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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
AND THE
WASHINGTON STATE DEPARTMENT OF ECOLOGY
AND THE
UNITED STATES AIR FORCE

IN THE MATTER OF:

The U.S. Department of Defense,
Fairchild Air Force Base

Spokane, Washington

)
) FEDERAL FACILITY AGREEMENT
) UNDER CERCLA SECTION 120

) Administrative Docket Number:
) 1088-11-09-120

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21 Based on the information available to the Parties on
22 the effective date of this Federal Facility Agreement
23 ("Agreement"), and without trial or adjudication of any issues of
24 fact or law, the Parties agree as follows:

1 I. JURISDICTION

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

4 1.1 The United States Environmental Protection
5 Agency ("U.S. EPA") enters into those portions of this Agreement
6 that relate to the Remedial Investigation/Feasibility Study
7 ("RI/FS") pursuant to Section 120(e)(1) of the Comprehensive
8 Environmental Response, Compensation, and Liability Act
9 ("CERCLA"), 42 U.S.C. § 9620(e)(1), as amended by the Superfund
10 Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L.
11 99-499 (hereinafter referred to as "CERCLA"), and Executive Order
12 12580;

13 1.2 U.S. EPA enters into those portions of this
14 Agreement that relate to interim remedial actions and final
15 remedial actions pursuant to Section 120(e)(2) of CERCLA,
16 42 U.S.C. § 9620(e)(2), and Executive Order 12580;

17 1.3 The United States Air Force ("USAF") enters
18 into those portions of this Agreement that relate to the RI/FS
19 pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1),
20 Executive Order 12580, the National Environmental Policy Act,
21 42 U.S.C. § 4321, and the Defense Environmental Restoration
22 Program ("DERP"), 10 U.S.C. § 2701 et seq.;

23 1.4 USAF enters into those portions of this
24 Agreement that relate to interim remedial actions and final
25 remedial actions pursuant to Section 120(e)(2) of CERCLA,
26 42 U.S.C. § 9620(e)(2), Executive Order 12580, and the DERP.

1 1.5 The State of Washington Department of
2 Ecology ("Ecology") enters into this Agreement pursuant to
3 Sections 107, 120(e)(2), 120(f), and 121(f) of CERCLA, 42 U.S.C.
4 §§ 9607, 9620(e)(2), 9620(f), and 9621(f), and Titles 70 and 43
5 of the Revised Code of Washington.

6
7 II. DEFINITIONS

8 2.1 The terms used in this Agreement shall have
9 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
10 § 9601, the NCP, 40 CFR Part 300, and Section 1004 of RCRA,
11 42 U.S.C. § 6903. In addition:

12 (a) "Agreement" shall mean this document and
13 shall include all Attachments to this document. All such
14 Attachments shall be incorporated by reference and are an
15 integral and enforceable part of this document;

16 (b) "ARAR" or "Applicable or Relevant and
17 Appropriate Requirements" shall mean any standard, requirement,
18 criteria, or limitation as provided in Section 121(d)(2) of
19 CERCLA, 42 U.S.C. § 9621(d)(2);

20 (c) "Authorized representative" may include a
21 Party's contractors or any other designee;

22 (d) "CERCLA" shall mean the Comprehensive
23 Environmental Response, Compensation, and Liability Act,
24 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments
25 and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499;

26 (e) "Days" shall mean calendar days, unless

1 otherwise specified. Any submittal that under the terms of this
2 Agreement would be due on a Saturday, Sunday, or federal holiday
3 shall be due on the following business day;

4 (f) "Ecology" shall mean the State of Washington
5 as represented by the Department of Ecology, its employees, and
6 authorized representatives;

7 (g) "Interim Remedial Actions" or "IRA" shall
8 mean all discrete response actions implemented prior to a final
9 remedial action which are taken to prevent or minimize the
10 release of hazardous substances, pollutants, or contaminants so
11 that they do not migrate or endanger public health, welfare, or
12 the environment. All interim remedial actions shall be
13 undertaken in accordance with the NCP, 40 C.F.R. Part 300, as
14 amended, and with the requirements of CERCLA;

15 (h) "NCP" shall mean the National Oil and
16 Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part
17 300, as amended;

18 (i) "Paragraph" shall mean a numbered paragraph
19 of this Agreement, designated by an Arabic numeral;

20 (j) "Part" shall mean one of the thirty-seven
21 (37) subdivisions of this Agreement, designated by a Roman
22 numeral;

23 (k) "Parties" shall mean USAF, U.S. EPA, and
24 Ecology.

