the event that a resubmitted plan, report or other item, or portion thereof, is  
623 disapproved by KDHE, KDHE may again require the City of Wichita to correct the deficiencies,  
624 in accordance with the preceding paragraphs. KDHE also retains the right to amend or develop  
625 the plan, report or other item.

626 Subject only to their right to invoke procedures set forth in the Dispute Resolution section,  
627 the City of Wichita shall implement any such plan, (including the Work Plan) report, or item as  
628 amended or developed by KDHE within 60 days of approval by KDHE.

629 112. If, upon the first resubmission or upon any subsequent resubmission, the plan,  
630 report, or item is disapproved by KDHE due to a material defect, the City of Wichita shall be  
631 deemed to be in violation of the provision of this Agreement requiring the City of Wichita to  
632 submit such plan, report, or item unless the City of Wichita invokes the dispute resolution  
633 procedures set forth in the Dispute Resolution section and the final decision overturns KDHE's

634 disapproval pursuant to that paragraph. The provisions of the Dispute Resolution and Stipulated  
635 Penalties sections shall govern the implementation of the Work Plan and accrual and payment of  
636 any stipulated penalties during Dispute Resolution. Implementation of any non-deficient portion  
637 of a submission shall not relieve the City of Wichita of any liability for stipulated penalties under  
638 the Stipulated Penalties section.

639 113. All plans, reports, and other items required to be submitted to KDHE under this  
640 Agreement shall, upon approval by KDHE, be deemed to be incorporated in and an enforceable  
641 part of this Agreement. In the event KDHE approves a portion of a plan, report, or other item  
642 required to be submitted to KDHE under this Agreement, the approved portion shall be deemed  
643 to be incorporated in and an enforceable part of this Agreement.

#### 644 MODIFICATION OF THE WORK PLAN

645 114. The Work Plan may be amended by mutual agreement of the KDHE and the City  
646 of Wichita. Such amendments shall be in writing, and shall have as their effective date the date  
647 on which they are signed by both parties, and shall be incorporated into this Agreement.

648 115. No informal advice, guidance, suggestions or comments by KDHE regarding  
649 reports, plans, specifications and any other writings submitted by the City of Wichita will be  
650 construed as relieving the City of its obligations to obtain written approval, whenever required  
651 by this Agreement.

#### 652 ADDITIONAL RESPONSE ACTIONS

653 116. In the event that KDHE or the City of Wichita determine that response actions are  
654 necessary to complete the RI/FS or RD/RA in addition to the approved Work Plan tasks including  
655 reports, written notification of such additional response actions shall be provided to the Project  
656 Coordinator for the other party.



681 not be considered valid. If the results cannot be validated by evaluation of the Quality  
682 Assurance/Quality Control procedures, historical data, or laboratory protocol, the City will  
683 resample upon KDHE's approval and discretion. The City will notify KDHE at least seven (7)  
684 days before conducting resampling. Failure to follow the above procedure for deviations will be  
685 considered violations of this order and may be subject to a stipulated penalty of \$1,000.00 per  
686 violation as provided in the Stipulated Penalty section and the data resulting therefrom shall be  
687 invalid.

688 122. The City of Wichita shall use the quality assurance, quality control, and chain of  
689 custody procedures specified in the Quality Assurance Project Plan, which is part of the approved  
690 Work Plan, for all sample collection and analysis performed pursuant to this Agreement, unless  
691 otherwise agreed to in writing by KDHE.

692 123. All contracts for field work and laboratory analysis shall provide that KDHE  
693 representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon  
694 reasonable notice, to all laboratories and personnel utilized by the City of Wichita for sample  
695 collection and analysis and other field work. Upon request by KDHE, the laboratories shall  
696 perform analysis of a reasonable number of known samples provided by KDHE to demonstrate  
697 the quality of the analytical data.

698 REPORTING

699 124. The City shall provide KDHE with written progress reports quarterly, pursuant to  
700 the Schedule in the Work Plan. At a minimum, these progress reports shall: (1) describe the  
701 actions, progress, and status of projects which have been taken toward achieving compliance with  
702 this Agreement, as well as the actions which are scheduled for the next quarter: (2) identify any  
703 requirements under this Agreement that were not completed as provided and any problem areas  
704 and anticipated problem areas in complying with this Agreement; and (3) include all results of

705 sampling, tests, data and conclusions drawn from data generated pursuant to the Work Plan(s).

706 ACCESS

707 125. The City, KDHE and any of their agents or contractors are authorized by the City,  
708 to the extent of it's authority, to enter and freely move about all property of the City in the N.I.C.  
709 Area during reasonable business hours and in compliance with safety requirements for the  
710 purposes of, inter alia: interviewing site personnel and contractors; inspecting operating logs and  
711 contracts related to the terms of this Agreement; reviewing the progress of the City in carrying  
712 out the terms of this Agreement; conducting such sampling and tests as KDHE deems necessary;  
713 using a camera, sound recording, or other documentary type equipment; and verifying the reports  
714 and data submitted to KDHE by the City. The City shall permit authorized representatives of  
715 KDHE to inspect and copy all records, files, photographs, documents, and other writings,  
716 including all sampling and monitoring data, that pertain to work undertaken pursuant to this  
717 Agreement. Upon disclosure to KDHE, such information shall be protected pursuant to K.S.A.  
718 65-170g, K.S.A. 65-3447 and as allowed by K.S.A. 45-221 et seq.

719 126. To the extent that work required by the Work Plan must be done on property not  
720 owned or controlled by the City, the City shall use its best efforts, excluding condemnation, to  
721 obtain such site access agreements from the present owner(s) of such property, including  
722 obtaining such access for investigative and remedial purposes, not inconsistent with the current  
723 beneficial use of the property, as a condition of the land owner obtaining certified property status  
724 thirty (30) days after receipt of a request therefor from KDHE. Any such access agreement shall  
725 address the purposes and limitations of the Agreement, any restoration requirements, and shall  
726 be incorporated by reference into this Agreement. In the event that agreements for site access  
727 are not obtained within thirty (30) days of the date of such request, the City shall notify KDHE  
728 regarding the matter. KDHE shall thereafter seek to obtain access for the City. KDHE shall not

729 be responsible for any injury or damage to persons or property caused by the negligent or willful  
730 acts or omissions of the City, its officers, employees, agents, successors, assigns, contractors, or  
731 any other person acting on the City's behalf in carrying out any activities pursuant to the terms  
732 of this Agreement. The City shall not be responsible for any injury or damage to persons or  
733 property caused by the negligent or willful acts or omissions of KDHE, their officers, employees,  
734 agents, successors, assigns, contractors, or any other person acting on KDHE's behalf in carrying  
735 out any activities pursuant to the terms of this Agreement.

#### 736 SAMPLING AND DATA/DOCUMENT AVAILABILITY

737 127. The City shall make available to KDHE all results of sampling, tests, or other data  
738 generated by or on its behalf as required by this Agreement. The City shall submit these results  
739 in the progress reports described in the "Reporting" Section of this Agreement. KDHE will make  
740 sampling results and other data available to the City. However, the City may perform such other  
741 additional investigations and take such additional samples as may be deemed appropriate for their  
742 own purposes, and shall not be required under this Agreement to furnish such information to  
743 KDHE unless specifically requested by KDHE. KDHE may request such additional information  
744 under the authority provided by law, subject to the privileges against disclosure which the City  
745 may have, including, but not limited to, attorney-client communication, work product privilege,  
746 or other legal defense.

747 128. The City shall notify KDHE at least seven (7) days before conducting any well  
748 drilling, installation of equipment, or sampling. At the request of KDHE, the City shall provide  
749 or allow KDHE or EPA or their authorized representatives to take split samples of all samples  
750 collected by the City pursuant to this Agreement. Similarly, at the request of the City KDHE  
751 shall provide the City or its authorized representatives with split or duplicate samples of all  
752 samples collected by KDHE under this Agreement. KDHE shall notify the City at least seven

753 (7) days before conducting any sampling under this Agreement, provided, however, that if seven  
754 (7) days notice of sample collection activity is not possible, KDHE and the City shall give such  
755 advance notice to enable each party to have a representative present during said sample collection  
756 activity.

757 RECORD PRESERVATION

758 129. The City agrees that it shall preserve, during the pendency of this Agreement and  
759 for a minimum of six (6) years after its termination, all records and documents which have not  
760 previously been provided to KDHE in its possession or in the possession of divisions, employees,  
761 agents or consultants or contractors which relate in any way to this Agreement or to hazardous  
762 waste management and disposal at the site. At the conclusion of six (6) years, the City shall then  
763 make such records available to KDHE for inspection or KDHE's retention or shall provide copies  
764 of any such records to KDHE.

765 STIPULATED PENALTIES

766 130. For each period of time that the City of Wichita fails to submit reports or  
767 deliverables at the times set out in Attachment 4, which is part of this Agreement, the City of  
768 Wichita, to the extent it is able to pass such penalties on to the consultant, shall pay as stipulated  
769 penalties the following: \$2,000 for the first week of delay or part thereof; \$3,000 per day for  
770 each day of delay for the 8th through 14th day and \$5,000 per day of delay thereafter provided  
771 that the City shall not be responsible for penalties caused by failure of any operable unit ("OU")  
772 party to submit reports or provide information needed by the City to submit deliverables in a  
773 timely manner. For failure to follow the notice of deviation requirements of the Quality  
774 Assurance section, the City of Wichita, to the extent it is able to pass such penalties on to the  
775 consultant, shall pay as stipulated penalties \$1,000 per violation. The City of Wichita agrees to

776 contract for the payment of these stipulated penalties with it's consultant. Any accrued penalties  
777 shall be forgiven in the event the next deliverable on the schedule in Attachment 4 is completed  
778 by the originally scheduled completed date.

779 131. Any stipulated penalties shall be payable within twenty-one (21) days after the City  
780 of Wichita's receipt of demand by KDHE and shall be paid by certified check to:

781 Secretary of Health and Environment  
782 Landon Building - 900 S.W. Jackson  
783 Suite 904  
784 Topeka, Kansas 66612-1290

785 A copy of the check and a transmittal letter shall be sent to the KDHE contact specified herein.  
786 The City of Wichita shall remit a check for the full amount of penalty stated in the demand.

787 132. Should City of Wichita fail to comply with a time requirement of any tasks  
788 required by this Agreement, the period of noncompliance shall terminate upon City of Wichita's  
789 performance of said requirement.