25 (l) "RCRA" shall mean the Resource Conservation
26 and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the

Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L.
98-616;

(m) "Site" includes Fairchild Air Force Base
("Fairchild AFB"), including the Craig Road Landfill, which
occupies approximately forty-three hundred and twenty-five
(4,325) acres twelve (12) miles west of Spokane, Spokane County,
Washington, and any off-base area contaminated by the migration
of hazardous substances, pollutants, or contaminants from
Fairchild AFB.

(n) "USAF" shall mean the United States Air
Force and, to the extent necessary to effectuate the terms of
this Agreement (including appropriations and congressional
reporting requirements), its employees, contractors, agents,
successors, assigns, and authorized representatives;

(o) "U.S. EPA" shall mean the United States
Environmental Protection Agency, including Region 10, its
employees, and authorized representatives; and

(p) "Work Plan" shall mean the final RI/FS or
RD/RA Work Plans, incorporated herein by reference, which are to
be prepared in accordance with Office of Solid Waste and
Emergency Response ("OSWER") Directives 9355.3-01 (October 1988)
and 9355.0-4A (June 1986), and the NCP.

1 III. PURPOSE

2 3.1 The general purposes of this Agreement are
3 to:

4 (a) Ensure that the environmental impacts associated
5 with past and present activities at the Site are thoroughly
6 investigated and appropriate removal and/or remedial action(s)
7 taken as necessary to protect the public health, welfare, and the
8 environment;

9 (b) Establish a procedural framework and schedule for
10 developing, implementing, and monitoring appropriate response
11 actions at the Site in accordance with CERCLA, the NCP, Superfund
12 guidance and policy, RCRA, RCRA guidance and policy; and,

13 (c) Facilitate cooperation, exchange of information,
14 and participation of the Parties in such actions.

15 3.2 Specifically, the purposes of this Agreement are
16 to:

17 (a) Identify removal and Interim Remedial Action
18 ("IRA") alternatives which are appropriate at the Site prior to
19 the implementation of final remedial action(s) for the Site. IRA
20 alternatives shall be identified and proposed to the Parties as
21 early as possible prior to formal proposal of IRA(s) to U.S. EPA
22 pursuant to CERCLA. This process is designed to promote
23 cooperation among the Parties in identifying IRA alternatives
24 prior to selection of final IRA(s);

25 (b) Establish requirements for the performance of an
26 RI to determine fully the nature and extent of the threat to the

1 public health or welfare or the environment caused by the release
2 and threatened release of hazardous substances, pollutants, or
3 contaminants at the Site and to establish requirements for the
4 performance of an FS for the Site to identify, evaluate, and
5 select alternatives for the appropriate remedial action(s) to
6 prevent, mitigate, or abate the release or threatened release of
7 hazardous substances, pollutants, or contaminants at the Site in
8 accordance with CERCLA;

9 (c) Identify the nature, objective, and schedule of
10 response actions to be taken at the Site. Response actions at
11 the Site shall attain that degree of cleanup of hazardous
12 substances, pollutants, or contaminants mandated by CERCLA;

13 (d) Implement the selected interim and final remedial
14 action(s) in accordance with CERCLA and meet the requirements of
15 Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), for an
16 interagency agreement between U.S. EPA and USAF;

17 (e) Assure compliance, through this Agreement, with
18 other federal and state hazardous waste laws and regulations for
19 matters covered herein;

20 (f) Coordinate response actions at the Site with the
21 mission and support activities at Fairchild AFB;

22 (g) Expedite the cleanup process to the extent
23 consistent with protection of human health and the environment;
24 and

25 (h) Provide Ecology involvement in the initiation,
26 development, and selection of remedial actions to be undertaken

1 at Fairchild AFB, including the review of all applicable data as
2 it becomes available, and the development of studies, reports,
3 and actions plans; and to identify and integrate state ARARs into
4 the remedial action process.

5 6 IV. PARTIES BOUND

7 4.1 This Agreement shall apply to and be binding
8 upon USAF, U.S. EPA, and the State of Washington. This Agreement
9 shall also apply to subsequent owners and operators of any
10 portion of the Site. USAF agrees to include notice of this
11 Agreement in any document transferring ownership of property
12 owned by the United States to any subsequent owners and operators
13 of any portion of the Site in accordance with Section 120(h) of
14 CERCLA, 42 U.S.C. § 120(h), 40 C.F.R. §§ 264.119 and 264.120, and
15 Part XXXII of this Agreement.