790 OTHER CLAIMS AND PARTIES

791 133. Nothing in this Agreement or the documents required hereunder, including the  
792 Work Plan, shall be used or construed as evidence or an admission in any proceeding other than  
793 the proceedings under this Agreement. Nothing in this Agreement, except as provided in the  
794 Certificate and Release paragraph below shall constitute or be construed as a release for any  
795 claim, cause of action or demand in law or equity against any person, firm, partnership or  
796 corporation not a signatory to this Agreement for any liability it may have arising out of or  
797 relating in any way to the generation, storage, treatment, handling, transportation, release or  
798 disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or  
799 contaminants found at, taken to, or taken from the facility. KDHE shall use its best efforts to  
800 encourage non-participating Potentially Responsible Parties who have not been issued a Certificate

801 of Release pursuant to this Settlement Agreement to participate with the City in its efforts,  
802 whether or not covered by this Agreement, to investigate and remediate the contamination  
803 described hereinabove as being of concern to the Parties. Any costs incurred in connection with  
804 such activities shall not be deemed to be oversight costs, but shall be costs which the City shall  
805 pay in the event it elects to have KDHE legally pursue such parties by administrative order or  
806 court action; provided that the City shall not be required to reimburse KDHE for costs for which  
807 KDHE receives site specific funding for such activities through Comprehensive Environmental  
808 Response, Compensation, and Liability Act ("CERCLA") as amended.

809 RELEASE OF CLAIMS

810 134. Except as provided in this paragraph, effective upon completion of activities  
811 described in the Work Plan(s) for the RI/FS and RD/RA and any other environmental response  
812 requirements covered by this Agreement, the KDHE hereby covenants not to take further action  
813 against the City for additional requirements in connection with the activities described herein.  
814 However, the requirements of this Agreement represent the best professional judgment of the  
815 KDHE at this time, based upon available information. If circumstances change, or if additional  
816 information is needed to determine if a potential threat exists or if data indicates that a threat of  
817 danger to public health or safety, or the environment exists, or a threat of pollution is different  
818 than is contemplated herein, KDHE retains the right to reasonably modify the dates and  
819 requirements of the Work Plan, or add additional reasonable requirements respecting the Remedial  
820 Investigation and Feasibility Study and RD/RA as necessary and appropriate to the purposes of  
821 this agreement and the City of Wichita retains the right to appeal any such modifications or  
822 additional requests subject to the provisions of this Agreement. All such modifications shall be  
823 in writing. Any such modification of dates or requirements shall necessitate a modification of  
824 the dates now set forth in the work plan for deliverables.

825           135. a.       For purposes of this paragraph, "Person" means a holder of any form of  
826       legal or equitable interest in a Certified Property and includes, by way of illustration and not of  
827       limitation, owners, mortgagees, tenants, and holders of mechanics' and artisans' liens, and all  
828       persons obtaining title or other form of interest in the property from them and any person or  
829       entity conducting a business operation on property within the Site. Any Person desiring to obtain  
830       a Certificate shall furnish to the City a sworn statement describing the property for which a  
831       Certificate is sought, stating that during the time which such Person held an interest in the  
832       property, no Hazardous Substance or petroleum products or constituents have been released or  
833       disposed of (as defined by state and federal law) at said property, that the Person agrees to grant  
834       the City, KDHE and others acting on their behalf or in cooperation with them access to said  
835       property for the purposes of performing activities related to the investigation and remediation of  
836       the Site as set forth above, and that such Person is entitled to a Certificate, and any other  
837       information the City may reasonably require. The City shall review the statement and any other  
838       relevant information, and may, taking into account the best interests of the City in carrying out  
839       the purposes of this Agreement, issue a Certificate and the property described in such certificate  
840       shall be Certified Property for the purposes of this Agreement. In issuing a Certificate the City  
841       may rely on the information provided by the Person and is not required to make an independent  
842       determination of qualification for the Certificate. In no event shall a Certificate be issued to a  
843       Person which is a corporate successor of a Person who would not be eligible for the issuance of  
844       a Certificate. The City shall annually furnish KDHE an updated list of properties granted  
845       Certificates by the City.

846           b.       For purposes of this paragraph, "Certified Property" means a lot, parcel, or other  
847       tract of property in the Site which is named in a Certificate. Except as provided in sub-  
848       paragraphs (e), (f) and (g), effective with the issuance of each Certificate, KDHE and the City  
849       jointly and severally agree not to take any action against, and hereby forever release, all Persons

850 to whom such Certificate is issued with respect to any liability of such Person, by way of  
851 contribution, subrogation, direct liability, or otherwise, for the environmental investigation and  
852 remediation described herein and for payment of any response costs related to environmental  
853 investigation or remediation of the Site.

854 c. Nothing in this paragraph shall prevent the City, KDHE, or anyone claiming by  
855 or through either of them from bringing an action to compel investigation and remediation  
856 activities described herein and recover response costs against any Person to whom a Certificate  
857 is not issued.

858 d. The City may from time to time, after the execution of this Agreement, establish  
859 such procedures and forms for the issuance of Certificates as it may see fit. No Certificate shall  
860 be issued to any Person until such time as this Agreement can no longer be terminated pursuant  
861 to the conditions subsequent paragraph of this Agreement. The City shall maintain a public  
862 record of all Certificates issued hereunder which shall be available for public inspection. To the  
863 extent that public notice and opportunity for comment is provided by the City in connection with  
864 issuance of a Certificate, KDHE, its designated agents or contractors will participate as a party  
865 in such proceedings. However if the workload of KDHE for these activities exceeds the amount  
866 of oversight set forth in the paragraph on Reimbursement of Costs, the City agrees to pay the  
867 costs for these activities within thirty (30) days of receipt of the accounting from KDHE;  
868 provided that the City shall not be required to reimburse KDHE for costs for which KDHE  
869 receives site specific funding for such activities through Comprehensive Environmental Response,  
870 Compensation, and Liability Act ("CERCLA") as amended.

871 e. Except as provided in sub-paragraphs (f) and (g), issuance of a Certificate shall  
872 be final and irrevocable, and the release and agreement contained in sub-paragraph (b) hereof  
873 shall not be affected or terminated by reason of the termination or modification of this  
874 Agreement; provided, however, that no person shall be released from liability pursuant to this

875 paragraph if such person provided false or misleading information in connection with obtaining  
876 the Certificate.

877 f. The agreement of KDHE set out in this paragraph is in anticipation of the City  
878 obtaining and continuing to obtain funds required and the use of those funds to timely perform  
879 the requirements and activities described in this Agreement. Should the City be unable to so  
880 perform any of its obligations under the Agreement because its source of funds, as set forth in  
881 the conditions subsequent paragraph, is insufficient to do so or it fails to use those funds to  
882 address the obligations herein, the agreement of KDHE not to take action and the release in this  
883 paragraph shall become void and unenforceable as to any requirements and activities described  
884 in this Agreement which are not completed by the City. Nothing in this sub-paragraph affects  
885 or qualifies the City's agreement not to seek contribution from any Person to whom a Certificate  
886 is issued unless such Certificate is later determined void by the City as provided herein. The City  
887 will ensure in its Certificate that each Person to whom a Certificate is issued acknowledges its  
888 understanding of the conditions set forth in this subparagraph.

889 g. In addition to the procedures for Certificate of Release provided above, the City  
890 may enter a settlement agreement with any potentially responsible party, without requiring any  
891 admission of liability by such party, upon terms satisfactory to the City, and payment of a  
892 settlement amount satisfactory to the City. In arriving at settlement terms and settlement  
893 amounts, the City shall give consideration to the relative amount of contamination which may be  
894 attributed to the settling party, the contribution of other parties, the legal and equitable defenses  
895 of such party, and such other factors as the City may deem appropriate. Upon entry of any such  
896 settlement, the settling party also shall be granted a Certificate of Release providing for  
897 contribution protection and a covenant not to sue providing that KDHE and the City covenant  
898 not to pursue or take further action against the settling party, so long as the settling party remains  
899 in compliance with the terms of the settlement agreement applicable to such party, and subject

900 to the provisions of this paragraph.

901 CONTRIBUTION PROTECTION

902 136. KDHE and the City acknowledge that under 42 U.S.C. 9613(f)(2), by entry of this  
903 Agreement, neither the City nor KDHE is liable for claims for contribution regarding matters  
904 addressed herein, and that this Agreement does not establish contribution rights or contribution  
905 protection of any other potentially responsible parties, except for those parties issued a Certificate  
906 and Release under the Release of Claims paragraph.

907 137. KDHE acknowledges that the City has a right of contribution under federal law  
908 and may have such rights under state law, against other, non-participating potentially responsible  
909 parties who may have created, contributed to, or otherwise have become responsible for the  
910 matters described herein, except for those parties being released by the Release of Claims  
911 paragraph herein, in that the City has expended or will expend reasonable response costs in  
912 performance of the activities required under this settlement agreement, and KDHE agrees to  
913 provide reasonable assistance upon request to the City to assist the City with enforcement of its  
914 claims against such third parties. The assistance referred to herein shall include making available  
915 records which relate to this matter, providing statements or testimony of staff upon notification  
916 when such requirements are relevant to the proceedings. or such other assistance as is reasonable  
917 and appropriate.

918 138. The KDHE hereby expressly reserves a cause of action or any claims of whatever  
919 kind or nature not subject to this Agreement which it may have or hereafter have against any  
920 other person or persons not afforded protection hereunder.

921 FORCE MAJEURE

922 139. The City of Wichita shall perform the requirements of this Agreement within the

923 time limits set forth herein subject to the conditions subsequently set forth in the Settlement  
924 Agreement, unless the performance is prevented or delayed by events which constitute a force  
925 majeure. A force majeure is defined as any event, arising from causes not reasonably foreseeable  
926 and beyond the control of the City of Wichita, which could not be overcome by due diligence  
927 and which delays or prevents performance by a date required by this Agreement. Such events  
928 do not include increased costs of performance, changed economic circumstances, or normal  
929 precipitation events. Although not technically constituting force majeure events, any failure to  
930 obtain required access to property of third parties, shall be treated in the same manner as a force  
931 majeure event provided the City of Wichita have exercised due diligence in attempting to obtain  
932 such access, which prohibits or delays performance. Due diligence is defined for the purposes of  
933 this Agreement as the measure of prudence, activity, and foresight reasonably expected from and  
934 ordinarily exercised by, a reasonable and prudent man under the particular circumstances.

935 140. The City of Wichita shall have the burden of proving all claims of force majeure.

936 141. The City of Wichita shall notify KDHE in writing within seven days after  
937 becoming aware of an event which the City of Wichita knew, or should have known, constituted  
938 a force majeure. Such notice shall estimate the anticipated length or delay, and an estimated  
939 timetable for implementation of these measures. Failure to comply with the notice provision of  
940 this section shall constitute a waiver of the City of Wichita's right to assert the force majeure  
941 claim.

942 142. Within seven days of the receipt of written notice from the City of Wichita of a  
943 force majeure event, the KDHE shall notify the City of Wichita of the extent to which  
944 modifications to this Agreement are necessary. If the City of Wichita is aggrieved by KDHE's  
945 written decision, the City of Wichita may appeal that decision to the Secretary.

946 143. If the City of Wichita elects to invoke the dispute resolution procedures set forth  
947 herein, it shall do so no later than 15 days after receipt of KDHE's notice. In any such

948 proceeding, the City of Wichita shall have the burden of demonstrating by a preponderance of  
949 the evidence that the delay or anticipated delay has been or will be caused by a force majeure  
950 event, that the duration of the delay or the extension sought was or will be warranted under the  
951 circumstances and that due diligence was exercised to avoid and mitigate the effects of the delay  
952 and the City complied with the requirements of the preceding sub-paragraphs. If the City of  
953 Wichita carries this burden, the delay at issue shall be deemed not to be a violation by the City  
954 of Wichita of the affected obligation of the Agreement.

955 144. Any modification to this Agreement shall not alter the schedule for performance  
956 or completion of other tasks required by the Agreement unless specifically modified.

957 OTHER APPLICABLE LAWS

958 145. All actions required to be taken pursuant to this Agreement shall be undertaken  
959 in accordance with the substantive requirements of all applicable local, state, and federal laws,  
960 and regulations.

961 146. The parties hereto recognize and agree that the city is subject to and must operate  
962 its financial affairs in compliance with the cash basis law (K.S.A. 10-1101, et seq.) and the  
963 budget law (K.S.A. 79-2925, et seq.).

964 PROJECT COORDINATORS

965 147. On or before the effective date of this Agreement, KDHE and the City shall each  
966 designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing  
967 the implementation of this Agreement. The KDHE Project Coordinator will be KDHE's  
968 designated representative. To the maximum extent possible, all communications between the City  
969 of Wichita and KDHE and all documents, reports, approvals, and other correspondence  
970 concerning the activities performed pursuant to the terms and conditions of this Agreement, shall

971 be directed through the Project Coordinators. The City and KDHE agree to provide at least seven  
972 (7) days written notice prior to changing Project Coordinators. The absence of any Project  
973 Coordinator from the Site shall not be cause for the stoppage of work.

974 NOTIFICATION

975 148. Unless otherwise specified, reports, notice or other submissions required under this  
976 Agreement shall be in writing and shall be sent to:

977 a. For KDHE:

978 Kansas Department of Health and Environment  
979 Forbes Field, Building 740  
980 Topeka, Kansas 66620-0001

981 b. For the City:

982 Jack Brown  
983 Wichita-Sedgwick County Health Department  
984 1900 E. 9th Street  
985 Wichita, Kansas 67214

986 and such additional parties as may be designated by the City from time to time.

987 DISPUTE RESOLUTION

988 149. Any dispute which arises under or with respect to this Agreement shall in the first  
989 instance be the subject of informal negotiations between the parties to the dispute. The period  
990 for informal negotiations shall not exceed forty-five (45) days from the time the dispute arises,  
991 unless it is modified by agreement of the Parties to the Dispute. The dispute shall be considered  
992 to have arisen when one party notifies the other parties in writing that there is a Dispute.

993 150. If the City disagrees, in whole or in part, with any approval or other decision by  
994 KDHE made pursuant to this Agreement, the City shall notify KDHE within thirty (30) days of  
995 receipt of the disapproval. The City and KDHE shall then have an additional forty-five (45)  
996 working days to attempt to resolve the dispute. If agreement is reached, the resolution shall be

997 reduced to writing, signed by each party and incorporated thereupon into this Agreement. If  
998 Agreement is not reached, the KDHE shall issue its final decision on the dispute, in writing, to  
999 inform the City of the decision of KDHE.

1000 151. The City reserves its rights to appeal any decision of the KDHE, which is not  
1001 consistent with law or which is arbitrary or capricious concerning a dispute under this Agreement,  
1002 to an administrative body with applicable jurisdiction and thereafter in compliance with the  
1003 Kansas Administrative Procedures Act. The final decision or resolution of such authority shall  
1004 be incorporated as a part of this Agreement. For purposes of this Agreement, final order or  
1005 decision shall mean an order or decision from which no appeal may be taken.

1006 152. In any dispute proceeding governed by this Section, the City shall have the burden  
1007 of demonstrating that the decision disputed is arbitrary and capricious or otherwise not in  
1008 accordance with law.

1009 RESERVATION OF RIGHTS

1010 153. Subject to the provisions of this Agreement, KDHE and the City reserve all rights  
1011 and defense which they may have, including the right to seek judicial review to the extent that  
1012 such rights are provided by law.

1013 154. Notwithstanding any other provision of this Agreement, KDHE retains all authority  
1014 and reserves all rights to take any and all response actions authorized by law.

1015 REIMBURSEMENT OF COSTS

1016 155. Six (6) months after the effective date of this Agreement and quarterly thereafter,  
1017 KDHE shall submit to the City of Wichita an accounting of all oversight costs incurred by KDHE  
1018 with respect to this Order during the previous three month period not to exceed \$50,000 per year.  
1019 The City will not be responsible for any such costs in excess of \$50,000 per year unless prior

1020 agreement has been reached between the City and KDHE. The City of Wichita shall, within  
1021 thirty (30) calendar days from receipt of said accounting, remit a check for the amount of those  
1022 costs made payable to the Secretary of Health and Environment. Checks should specifically  
1023 reference the identity of this site. Check should be addressed to:

1024 Secretary of Health and Environment  
1025 Landon Building - 900 S.W. Jackson  
1026 Suite 904  
1027 Topeka, Kansas 66612-1290

1028 A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein.  
1029 The City of Wichita shall remit a check for the full amount of those costs.

1030 156. KDHE shall submit to the City an accounting for the cost of performing or  
1031 reviewing the Baseline Risk Assessment. Upon receipt of such accounting, the City agrees to  
1032 reimburse KDHE for such amount. KDHE agrees to use a qualified contractor to perform or  
1033 review such Baseline Risk Assessment.

1034 EMERGENCY RESPONSE

1035 157. In the event of any action or occurrence relating to property or activities of the  
1036 City within the site pertaining to remedial activity during the performance of the Work pursuant  
1037 to this Agreement which causes or threatens a release of hazardous waste(s) or substance(s) that  
1038 constitutes an emergency situation or may present an immediate threat to public health or welfare  
1039 or the environment, the City of Wichita shall take all appropriate action to prevent, abate, or  
1040 minimize such release or threat of release, and shall immediately notify the KDHE's Project  
1041 Coordinator, or, if the Project Coordinator is unavailable, KDHE's Alternate Project Coordinator.

1042 158. If neither of these persons is available, the City of Wichita shall notify the KDHE,  
1043 Bureau of Remediation, the City of Wichita shall take such actions in consultation with KDHE's  
1044 Project Coordinator or other available authorized KDHE officer and in accordance with all

1045 applicable provisions of the Health and Safety Plans, the Contingency Plans, or any other  
1046 applicable plans. In the event that the City of Wichita fails to take appropriate response action  
1047 as required by this paragraph, and KDHE takes such action instead, the City of Wichita shall  
1048 reimburse KDHE all costs of the response action not inconsistent with the National Contingency  
1049 Plan "NCP".

1050 159. Nothing in the preceding paragraph or in this Agreement shall be deemed to limit  
1051 any authority of the State, to take, direct, or order all appropriate action or to seek an order from  
1052 the Court to protect human health and the environment or to prevent, abate, respond to, or  
1053 minimize an actual or threatened release of hazardous waste(s) and substance(s) on, at, or from  
1054 the Site.

#### 1055 EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

1056 160. This Agreement shall become effective when signed by the City and the Secretary  
1057 of the Department of Health and Environment.

1058 161. This Agreement may be amended by mutual agreement of KDHE and the City  
1059 except that the rights of persons obtaining a certificate under the Certificate of Release paragraph  
1060 shall not be affected by such subsequent amendment(s). Such amendments shall be in writing,  
1061 shall have as their effective date the date on which they are signed by both parties, and shall be  
1062 incorporated into this Agreement. Nothing herein shall limit KDHE's ability to require additional  
1063 tasks as set forth in the Additional Tasks paragraph of this Agreement or the ability of the City  
1064 to request modification by mutual agreement in the event of changes to applicable law or  
1065 regulation.

#### 1066 TERMINATION

1067 162. The provisions of this Agreement with the exception of Certificate of Release and

1068 Other Claims and Parties paragraphs shall terminate upon the City's receipt of written notice from  
1069 KDHE that the City has demonstrated that the terms of this Agreement, including any additional  
1070 tasks which KDHE has determined to be necessary have been satisfactorily completed.

1071 CONDITIONS SUBSEQUENT

1072 163. The obligations of the City and KDHE under this Agreement shall be void and this  
1073 Agreement shall be terminated at the option of the City or KDHE if within 180 days of the date  
1074 this agreement is executed by the parties:

1075 a. The City notifies KDHE that the City was unable to create a  
1076 Redevelopment of Central Business District Area (Tax increment finance area) pursuant to K.S.A.  
1077 12-1770, et seq., or as amended.

1078 b. A valid protest is filed under K.S.A. 12-1774 to require the City to hold  
1079 a referendum on issuing bonds authorized to be issued under the Tax Increment Finance Act or  
1080 a referendum pursuant to a valid petition is held and fails.

1081 c. In the event the Parties are unable to negotiate a Work Plan.

1082 d. In the event the City of Wichita is unable to negotiate an Agreement with  
1083 at least three of the larger lending institutions ("Banks") in the City of Wichita by which  
1084 agreement the Banks substantially agree that they will not refuse to lend on the security of real  
1085 properties within the N.I.C. Site, which properties are owned or operated by Persons issued a  
1086 Certificate pursuant to the Release of Claims paragraph of this Agreement, except that the Banks  
1087 retain the right to refuse any loans that would not otherwise be consistent with prudent lending  
1088 practices, the safe and sound operation of the Banks, and minimum regulatory standards and  
1089 conditions.

1090 e. In the event the City is unable to negotiate an Agreement with a sufficient  
1091 number of private parties to financially participate in the activities required by this Agreement.

1092 f. In the event that the EPA does not initiate action to remove or defer the  
1093 29th and Mead site from the NPL as provided in its letter of April 7, 1995, or in the event such  
1094 removal or deferral is frustrated by any other event.

1095 g. In the event the City terminates this Agreement pursuant to this paragraph,  
1096 all agreements herein are void and all provisions hereof become unenforceable by either party and  
1097 by other persons or entities benefiting from the Agreement.

1098 COORDINATION WITH OTHER POTENTIALLY RESPONSIBLE PARTIES

1099 164. The KDHE and the City acknowledge and agree that other potentially responsible  
1100 parties ("PRPs") may be responsible for or may voluntarily undertake certain environmental  
1101 response actions such as Operable Unit/Source Control Remedial Investigation/Feasibility Studies  
1102 and/or Remedial Designs/Remedial Actions within the Site and that such actions:

1103 a. are accomplished through a Consent Agreement between the PRP(s) and  
1104 KDHE for the appropriate action;

1105 b. should be coordinated with and integrated into the actions and obligations  
1106 of the City hereunder in such a fashion to minimize the expense otherwise borne by the City in  
1107 performing its obligations under this Agreement;

1108 c. are consistent with the intent and objectives of the work to be performed  
1109 under this Agreement; and

1110 d. are reviewed and approved by KDHE in accordance with the provisions  
1111 defined in each Operable Unit/Source Control Consent Agreement.