16 4.2 USAF will notify U.S. EPA and Ecology of the
17 identity of its contractors performing work under this Agreement.
18 USAF shall provide copies of this Agreement to all contractors
19 performing any work pursuant to this Agreement.

20 4.3 Under no condition shall a Party under this
21 Agreement utilize the services of any consultant, prime
22 contractor, or subcontractor who has been suspended, debarred, or
23 voluntarily excluded within the scope of 40 C.F.R. Part 32 or
24 under the Federal Acquisition Regulation ("FAR") at 48 C.F.R.
25 Subpart 9.4 et seq.

26 4.4 Each undersigned representative of a Party

certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

V. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

5.1 The Parties intend to integrate USAF's CERCLA response obligations and corrective action obligations of other statutes which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. 9601 et seq., and applicable state law; satisfy the corrective action requirements of Sections 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621.

5.2. Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action. The Parties agree that with respect to releases of hazardous waste covered by this Agreement that have occurred on a site,

1 RCRA and Ch. 70.105 et seq. of the Revised Code of Washington
2 ("RCW") shall be considered ARARs pursuant to Section 121 of
3 CERCLA, 42 U.S.C. § 9621. If RCRA or RCW Ch. 70.105 et seq.
4 ARARs are waived by the Record of Decision ("ROD") pursuant to
5 Section 121 of CERCLA, 42 U.S.C. § 9621, Ecology shall have the
6 right to withdraw from this Agreement within sixty (60) days
7 following the effective date of the ROD and exercise any legal
8 rights and remedies available under law. If Ecology exercises
9 its right to withdraw from this Agreement, USAF expressly
10 preserves its ability to assert any defense that it may have
11 under the law or in equity in regard to the legal right or
12 remedies pursued by Ecology. Releases or other hazardous waste
13 activities not covered by this Agreement remain subject to all
14 applicable state and federal environmental requirements.

15 5.3 The Parties recognize that the requirement
16 to obtain permits for response actions undertaken pursuant to
17 this Agreement shall be as provided for in CERCLA and the NCP.

18 5.4. Nothing in this Agreement shall alter USAF's
19 authority with respect to removal actions conducted pursuant to
20 Section 104 of CERCLA, 42 U.S.C. § 9604.

21 VI. FINDINGS OF FACT

22 6.1 For purposes of this Agreement, the
23 following constitutes a summary of the facts upon which this
24 Agreement is based. None of the facts related herein are
25 admissions nor are they legally binding upon any Party with
26 respect to any unrelated claims of persons not a Party to this

1 Agreement.

2 6.2 Fairchild AFB is located about twelve (12)
3 miles west of Spokane, Washington, and occupies approximately
4 forty-three hundred and twenty-five (4,325) acres. Land use
5 surrounding the base is primarily agricultural. The nearest
6 communities are Airway Heights, approximately one (1) mile east
7 of the Craig Road Landfill, and Medical Lake, approximately two
8 (2) miles to the south.

9 6.3 Deep Creek and Marshall Creek are the two
10 (2) largest drainageways in the area surrounding the base. Both
11 creeks flow north and are tributaries of the Spokane River. West
12 Medical Lake, Medical Lake, and Silver Lake are within three (3)
13 miles of Fairchild AFB. These lakes support wildlife and are
14 used for recreation.

15 6.4 During past waste disposal activities,
16 carbon tetrachloride and other solvents, paint wastes, plating
17 sludges containing cadmium and lead, and related industrial
18 wastes were disposed of in the four (4) waste areas that were
19 ranked for National Priorities List ("NPL") consideration.

20 6.5 USAF has been participating in the
21 Installation Restoration Program ("IRP"). The basic IRP at
22 Fairchild AFB included four (4) phases. However, only two (2) of
23 the four (4) phases were implemented as the phased approach was
24 superseded in 1988 by an approach equivalent to the organization
25 presently employed by U.S. EPA. Phase I, Installation
26 Assessment/Records Search, identified past disposal locations and

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determined which locations need further consideration. Phase II, Confirmation/Quantification, involved field investigations to determine which locations needed further characterization. Phase III, Technology Base Development, would have been a research phase where new technologies for solving environmental problems could be developed and implemented on a case-by-case basis. Locations warranting action to minimize or eliminate contamination would have been referred from Phase II to Phase IV, Remedial Action.