1112 Additionally, KDHE and the City agree to the following with regard to coordination with  
1113 other PRP's:

1114 e. In any Consent Order with other PRPs, the KDHE will require that any  
1115 environmental response activities to be undertaken by other PRPs are coordinated with the

1116 response activities to be undertaken by the City, and are not unnecessarily duplicative of cost or  
1117 effort to be undertaken by the City. Any activities to be undertaken by other PRPs will not  
1118 jeopardize or prejudice the City's ability to determine the full extent of the costs which should  
1119 be borne by other PRPs with respect to the Site. In any Consent Order with other PRPs for  
1120 environmental response actions within the site area, KDHE will require that the PRP provide to  
1121 the City, promptly upon their availability, copies of any nonprivileged, nonproprietary  
1122 environmental investigatory information developed through any studies performed by the PRP  
1123 relating to the Site; that the PRP and the City and their respective environmental consultants will  
1124 cooperate with each other and their environmental consultants to the maximum extent possible  
1125 so that the activities of each are coordinated and complimentary; and that the PRP will, if  
1126 appropriate, pay an equitable share of environmental response costs incurred by the City relating  
1127 to investigation and remediation of soils and groundwater contamination at the Site area, subject  
1128 to such later adjustment as the City and the PRP may agree upon, based upon legal and equitable  
1129 factors.

1130 f. In the event underground or aboveground storage tanks or dry cleaning  
1131 facilities eligible for participation in the Drycleaners Response Act, are discovered by the City  
1132 of Wichita or its consultants, a PRP or its consultants, or are reported to the KDHE in the area  
1133 of the Site during the activities under this Agreement, KDHE will make best efforts to require  
1134 the owners or operators of such underground or aboveground storage tanks and/or dry cleaning  
1135 facilities to apply and/or undertake any appropriate response or removal actions, remediation  
1136 activities, or such other activities which will make available the benefits of the Kansas  
1137 Underground Storage Tank Trust Fund and/or the Dry Cleaners Response Act to pay for such  
1138 activities, all of which may make available the benefits of the respective fund and consequently  
1139 may reduce the obligations of the City of Wichita to perform under this Agreement.

1140

SOURCE OF FUNDS

1141

165. The parties hereto agree that the only source of funds that the City is obligated to

1142

expend in fulfilling its obligations under this agreement are as follows:

1143

a. Bonds issued pursuant to authority of K.S.A. 12-1774 for capital

1144

improvements.

1145

b. Tax increment funds derived from the creation of a tax increment financing

1146

district that includes the N.I.C. Site area.

1147

c. Contributions recovered from PRPs or received from other persons.

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

CITY OF WICHITA

*Bob Knight*  
Bob Knight, Mayor

OCI 3 1 1995  
Date

ATTEST:

*Pat Burnett*  
City Clerk, Dep.



Approved as to Form:

*Gary E Rebenstorf*  
Gary E Rebenstorf  
Wichita City Attorney

THE KANSAS DEPARTMENT OF  
HEALTH AND ENVIRONMENT

*James J. O'Connell* *14 Nov 95*  
By: James J. O'Connell, Secretary Date  
Health and Environment

CERTIFICATE OF MAILING

I hereby certify that on this 14<sup>th</sup> day of November 1995, I deposited a true and correct copy of the above and foregoing Agreement in the United States Mail, postage prepaid, and addressed as follows:

Gary E. Rebenstorf  
Wichita City Attorney  
455 North Main Street  
Wichita, Kansas 67202

Sharon Johnson  
KDHE Staff Member

## LIST OF ATTACHMENTS

ATTACHMENT 1 = Site Map

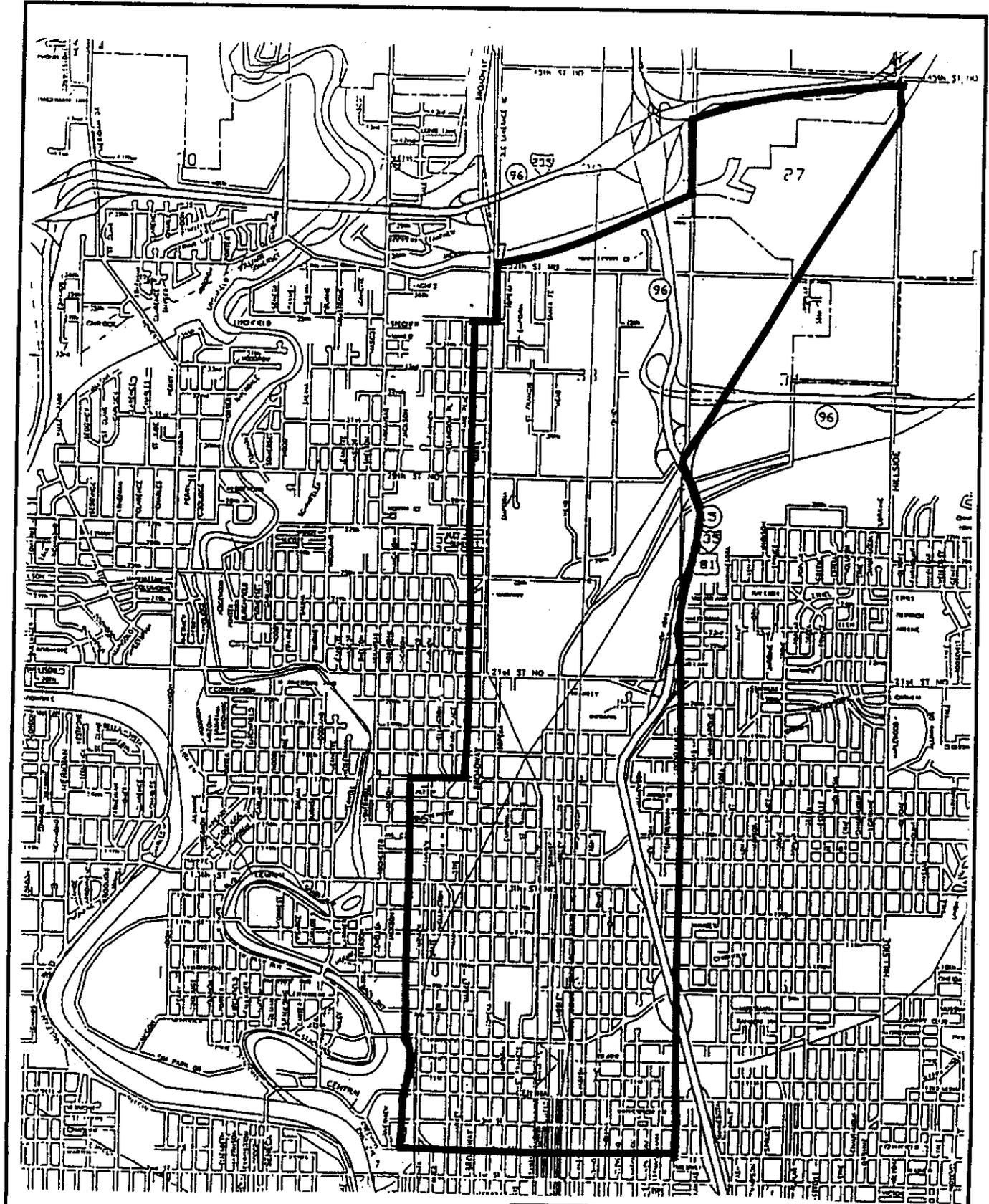
ATTACHMENT 2 = Scope of Work for a Remedial Investigation and Feasibility Study

ATTACHMENT 3 = Scope of Work for a Remedial Design and Remedial Action

ATTACHMENT 4 = Deliverables Schedule

ATTACHMENT 5 = Laboratory Methodologies

ATTACHMENT 6 = KDHE approved Work Plan(s)



Attachment 1  
Wichita North Industrial Corridor Site

## ATTACHMENT 2

### SCOPE OF WORK FOR A REMEDIAL INVESTIGATION(RI)/FEASIBILITY STUDY (FS)

#### GENERAL:

All work conducted under this Settlement Agreement shall be in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (1980), the Superfund Amendments and Reauthorization Act (1986), the National Contingency Plan, and EPA guidance documents, as amended. The general activities for an RI/FS that Respondent(s) are required to perform are identified in this Scope of Work. All work performed under this Settlement Agreement shall be in accordance with the Implementation Schedule herein, as defined in the approved Work Plan (Attachment 6), and in full accordance with the standards, specifications, and other requirements of the work plans, as approved or modified by KDHE.

#### SCOPING:

The Respondent will conduct several meetings with KDHE to: 1) identify the objectives of the RI/FS process, 2) identify the types of actions that may be required to address site contamination problems, 3) identify the need for interim actions to mitigate potential threats, prevent further environmental degradation, or rapidly reduce risks significantly; 4) identify available data sources, and 5) identify the optimal sequence of site actions and investigative activities. Information gathered during these meetings will assist in the development of an RI/FS Work Plan.

#### OBJECTIVES:

The primary objectives of the Remedial Investigation (RI) are described as follows:

- 1) All significant source areas must be adequately characterized in order to determine adequate remediation and clean-up goals (i.e. type and nature of source(s) of contaminants, cause of release, estimated quantity of release(s), and if the release(s) is/are active or inactive).
- 2) The extent (vertical and horizontal) of contamination from the site must be characterized (including the migration mechanisms) for the purpose of and to the extent necessary for developing and evaluating effective remedial alternatives.
- 3) To adequately characterize the chemical and physical properties of the contaminants, their mobility and persistence in the environment and their important fate and transport mechanisms.

- 4) The identification of any human and environmental targets that may be affected by contamination.
- 5) A risk assessment of contaminant impacts on identified target areas.
- 6) To develop individual source control plans for those areas identified as "hot spots" or areas of highest contamination.

The primary objectives of the Feasibility Study (FS) are described as follows:

- 1) To identify and evaluate all appropriate treatment technologies based on information obtained during the RI.
- 2) To screen and assemble appropriate technologies into remedial action alternatives.
- 3) To evaluate and refine alternatives based on the criteria as defined by the relevant EPA guidance documents.
- 4) To conduct treatability studies or pilot tests to support the effectiveness of certain alternatives.
- 5) To recommend the most feasible and effective remedial action for the site.

#### RI/FS WORK PLAN:

Within 90 days of the effective date of this Settlement Agreement, Respondent(s) shall submit to KDHE a draft RI/FS Work Plan for approval. KDHE will provide comments on the draft RI/FS Work Plan. Within 30 days of receipt of KDHE's comments, Respondents shall submit for final approval a revised RI/FS Work Plan that addresses KDHE's comments. Upon KDHE approval, the RI/FS Work Plan shall become incorporated into this Agreement and made a part thereof as Attachment 6. A Sampling and Analysis Plan, which consists of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (SHSP) will be submitted with the Work Plan.

#### DELIVERABLES:

The general activities and subsequent deliverables that the Respondent(s) are required to complete are specified in the USEPA document titled, "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," and as defined in the Implementation Schedule (Attachment 6). KDHE reserves the right to stop Respondent(s) from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

#### COMMUNITY RELATIONS:

The Respondent(s) shall prepare a Community Relations Plan (CRP), in accordance with EPA guidance and the NCP. KDHE shall review and make changes to CRP prior to final approval. KDHE and the Respondent(s) shall jointly implement the approved plan. The CRP must be approved by KDHE prior to implementation of on-site field activities.

#### IMPLEMENTATION:

Within 30 days from the date of KDHE approval of the FSP, QAPP, and SHSP, Respondents shall commence the schedule of work and thereafter implement the tasks detailed in the RI/FS Work Plan.

#### ADDITIONAL TASKS:

KDHE may determine that additional tasks are necessary in addition to the approved RI/FS Work Plan tasks including reports, which have been completed pursuant to this Agreement. KDHE may request Respondents to implement any such additional tasks within a timeframe specified by KDHE. Failure by Respondents to implement additional tasks as requested by KDHE, shall be considered a violation of this Settlement Agreement.

#### REPORTS:

Following completion of all field activities a Remedial Investigation Report must be prepared, which includes all data collected from the field activities. The RI report shall describe in detail the work completed on-site to accomplish the objectives as set forth in this SOW.

In addition, Respondents shall submit a Feasibility Study Report, which evaluates appropriate remedial alternatives as determined from information gathered during the RI. The FS Report shall evaluate appropriate remedial alternatives based upon the criteria defined in EPA guidance documents; a detailed analysis of the selected remedial alternative shall also be provided. The no-action alternative must also be considered in the initial evaluations.

#### ADMINISTRATIVE DECISION (AD)

After approval of the final Feasibility Study Report, KDHE shall prepare a draft Administrative Decision (AD) on the preferred remedial alternative as concluded from the RI/FS study. The draft AD shall support the selection of the preferred remedial alternative by documenting the following: 1) how the remedy was selected; 2) how the remedy eliminates, reduces, or controls exposures to human and environmental receptors; 3) how the remedy meets federal, state and local remedial requirements; and 4) discussion of remediation goals.

KDHE shall publish a notice of the availability of the draft AD and provide a public comment period of 30 calendar days. The notice shall include an agency contact person and address, for the submission of written and oral comments on the draft AD.

A final AD shall be prepared by KDHE that includes KDHE's explanation for any significant differences between the draft AD and the final AD as well as a responsiveness summary to the public comments. Notice of the final AD will be published in the Kansas Register.

### ATTACHMENT 3

#### SCOPE OF WORK FOR A REMEDIAL DESIGN(RD)/REMEDIAL ACTION (RA)

##### GENERAL:

All work conducted under this Settlement Agreement shall be in accordance with Comprehensive Environmental Response, Compensation and Liability Act (1980), Superfund Amendments and Reauthorization Act (1986), the National Contingency Plan, and EPA guidance documents, as amended. The general activities for an RD/RA that Respondent(s) are required to perform are identified in this Scope of Work. All work performed under this Settlement Agreement shall be in accordance with the schedules herein, as defined in the Implementation Schedule of the approved Work Plan (Attachment 6), and in full accordance with the standards, specifications, and other requirements of the work plans, as approved or modified by KDHE.

##### REMEDIAL DESIGN

##### OBJECTIVES:

The primary objectives of the Remedial Design (RD) are described as follows:

- 1) To collect and evaluate data generated in the pre-design planning stage (if needed).
- 2) To provide a complete engineered design of the Remedial Action to be constructed (plans and specifications) as described in the Administrative Decision.
- 3) To identify and obtain easements, permits, and approvals that will be required during construction.
- 4) To identify critical technical requirements and activities where quality may be at risk.
- 5) To keep the public informed throughout the process.
- 6) To design a construction quality control program and a testing program to demonstrate that the proposed materials and equipment are acceptable.

##### PRE-DESIGN TECHNICAL SUMMARY:

Within 15 days after the AD is signed, KDHE will prepare a Pre-Design Technical Summary, which will define and document the technical criteria to implement the remedy. This document will initiate the RD/RA process.

#### RD WORK PLAN:

Within 60 days after the publication of the final AD, Respondent(s) shall submit to KDHE a Work Plan for the design of the selected remedial alternative at the Site. The Remedial Design (RD) Work Plan shall provide for design of the remedy set forth in the final AD in accordance and, upon its approval by KDHE, shall be incorporated into and become enforceable under this Settlement Agreement. A Health and Safety Plan for the field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements shall be included as part of the RD Work Plan.

The RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan [including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP)]; (2) treatability studies; (3) a preliminary design submittal; an intermediate design submittal; (5) a pre-final/final design submittal; and (6) a Construction Quality Assurance Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion and submittal of a Remedial Action Work Plan.

#### RD DELIVERABLES:

The general activities and subsequent deliverables that the Respondent(s) are required to complete are outlined in Attachment 6. KDHE reserves the right to stop Respondent(s) from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RD.

The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of project delivery strategy; (3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

The intermediate design submittal, if required by KDHE or if independently submitted by the Respondents, shall be a continuation and expansion of the preliminary design. Any engineering proposals must be identified and evaluated during this review.

The Pre-Final/Final Design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan; and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Respondent's consultant, to conduct a quality assurance program during the

construction phase of the project. The QA Official may select a quality assurance team that is responsible for examining and testing various materials, procedures, and equipment during the construction. The QA Official and team will be retained by the Respondent(s) and must be independent of the construction contractor. The QA Official and team are subject to approval by KDHE.

The Pre-Final/Final Design review will be the last review of the Remedial Design process and approval by KDHE will initiate community relations (as described below) and the development of the Remedial Action Work Plan.

#### RD IMPLEMENTATION:

Within 30 days from the date of KDHE approval of the RD Work Plan, Respondents shall implement the RD Work Plan. The Respondent(s) shall submit all plans, submittals and other deliverables required under the approved RD Work Plan in accordance with the approved schedule of work. Unless otherwise directed by KDHE, Respondent(s) shall not commence any Remedial Design activities at the Site prior to approval of the RD Work Plan.

#### COMMUNITY RELATIONS:

Upon KDHE approval of the Pre-Final/Final Design, the Respondent(s) will distribute to the community and other interested persons, a fact sheet on the final engineering design. The fact sheet must be approved by KDHE prior to distribution.

### REMEDIAL ACTION (RA)

#### OBJECTIVES:

The primary objectives of the Remedial Action (RA) are described as follows:

- 1) To identify and modify any part of the remedial system due to changed field conditions.
- 2) To construct the remedial system as designed during the RD stage or modified due to changed field conditions.
- 3) To test, verify and provide a level of confidence to the Respondent(s), KDHE and the public that the constructed remedy meets project requirements.
- 4) To construct a remedial system that is approved by KDHE after pre-final and final inspections.
- 5) To implement the approved remedial system.
- 6) To submit a RA Report.

#### RA WORK PLAN:

Within 30 days after the approval of the Pre-Final/Final Design submittal, Respondents shall submit to KDHE, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan" (RA Work Plan). The RA Work Plan shall provide for construction of the remedy, as set forth in the design plans and specification in the approved final design submittal. Upon its approval by KDHE, the RA Work Plan shall be incorporated into and become enforceable under this Settlement Agreement. At the same time as they submit the RA Work Plan, Respondents shall submit to KDHE a revised Health and Safety Plan for field activities required by the RA Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements.

The RA Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for development and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater/air monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action Team; (10) construction quality control plan (by constructor); (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials; (12) requirements for project closeout. The RA Work Plan also shall include a schedule for implementation of all RA tasks identified in the final design submittal and shall identify the initial formulation of the Respondent's RA Project Team (including, but not limited to, the Respondent's consultant).

#### RA IMPLEMENTATION:

Upon approval of the RA Work Plan by KDHE, Respondent(s) shall implement the activities required under the RA Work Plan. The Respondent(s) shall submit all plans, submittals, or other deliverables required under the approved RA Work Plan in accordance with the approved implementation schedule. Unless otherwise directed by KDHE, Respondent(s) shall not commence physical on-site activities at the Site prior to approval of the RA Work Plan.

#### QA OFFICIAL REPORT:

A Report must be submitted by the QA Official which summarizes inspections, sampling and documentation of the construction process and final remedial design. The Report must provide documentation to support implementation of all activities at the site and to provide confidence that the constructed remedy meets project requirements. The Report must be submitted and approved prior to "start-up" of the remedial system.

## RA REPORT:

A RA Report must be submitted by the Respondent(s) within 30 days of the construction and initiation of remedial activities. The RA Report certifies that all items contained in the RD/RA work plans have been completed. The report will also include: 1) a summary of cleanup standards specified for this project; 2) estimated schedule of completion; 3) monitoring schedule; 4) report schedule; 5) project summary; 6) emergency contingency; and 7) a description of day-to-day activities.

## CERTIFICATION OF COMPLETION OF THE RA:

Within 90 days after the Respondent(s) conclude that Remedial Action has been fully performed, the Respondent(s) shall so certify to the State and shall schedule and conduct a pre-certification inspection to be attended by themselves and the State. If, after the pre-certification inspection, the Respondent(s) still believe that the Remedial Action has been fully performed, they shall submit a written report to KDHE for approval within 30 days of the inspection. In the report, a registered professional engineer and the Respondent(s) Project Coordinator shall certify that the Remedial Action has been completed in full satisfaction of the requirements of this Settlement Agreement. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of the Respondent(s) or the Respondent(s) Project Coordinator:

"I certify that the information contained in or accompanying this submission is true, accurate and complete."

If, after completion of the pre-certification inspection and receipt and review of the written report, KDHE determines that the Remedial Action or any portion thereof has not been completed in accordance with this Settlement Agreement has not been achieved, KDHE will notify the Respondent(s) in writing of the activities that must be undertaken to complete the Remedial Action. KDHE will set forth in notice a schedule for performance of such activities consistent with the Settlement Agreement or require the Respondent(s) to submit a schedule to KDHE for approval. The Respondent(s) shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Paragraphs 76-81 (Dispute Resolution).

If KDHE concludes, based on the initial or any subsequent Certification of Completion by Respondent(s) and that the Remedial Action has been fully performed in accordance with this Settlement Agreement, KDHE will so certify in writing to the Respondent(s). This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Settlement Agreement. Certification of Completion of the Remedial Action shall not affect Respondent(s) obligations under this Settlement Agreement that continue beyond the Certification of Completion, including, but not limited to, access, Operation and Maintenance, record retention, indemnification, and payment of Future Response Costs and penalties.