6.6 Fairchild AFB received Interim Status under RCRA by applying for a Part A permit for a treatment, storage, and disposal facility. U.S. EPA and Ecology are reviewing a Part B application for a conforming storage facility. Fairchild AFB has submitted closure plans for the Industrial Waste Lagoons and the Deep Creek Steam Heat Plant. Discharges from the Industrial Waste Lagoons are regulated under a permit issued under the National Pollutant Discharge Elimination System.

6.7 On June 24, 1988, Fairchild AFB was proposed for inclusion on the CERCLA NPL. 53 Fed. Reg. 23,978 (June 24, 1988). It was listed on March 13, 1989. 54 Fed. Reg. 10,512 (March 13, 1989).

VII. REGULATORY DETERMINATIONS

7.1 For purposes of this Agreement, the following constitutes a summary of the Regulatory Determinations upon which this Agreement is based. None of the Regulatory

1 Determinations related herein are admissions nor are they legally
2 binding upon any Party with respect to any unrelated claims of
3 person(s) not a Party to this Agreement.

4 7.2 Fairchild AFB is a Site within the meaning
5 of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

6 7.3 Hazardous substances, pollutants, or
7 contaminants within the meaning of Sections 101(14) and 104(9)(2)
8 of CERCLA, 42 U.S.C. §§ 9601(14) and 9604(a)(2), have been
9 disposed of at the Site;

10 7.4 There have been releases and there continue
11 to be releases and threatened releases of hazardous substances,
12 pollutants, or contaminants into the environment within the
13 meaning of Sections 101(22), 104, 106, and 107 of CERCLA,
14 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607 at and from the Site;

15 7.5 With respect to those releases and
16 threatened releases, USAF is a responsible person within the
17 meaning of Section 107 of CERCLA, 42 U.S.C. § 9607;

18 7.6 The actions to be taken pursuant to this
19 Agreement are reasonable and necessary to protect the public
20 health or welfare or the environment; and

21 7.7 A reasonable time for beginning and/or
22 completing the actions has been provided.

23
24 VIII. SCOPE OF AGREEMENT

25 A. Work to be Performed

26 8.1 Based upon available information, the

operable units covered by this Agreement include, but are not limited to, the following:

(a) Operable Units

1. IS-1 Building 1034 - French Drain
2. FT-1 Fire Training Pit
3. OU-1 Flightline
4. SW-1 Old Base Landfill
5. SW-8 Craig Road Landfill
6. WW-1 Waste Water Lagoons

(b) Potential Operable Units

1. IS-3 Reciprocating Engine Test Facility (Bldg. 2150)
2. IS-4 Jet Engine Test Cell (Bldg. 3000)
3. PS-1 Bulk Storage Tanks
4. PS-3 Area C Pumphouse (Bldg. 159)
5. PS-4/PS-9 Crash Site
6. PS-5 Wherry House Fuel Oil Spill
7. PS-7 Deep Creek Steam Generating Plant (Bldg. 1350)
8. SW-6 Weapons Storage Area
9. SW-10 Air National Guard Test Cell Area (Bldg. 1035)
10. SW-11 Bldg. 2245 Disposal Site
11. SW-12 Disposal Area East of WSA
12. SW-13 EOD Range

8.2 USAF will conduct and finance the cost of the RI/FS consultant study in accordance with the RI/FS Work Plan and implement the RD/RA at the Site in accordance with the RD/RA Work Plan, and all relevant statutes, regulations, policies, guidance, and criteria.

8.3 All work performed pursuant to this Agreement shall be under the direction and supervision, or in consultation with a qualified engineer, geologist, or equivalent expert with expertise in hazardous substances site investigation and remediation.

1 8.4 USAF shall perform the tasks and submit
2 plans, reports, and other documents as required by those
3 provisions of the Work Plans.

4 8.5 These matters are set forth in more detail
5 below and in the subsequent RI/FS and RD/RA Work Plans. This
6 Agreement fully incorporates the provisions of such Work Plans.
7 In the event of any inconsistency between this Agreement and the
8 Work Plan, this Agreement shall govern unless and until duly
9 amended pursuant to Part XXXIII of this Agreement.

10 B. Interim Remedial Actions

11 8.6 USAF shall develop and implement Interim
12 Remedial Actions ("IRAs") which shall be set forth in the RI/FS
13 Work Plan and pursuant to Part XX. The IRA(s) shall be,
14 consistent with the purposes set forth in Part III of this
15 Agreement.