**ATTACHMENT 4  
TABLE OF MILESTONES**

PHASE	(*)DELIVERABLE OR ACTION	DEADLINE
RI/FS	1. *RI/FS Work Plan	90 days after effective date of order.
	2. *FSP, QAPP and SHSP	30 days after approval of the Work Plan.
	3. *Community Relations Plan	Approved by KDHE and implemented prior to on-site field activities.
	4. Implementation of Approved Work Plan	Within 30 days of KDHE approval of FSP, QAPP and SHSP.
	5. *Data Acquisition Package	According to schedule in approved Work Plan.
	6. *Final Data Review Package (Site Characterization)	According to schedule in approved Work Plan.
	7. *Risk Assessment Report	According to schedule in approved Work Plan.
	8. *Treatability Studies (if needed)	According to schedule in approved Work Plan.
	9. *Draft Remedial Investigation Report	According to schedule in approved Work Plan.
	10. *Final Remedial Investigation Report	According to schedule in approved Work Plan.
	11. *Draft Feasibility Study Report	According to schedule in approved Work Plan.
	12. *Final Feasibility Study Report	According to schedule in approved Work Plan.
AD	13. Draft Administrative Decision	Prepared by KDHE after approval final FS Report.
	14. Public Comment	30 days after public notice of draft AD.
	15. Final Administrative Decision	Prepared by KDHE after public comment period.
RD	16. *RD Work Plan SHSP, RDQAPP	Within 60 days after the publication of the final Administrative Decision
	17. Implementation of Approved Work Plan	Within 30 days of KDHE approval of RD Work Plan.
	18. *Preliminary Design	According to schedule in approved Work Plan.
	19. *Intermediate Design	According to schedule in approved Work Plan.
	20. *Pre-final Design O&M, CQAPP, FSP	According to schedule in approved Work Plan.
RA	21. *RA Work Plan	Within 30 days after KDHE approval of final design.
	22. RA Implementation	Upon KDHE approval of RA Work Plan.

ATTACHMENT 5  
APPROVED METHODS

PARAMETER GROUP	SDWA (QC)	NPDES (QC)	SW846 (QC)
<b>VOLATILE ORGANIC COMPOUNDS</b>			
GC	502.1 (2)	601 (2)	8010 (1)
GC	502.2 (2)	602 (2)	8020 (1)
GC	503.1 (2)		8021 (1)
GC/MS	524.1 (2)	624 (2)	8240 (2)
GC/MS	524.2 (2)	1624 (2)	8240A (2)
GC/MS			8260 (2)

QUALITY CONTROL

FOLLOW QC SPECIFIED BY METHOD:

1. - FOLLOW GENERAL GC METHODS PROCEDURE EPA SECTION 8000. <sup>(1)</sup>
2. - QC INCLUDED IN METHOD.
3. - WHEN QC IS NOT SPECIFIED BY METHOD, USE STANDARD METHOD 17th EDITION QA/QC GENERAL INSTRUCTIONS. <sup>(2)</sup>

SOURCES:

<sup>1</sup> "Methods of Chemical Analysis of Water and Wastes." EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268 (EPA-600/4-88-039). Dec. 1988.

<sup>2</sup> "Standard Methods for the Examination of Water and Wastewater." 17 th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989.

<sup>3</sup> "Test Methods for the evaluation of Solid Waste." EPA Office of Solid Waste and Emergency Response, Washington, DC 20460. November 1986. SW 846 Third Edition.

<sup>4</sup> Federal Register Vol. 49, No. 209.

rev. 8/20/92

Volatile Organic Compounds  
METHODS

Analytes	SDWA	NPDES	SW-846
Acetone			
Acrolein			
Acrylonitrile			
Benzene		602, 624, 624,	8021, 8240,
Bromobenzene	502.1, 503.1,		8021, 8260
Bromo-chloroethane	502.2, 503.1,		8021, 8260
Bromo-dichloroethane	502.2, 503.1,		8021, 8260
Bromoform	502.2, 503.1,		8021, 8260
Bromomethane	502.2, 503.1,		8021, 8260
2-Butanone			
n-Butylbenzene			
sec-Butylbenzene			
tert-Butylbenzene			
Carbon disulfide			
Carbon Tetrachloride			
Chlorobenzene			
Chloroethane			
2-Chloroethylvinylether			
Chloroform			
Chloroacetaldehyde			
2-Chlorotoluene			
4-Chlorotoluene			
Dibromochloroethane			
1,2-Dibromo-3-chloropropane			
1,2-Dibromoethane			
Dibromomethane			
1,2-Dichlorobenzene			
1,3-Dichlorobenzene			
1,4-Dichlorobenzene			
Dichlorodifluoroethane			
1,1-Dichloroethane			
1,2-Dichloroethane			
1,1-Dichloroethane			
cis-1,2-Dichloroethane			
trans-1,2-Dichloroethane			
1,2-Dichloropropane			
1,3-Dichloropropane			
2,2-Dichloropropane			
1,1-Dichloropropane			
cis-1,3-Dichloropropane			
trans-1,3-Dichloropropane			

Volatile Organic Compounds  
METHODS

Analytes	SDWA	NFDES	SW-846
Diethyl ether			
p-Dioxane			
Ethyl Benzene	502.2, 503.1,	602, 624, 1624,	8020, 8021,
Hexachlorobutadiene	502.2, 503.1,		8021,
2-Hexanone			8240,
Isopropylbenzene	502.2,		8021,
4-Isopropyltoluene	502.2, 503.1,		8240,
Methylene Chloride			
4-Methyl-2-pentanone	502.1,	601, 624, 8010	8021, 8240,
Naphthalene			
n-Propylbenzene	502.2,		8021,
	502.2,		8021,
	503.1,		8240,
Styrene	502.2,		8021,
1,1,1,2-Tetrachloroethane	502.1,		8240,
1,1,2,2-Tetrachloroethane	502.1,		8240,
Tetrachloroethane	502.1,		8240,
Toluene	503.1,		8021,
1,2,3-Trichlorobenzene	502.2,	602,	8020, 8021,
1,2,4-Trichlorobenzene	502.2,		8021,
1,1,1-Trichloroethane	502.2,		8240,
1,1,2-Trichloroethane	502.2,		8240,
Trichloroethane	502.1,		8240,
Trichlorofluoromethane	502.2,		8240,
1,2,3-Trichloropropane	502.2,		8240,
1,2,4-Trimethylbenzene	503.1,		8240,
1,3,5-Trimethylbenzene	503.1,		8240,
Vinyl Acetate			
Vinyl Chloride	502.2,		8240,
o-Xylene	502.2,		8240,
m-Xylene	503.1,		8240,
p-Xylene	503.1,		8240,
Total Xylenes	502.2,		8020,

METALS

	EPA 200 SERIES	SW-846 7000 SERIES	SM <sup>1</sup> 3000 SERIES	EPA 200.7	ICP SW-846 6010	SM 3120
ALUMINUM	202.1,202.2	7020	3111D,E,3113	X	X	X
ANTIMONY	204.1,204.2	7040,7041	3111B,3113	X	X	X
ARSENIC	206.2,206.3 206.4,206.5	7060,7061	3113,3114	X	X	X
BARIUM	208.1,208.2	7080,7081	3111D,3113	X	X	X
BERILLIUM	210.1,210.2	7090,7091	3111D,E,3113	X	X	X
BISMUTH	212.3		3111B	X	X	X
BORON						
CADMIUM	213.1,213.2	7130,7131	3111B,C,3113	X	X	X
CALCIUM	215.1,215.2	7140	3111B	X	X	X
CESIUM			3111B			
CHROMIUM	218.1,218.2,218.3	7190,7191	3111B,C,3113	X		X
CHROMIUM-HEX	218.4,218.5	7195,7196, 7197,7198				
COBALT	219.1,219.2	7200,7201	3111B,C,3113	X	X	X
COPPER	220.1,220.2	7210,7211	3111B,C,3113	X	X	X
GOLD	231.1,231.2		3111B			
IRIDIUM	235.1,235.2		3111B			
IRON	236.1,236.2	7380,7381	3111B,C,3113	X	X	X
LEAD	239.1,239.2	7420,7421	3111B,C,3113	X	X	X
LITHIUM			3111B			X
MAGNESIUM	242.1	7450	3111B	X	X	X
MANGANESE	243.1,243.2	7460,7461	3111B,C,3113	X	X	X
MERCURY	245.1,245.2,245.3	7470,7471	3112			
MOLYBDENUM	246.1,246.2	7480,7481	3111D,3113	X	X	X
NICKEL	249.1,249.2	7520	3111B,C,3113	X	X	X
OSMIUM	252.1,252.2	7550	3111D			

<sup>1</sup>STANDARD METHODS - FOR THE EXAMINATION OF WATER AND WASTEWATER -  
17TH EDITION.



ACID EXTRACTABLES (KAL LIST)

CAS	SDWA	NPDES	SH-846
59-50-7			8040
95-57-8		625	8040, 8250, 8270
106-48-9			
120-83-2		604, 625, 1625/SM64108, 64208	8040, 8250, 8270
87-65-0			8040, 8250, 8270
95-77-2			
105-67-9		604, 625, 1625/SM64108, 64208	8040, 8250, 8270
534-52-1		625	8040
51-28-5			8250, 8270, 8040
88-75-5			
100-2-7	515.1		8040, 8250, 8270
87-86-5			8040, 8250, 8270
108-95-2	515.1, 525	604, 625, 1625/SM64108, 64208	8040, 8250, 8270
1901-51-3			
58-90-2			8040, 8250, 8270
935-95-5			8040
95-95-4			
88-06-2			8040, 8250, 8270
609-19-8			8040, 8250, 8270

Rev. February 3, 1993

BASE NEUTRAL COMPOUNDS (KAL LIST)  
METHODS

	CAS	SDWA	NPDES	SW-846
Acenaphthylene	208-96-8	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Anthracene	120-12-7	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Benzidene	98-87-5		605, 625, 1625	8250, 8270
Benzo[a]anthracene	56-55-3	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Benzo[a]pyrene	50-32-8	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Benzo[b]fluoranthene	205-99-2	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Benzo[g,h,i]perylene	191-24-2	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Benzo[k]fluoranthene	207-08-9	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Bis(2-chloroethoxy)methane	111-91-1		611, 625, 1625/SK64108	8250, 8270
Bis(2-chloroisopropyl)ether	111-44-4		611, 625, 1625/SK64108	8250, 8270
Bis(2-chloroisopropyl)ether	108-60-1			8140
Bis(2-ethylhexyl)phthalate	117-81-7	525		8250, 8270
Bromophenyl phenyl ether, 4-	101-55-3		611, 625, 1625/SK64108	8250, 8270
Butyl benzyl phthalate	85-68-7	525	606, 625, 1625/SK64108	8250, 8270
Chloronaphthalene, 2-	91-58-7		612, 625, 1625/SK64108	8120, 8250, 8270
Chlorophenyl phenyl ether, 4-	7005-72-3		611, 625, 1625/SK64108	8250, 8270
Chrysene	218-01-9	507	610, 625, 1625/SK64108, 64208	8100, 8250, 8270, 8310
Dibenzo[a,h]anthracene	53-70-3	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Dichlorobenzene, 1,2- (o-)	95-50-1	502.1, 502.2, 503.1 524.1, 524.2	601, 602, 612, 625, 624, 1625/SK64108, 64308 62208	8120, 8250, 8270
Dichlorobenzene, 1,3- (m-)	541-73-1	502.1, 502.2, 503.1 524.1, 524.2	601, 602, 612, 625, 624, 1625/SK64108, 64308 62208	8120, 8250, 8270
Dichlorobenzene, 1,4- (p-)	106-46-7	502.1, 502.2, 503.1 524.1, 524.2	601, 602, 612, 625, 624, 1625/SK64108, 64308 62208	8120, 8250, 8270
Dichlorobenzidene, 3,3'	91-94-1		605, 625, 1625/SK64108	8250, 8270
Diethylphthalate	84-66-2	525	606, 625, 1625/SK64108	8060, 8250, 8270
Dimethylphthalate	131-11-3	525	606, 625, 1625/SK64108	8060, 8250, 8270
Dinitrotoluene, 2,4-	121-14-2		609, 625, 1625/SK64108	8090, 8250, 8270
Dinitrotoluene, 2,6-	606-20-2		609, 625, 1625/SK64108	8090, 8250, 8270
Diphenylhydrazine, 1,2-	122-66-7			8250, 8270
Di-n-butyl phthalate	84-74-2			8060, 8250, 8270
Di-n-octyl phthalate	117-84-0			8060
Fluoranthene	206-44-0		610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Fluorene	86-73-7	525	610, 625, 1625/SK64108, 64408	8100, 8250, 8270, 8310
Hexachlorobenzene	118-74-1	505, 508, 525	612, 625, 1625/SK64108	8120, 8250, 8270
Hexachlorobutadiene	87-68-3	502.2, 503.1, 524.2	612, 625, 1625/SK64108	8120, 8250, 8270
Hexachlorocyclopentadiene	77-47-4	505, 525	612, 625, 1625/SK64108	8120, 8250, 8270
Hexachloroethane	67-72-1		616, 625, 1625/SK64108	8250, 8270

Iideno[1,2,3-c,d]pyrene Isophorone	193-39-5 78-59-1	525	609, 625, 1625, SM64108	8100, 8250, 8270, 8310 8090, 8250, 8270
Naphthalene	91-20-3	505.2, 503.1, 524.1	610, 625, 1625, SM64108, 64408	8021, 8100, 8250, 8270, 8310
Nitrobenzene	98-95-3		609, 625, 1625, 64108	8090, 8250, 8270
N-nitrosodimethylamine	62-75-9		607, 625, 1625, SM64108	8250, 8270
N-nitrosodiphenylamine	86-30-6		607, 625, 1625, SM64108	8250, 8270
N-nitrosodi-n-propylamine	621-64-7		607, 625, 1625, SM64108	8250, 8270
Phenanthrene	85-01-8	525	610, 625, 1625, SM64108, 64408	8100, 8250, 8270, 8310
Pyrene	129-00-0	525	610, 625, 1625, SM64108, 64408	8100, 8250, 8270, 8310
Styrene	100-42-5	502.2, 503.1, 524.1, 524.2		
Trichlorobenzene, 1,2,4-	120-82-1	502.2, 503.1, 524.2	612, 625, 1625, 1625, SM64108	8021, 8120, 8250, 8270

Rev. February 3, 1993

PESTICIDE (KAL LIST)

SW-846

NPDES

SDWA

CAS

PESTICIDE (KAL LIST)	CAS	NPDES	SDWA	SW-846
Acifluorfen (Blazer)	5094-66-6		515.1	
Alachlor (Lasso)	15072-60-8		505,507,525.1	
Aldicarb (Temik)	116-6-1		531.1	
Aldrin	309-00-2	608,625/SW66308&C	505,508,525	8080,8250,8270
Ametryn	834-12-8		507	
Ammonium sulfamate (Ammate)	7773-06-0		505,507,525	
Atrazine (AATrex)	1912-24-9			
Bentazon (Basagran)	25057-89-0		515.1	
BHC, total (Lindane)	58-89-9	608,625/SW66308&C,64108	505,508,525.1	8080,8250,8270
Bromacil (Hyvar)	314-40-9			
Butylate (Sutan +)	2008-41-5		507	
Carbaryl (Sevin)	63-25-2		531.1	
Carbofuran (Furadan)	1553-66-2		531.1	
Carboxin	5234-68-4		507	
Chloramben (Amiben)	133-90-4		515.1	
Chlordane	57-74-9	606,625,SW64108,66308&C	505,508,525.1	8080,8270,8250
Chlorothalonil	1897-45-6		508	8140
Chlorpyrifos (Lorsban/Dursban)	2921-88-2			
Cyanazine (Bladex)	21725-46-2			
D, 2,4-	94-75-7		515.1	8150
Dalapon	75-99-0		515.1	8150
DBCP (1,2-dibromo,3-chloropropane)	96-12-8		504,524.1	8240
DCPA, (Dacthal)	1861-32-1		508	8080
DDD, 4,4'-(p,p'-DDD)	53-19-0	608,625/SW66308&C,64108	508	8080,8250,8270
DDE, 4,4'-(p,p'-DDE)	342-48-26	608,625/SW66308&C,64108	508	8080,8250,8270
DDT, o,p'-	50-29-3	608,625/SW66308&C,64108	508	8080,8250,8270
DDT, p,p'-	50-29-3	608,625/SW66308&C,64108	508	8080,8250,8270
Diazinon	333-41-5		507	8140
Dibromoethane, 1,2- (EDB)	106-93-4		502.1,502.2,504,524.1,524.2	
Dicamba (Banvel)	1918-00-9		515.1	8150
Dieldrin	60-57-1		505,508	8080,8250,8270
Dimethoate (Cygon)	60-51-5			8270
Dimethrin	67239-16-1			
Dinoseb (DNBP)	88-85-7		515.1	8150
Dioxane, p-	123-91-1			8240
Diphenamid	957-51-7		507	
Disulfoton (Di-Syston)	298-04-4		507	
Diuron (Karmex)	330-54-1			8140
Endosulfan, alpha	115-29-7	608,625/SW64108,66308&C	508	8080,8250,8270
Endosulfan, beta	115-29-7	608,625/SW64108,66308&C	508	8080,8250,8270
Endosulfan sulfate	1031-07-8	608,625/SW64108,6630C	508	8080,8250,8270
Endothal	145-73-3		548	
Endrin	145-73-3		505,508,525.1	8080,8250,8270
Endrin aldehyde	72-20-8		505,508,525.1	8080,8250,8270

EPTC (Eptom/Eradicane)	759-94-4	507			
Ethylene thiourea	96-45-7				
Fenamiphos (Nemacur)	22224-92-6	507			
Fenvalerate (Pydrin)	51630-58-1				
Fluometuron	2164-17-2				
Fonofos (Dyfonate)	944-22-9				
Glyphosate (Roundup)	1071-83-6	547			
Heptachlor	76-44-8	505, 508, 525.1	608, 625/SM6410B	8080, 8250, 8270	
Heptachlor epoxide	1024-57-3	505, 508, 525.1	608, 625/SM6410B, 6630B&C	8080, 8250, 8270	
Hexazinone (Velpar)	51235-04-2				
Igran (Terbutryn)	122-42-9	507			
IPC (Propham)					
Malathion	121-75-5		SM6630C		
Maleic hydrazine	123-33-1				
MCPA (Weedone)	94-74-6				8150
Methomyl	21087-64-9	531.1			
Methoxychlor (Marlate)	72-43-5	505, 508, 525.1	SM6630 B&C		
Methyl parathion	298-00-0	507			
Metolachlor (Dual)	51218-45-2	507			
Metribuzin (Sencor)	21087-64-9	507			
Oryzalin (Surflan)	19044-88-3	531.1			
Oxamyl	23135-22-0				
Paraquat	1910-42-5	549			
Parathion	56-38-2		SM6630C	8140, 8270	
PCBs (total)	11097-69-1	505, 508	608	8080	
Pendimethalin (Prowl)	40318-45-4				
Permethrin (Ambush)	52645-53-1	508	SM6630		
Picloram (Tordon)	1918-2-1	515.1			
Prometon (Pramitol)	1610-18-0	507			
Pronamide (Kerb)	23950-58-5	507			
Propachlor (Ramrod)	1918-16-7	508			8250, 8270
Propargite (Omite/Comite)					
Propazine (Milogard)	139-40-2	507			
Propoxur (Baygon)	114-26-1	531.1			
Simazine (Princep)	122-34-9	505, 507, 525.1			
T, 2, 4, 5-	93-76-5	515.1			
TCDD, 2, 3, 7, 8- (Dioxin)	1746-1-6	513	SM6640B	8150	
Tebuthiuron (Spike)	34014-18-1	507	613, 1613		
Terbacil (Sinbar)	5902-51-2				
Terbufos (Counter)	13071-74-9				
Toxaphene	8001-35-2	507			
TP, 2, 4, 5- (Silvex)	93-72-1	505, 508, 525.1	608, 625/SM6630B&C, 6410B	8250, 8270	
Trifluralin (Treflan)	1582-09-8	515.1	SM6640B	8150	
		508	SM6630B	8270	

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF  
CITY OF WICHITA  
NORTH INDUSTRIAL  
CORRIDOR SITE

Case No. 95-E-0321

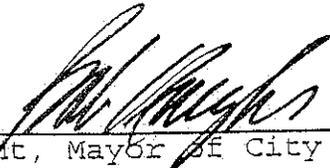
AMENDMENT TO SETTLEMENT AGREEMENT

Now, on this JUL 23 1996 of \_\_\_\_\_, 1996, the Kansas Department of Health and Environment (KDHE) and the City of Wichita mutually agree, to amend the terms of the Settlement Agreement entered into on November 14, 1995.

The Settlement Agreement, pursuant to paragraph 161, is modified, altered, and changed only with regard to Attachment 4 entitled Table of Milestones:

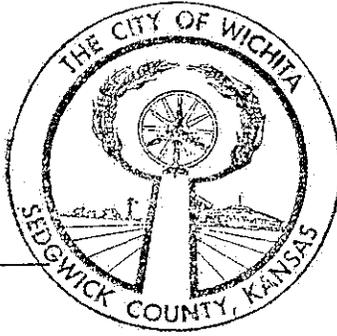
Line 1 shall be modified to read " The Work Plan shall be due no later than 90 days from the date that KDHE notifies the City of Wichita that it has approved the data and portions of the Remedial Investigation (RI) Report regarding the 29th and Mead Remedial Investigation/Feasibility Study submitted by the Wichita North Industrial District (WNID) group.

This Amendment shall be effective as of the date signed by the Secretary of the KDHE.