16 C. Remedial Investigations

17 8.7 USAF shall develop, implement, and report
18 upon remedial investigations of the Site which comply with
19 applicable requirements of CERCLA, the NCP, and pertinent written
20 guidance and established written U.S. EPA policy, and which is in
21 accordance with the requirements and time schedules set forth in
22 this Agreement.

23 D. Feasibility Studies

24 8.8 USAF shall design, propose, undertake, and
25 report upon feasibility studies for the Site which comply with
26 applicable requirements of CERCLA, the NCP, and relevant guidance

1 and established U.S. EPA policy, and which is in accordance with
2 the requirements and time schedules set forth in this Agreement.

3 E. Remedial Actions

4 8.9 USAF shall develop and submit its proposed
5 remedial action alternative following completion and approval of
6 an RI and FS. Ecology may recommend the remedial action
7 alternative it deems appropriate to U.S. EPA. Pursuant to and in
8 accordance with Parts XX and XXI, the U.S. EPA Administrator, in
9 consultation with USAF and Ecology, shall make final selection of
10 the remedial action(s) for the Site. The final selection of
11 remedial action(s) by the U.S. EPA Administrator shall be final
12 and not subject to dispute. Notwithstanding this Part, or any
13 other Part of this Agreement, Ecology does not waive any right to
14 seek judicial review of an interim or final remedial action in
15 accordance with Sections 113 and 121 of CERCLA, 42 U.S.C. §§ 9613
16 and 9621.

17
18 IX. PROJECT MANAGERS

19 9.1 Not later than five (5) days after the
20 effective date of this Agreement, USAF, Ecology, and U.S. EPA
21 shall each designate a Project Manager and alternate. Each
22 Project Manager shall be responsible for overseeing his
23 principal's duties concerning the implementation of this
24 Agreement. All written communications between USAF and the
25 regulatory agencies (including communication by letter, reports,
26 notices, etc.), concerning activities related to this Agreement

1 shall be directed or a copy sent to the appropriate Project
2 Manager(s).

3 9.2 Each Project Manager shall be, or rely on, a
4 qualified and competent person with experience in hazardous
5 substances site investigations and remedial actions and having
6 the skills necessary to implement this Agreement.

7 9.3 USAF, Ecology, and U.S. EPA may change their
8 respective Project Manager(s) by sending a written notification
9 to the other Parties no later than five (5) days before the date
10 of such change.

11 9.4 The Project Managers may, in accordance with
12 Part XX(J) of this Agreement, make modifications to the work to
13 be performed pursuant to this Agreement, or in techniques,
14 procedures, or design utilized in carrying out this Agreement,
15 which are necessary to the completion of the project.

16 9.5 The Project Managers for USAF shall be
17 physically present on Site or reasonably available to supervise
18 work performed at the Site during implementation of the work
19 performed pursuant to this Agreement and be available to the
20 U.S. EPA and Ecology Project Managers for the pendency of this
21 Agreement. The absence of the regulatory agency Project Managers
22 from the Site shall not be cause for work stoppage or delay.

23
24 X. ACCESS

25 10.1 Without limitation on any authority
26 conferred on them by law, the U.S. EPA, Ecology, and/or their

1 authorized representatives, shall have authority to enter the
2 Site at all reasonable times for the purposes of, among other
3 things: (1) inspecting records, operating logs, contracts, and
4 other documents relevant to implementation of this Agreement;
5 (2) reviewing the progress of USAF, its response action
6 contractors, or agents in implementing this Agreement;
7 (3) conducting such tests as Ecology and U.S. EPA Project
8 Managers deem necessary; and (4) verifying the data submitted to
9 U.S. EPA and Ecology by USAF. USAF shall honor all requests for
10 such access by U.S. EPA and Ecology, subject to any statutory or
11 regulatory requirement as may be necessary to protect national
12 security or mission-essential activities.