  
\_\_\_\_\_  
Bob Knight, Mayor of City of Wichita

JUL 23 1996  
\_\_\_\_\_  
Date

ATTEST:



Pat Burnett  
City Clerk

Approved as to form:

Gary E. Rebenstorf  
Gary E. Rebenstorf  
Wichita City Attorney

\_\_\_\_\_  
Date

James J. O'Connell  
James J. O'Connell, Secretary  
Kansas Department of Health  
and Environment

2 August 1996  
Date

CERTIFICATE OF MAILING

I do hereby certify that a copy of the above and foregoing document was mailed this 5<sup>th</sup> day of August, 1996, by placing it into the United States Mail, first class, postage prepaid, to the following:

Gary E. Rebenstorf  
Wichita City Attorney  
455 North Main Street  
Wichita, Kansas. 67202.

Shereca Johnson  
KDHE Staff Person

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
AND CITY OF WICHITA

NORTH INDUSTRIAL CORRIDOR SITE

KDHE Case No. 95-E-0321

AMENDMENT TO SETTLEMENT AGREEMENT

COMES NOW the Kansas Department of Health and Environment (KDHE) and the City of Wichita and mutually agree to amend the terms of the Settlement Agreement entered into in Case No. 95-E-0321 pursuant to Paragraph 161 of said Settlement Agreement.

The Settlement Agreement shall be amended in the following respects only:

Paragraph 164a. shall be struck and replaced by:

- a. are accomplished through an agreement between the PRP(s) and KDHE for the appropriate action.

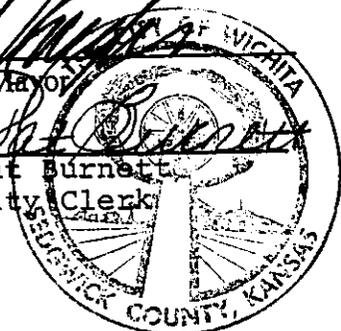
This Amendment shall become effective when signed by the City of Wichita and the Secretary of the Kansas Department of Health and Environment.

  
 James L. O'Connell, Secretary  
 Kansas Department of Health  
 and Environment

8 Jan 97  
 Date

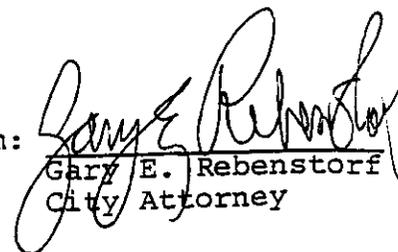
  
 Bob Knight, Mayor

ATTEST:   
 Pat Burnett  
 City Clerk



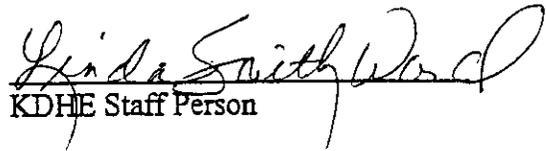
C:\rem\inc\amend.1  
 10/2/96

NOV 19 1996  
 Date

Approved as to Form:   
 Gary E. Rebenstorf  
 City Attorney

CERTIFICATE OF SERVICE

9<sup>th</sup> I do hereby certify that a copy of the above and foregoing document was served this day of Thursday, 1997, by United States Mail, first class, postage prepaid, to the following:

  
KDHE Staff Person

12/18/01

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
AND CITY OF WICHITA

NORTH INDUSTRIAL CORRIDOR

KDHE Case No. 95-E-0321

THIRD AMENDMENT TO SETTLEMENT AGREEMENT

COME NOW the Kansas Department of Health and Environment and the City of Wichita and mutually agree to amend the terms of the Settlement Agreement entered into in Case No. 95-E-0321 pursuant to Paragraph 161 of said Settlement Agreement.

The Settlement Agreement shall be amended in the following respects only:

Attachment 1 – the Site Map is replaced by the Amended N.I.C. Site attached hereto as Attachment 1 and as further delineated in the boundary description attached hereto as Attachment 1A.

This Amendment shall be come effective when signed by the City of Wichita and the Secretary of the Kansas Department of Health and Environment.

CITY OF WICHITA, KANSAS  
By Direction of City Council

Date JAN 8 2002

  
By \_\_\_\_\_  
Chris Cherches, City Manager

ATTEST:

  
Pat Burnett, City Clerk



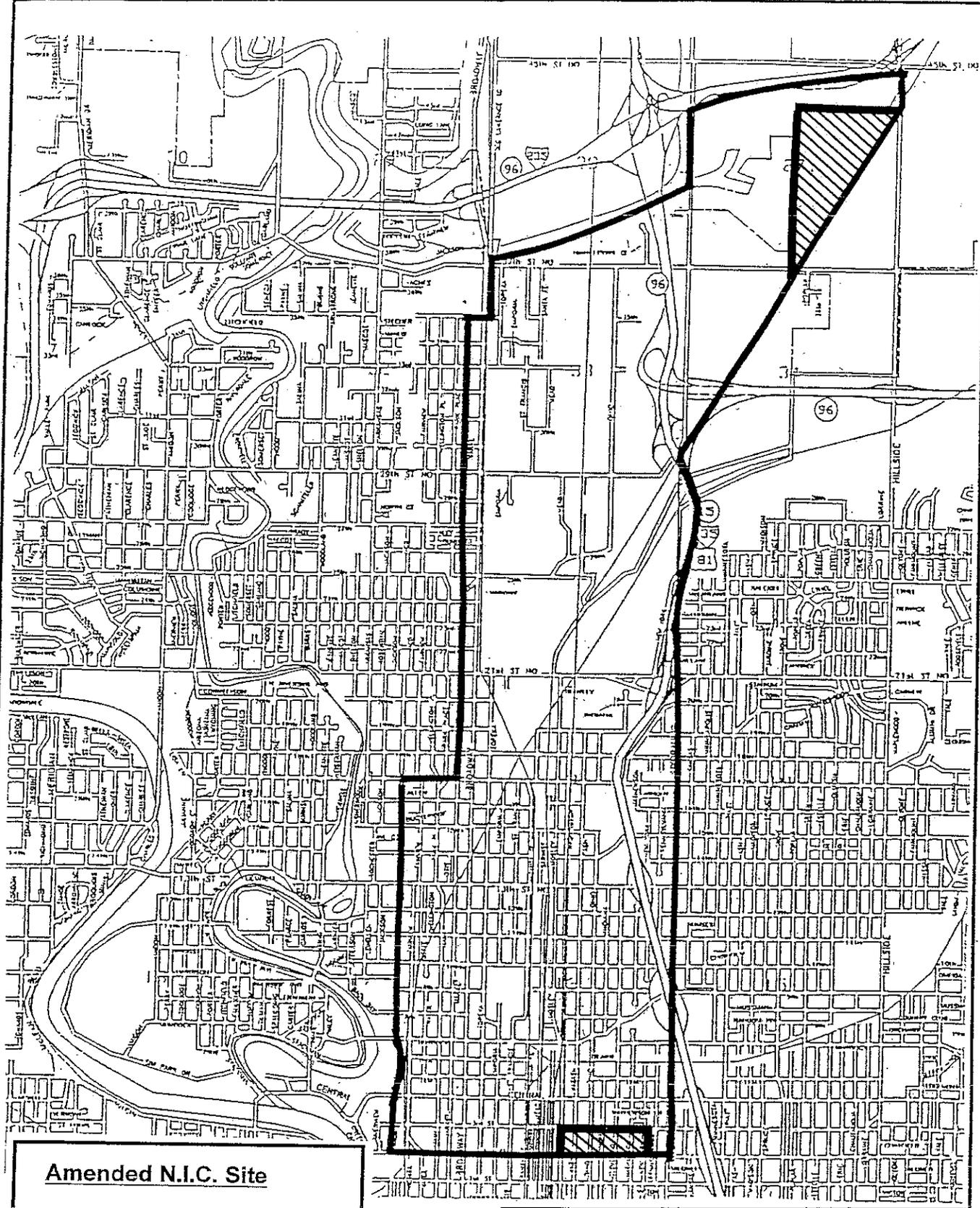
Approved as to form:

  
Gary E. Rebenstorf  
Director of Law

KANSAS DEPARTMENT OF HEALTH AND  
ENVIRONMENT

Date 2-11-02

By   
Clyde D. Graeber, Secretary



**Amended N.I.C. Site**

**Original Boundary**

**Areas Removed**

## Attachment 1

Wichita North Industrial Corridor Site

## Proposed Modified Boundary for the North Industrial Corridor Site

The Boundary description begins in the northwest corner of the site and proceeds counter-clockwise.

Starting from the intersection of 37<sup>th</sup> Street North and Broadway Avenue, south along the centerline of Broadway Avenue to the intersection of Broadway and 35<sup>th</sup> Street North. West along the centerline of 35<sup>th</sup> Street North to the intersection of 35<sup>th</sup> and Market Street. South along the centerline of Market Street to the intersection of Market and 17<sup>th</sup> Street. West along the centerline of 17<sup>th</sup> Street to the intersection of 17<sup>th</sup> and Waco Avenue. South along the centerline of Waco Avenue to the intersection of Waco and 2<sup>nd</sup> Street. East along the centerline of 2<sup>nd</sup> Street to the intersection of 2<sup>nd</sup> and Washington Street. North along the centerline of Washington Street to the intersection of Washington and 3<sup>rd</sup> Street. East on 3<sup>rd</sup> Street to the intersection of 3<sup>rd</sup> and New York Street. South on New York Street to the intersection of New York and 2<sup>nd</sup> Street. East on 2<sup>nd</sup> Street to the intersection of 2<sup>nd</sup> and Hydraulic Avenue. North along the centerline of Hydraulic Avenue to the point where the centerline of Hydraulic intersects with the east right-of-way of Highway I-135. Generally north along the east right-of-way of Highway I-135 to the point where the east right-of-way Highway I-135 intersects the west right-of-way of the Union Pacific Railroad. Northeast along the west right-of-way of the Union Pacific Railroad to the north right-of-way line of 37<sup>th</sup> Street North. West along 37<sup>th</sup> Street to the east line of the Southwest Quarter of Section 27, Township 26 South, Range 1 East of the 6<sup>th</sup> P.M. North along said east line and said east line extended north to the south line of the north half of the Northeast Quarter of said Section 27. Easterly along said south line to the northwest right-of-way line of the Union Pacific Railroad. Northeasterly along the Union Pacific Railroad to the west right-of-way line of Hillside Avenue. North along Hillside to the south right-of-way line of Highway K-254. Southwesterly along K-254 to the west right-of-way line of Hydraulic. South along Hydraulic to the southerly right-of-way line of the Chisholm Creek Diversion. Southwesterly along the Chisholm Creek Diversion to the west right-of-way line of the Burlington Northern/Santa Fe Railroad. North along the Burlington Northern/Santa Fe Railroad to the north right-of-way line of the Chisholm Creek Diversion. Westerly along Chisholm Creek Diversion to the centerline of Broadway. South along Broadway to the intersection of 37<sup>th</sup> Street North and Broadway Street, the beginning point.