13 10.2 To the extent that this Agreement requires
14 access to property not owned and controlled by USAF, USAF shall
15 exercise its authorities to obtain access pursuant to Section
16 104(e) of CERCLA, 42 U.S.C. § 9604(e), and should make every
17 reasonable effort to obtain signed access agreements for itself,
18 its contractors, and agents, and provide U.S. EPA and Ecology
19 with copies of such agreements. With respect to non-USAF
20 property upon which monitoring wells, pumping wells, treatment
21 facilities, or other response actions are to be located, the
22 access agreements to the extent practicable shall also provide
23 that no conveyance of title, easement, or other interest in the
24 property shall be consummated without provisions for the
25 continued operation of such wells, treatment facilities, or other
26 response actions on the property. The access agreements should

1 also provide to the extent practicable that the owners of any
2 property where monitoring wells, pumping wells, treatment
3 facilities, or other response actions are located shall notify
4 the USAF, Ecology, and the U.S. EPA by certified mail, at least
5 thirty (30) days prior to any conveyance, of the property owner's
6 intent to convey any interest in the property and of the
7 provisions made for the continued operation of the monitoring
8 wells, treatment facilities, or other response actions installed
9 pursuant to this Agreement.

10 10.3 Nothing in this Part shall be construed to
11 limit the discretion of USAF to exercise the authority of the
12 President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
13 delegated by Executive Order 12580.

14 XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

15 11.1 The Parties shall make available to each
16 other quality assured results of sampling, tests, or other data
17 generated by any Party, or on their behalf, with respect to the
18 implementation of this Agreement within sixty (60) days of their
19 collection or field testing. If quality assurance is not
20 completed within sixty (60) days, preliminary data or results
21 shall be made available within the sixty (60) day period and
22 quality assured data or results shall be submitted as they become
23 available but in no event later than ninety (90) days after the
24 sampling or testing. These periods can be extended upon mutual
25 agreement among the Project Managers.

26 11.2 At the request of either the Ecology or

1 U.S. EPA Project Manager, USAF shall allow split or duplicate
2 samples to be taken by Ecology or U.S. EPA during sample
3 collection conducted during the implementation of this Agreement.
4 USAF's Project Manager shall notify the U.S. EPA and Ecology
5 Project Managers not less than fourteen (14) business days in
6 advance of any well drilling, sample collection, or other
7 monitoring activity, conducted pursuant to this Agreement. The
8 fourteen (14) day notification can be waived upon mutual
9 agreement among the Project Managers for USAF, U.S. EPA, and
10 Ecology.

11 11.3 If preliminary analysis indicates a
12 potential imminent and substantial endangerment to the public
13 health, all Project Managers shall be immediately notified.
14

15 XII. QUALITY ASSURANCE

16 12.1 Throughout all sample collection,
17 transportation, and analyses activities conducted in connection
18 with this Agreement, USAF shall use procedures for quality
19 assurance, and for quality control, and for chain-of-custody in
20 accordance with approved U.S. EPA methods, including "Interim
21 Guidelines and Specifications for Preparing Quality Assurance
22 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
23 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
24 guidelines. USAF shall require each laboratory it uses to
25 perform any analysis according to approved U.S. EPA methods and
26 to participate in a quality assurance/quality control program

equivalent to that which is followed by U.S. EPA and which is consistent with U.S. EPA document QAMS-005/80.

XIII. REPORTING

13.1 USAF shall submit to Ecology and U.S. EPA quarterly or, at the option of USAF, more frequent written progress reports which describe the actions which USAF has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be prepared and submitted in accordance with the Work Plans.

XIV. NOTICE TO THE PARTIES

14.1 All Parties shall expeditiously transmit primary and secondary documents, and all notices required herein. Time limitations shall commence upon receipt.

14.2 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

(A) For the USAF:
Jim Gillie
92 CSG/DEEV
Fairchild AFB, Washington 99011-5000
(509) 247-5847

(B) For U.S. EPA:
Bub Loiselle
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue, HW-074
Seattle, Washington 98101
(206) 442-1847

1 (C) For the State of Washington:
2 Washington State Department of Ecology
3 Attn: Duane R. ("Bob") Goodman
4 Mail Stop PV-11
5 Olympia, Washington 98504-8711
6 (206) 438-8300

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XV. PERMITS

15.1 The Parties recognize that the requirement
to obtain permits for response actions undertaken pursuant to
this Agreement shall be as provided for in CERCLA and the NCP.
The Parties further recognize ongoing hazardous waste management
activities at the Site may require the issuance of permits under
federal and state laws. This Agreement does not affect the
requirements, if any, to obtain such permits. However, if a
permit is issued for ongoing hazardous waste management
activities at the Site, U.S. EPA and Ecology shall reference and
incorporate any appropriate provisions, including appropriate
schedules (and the provisions for extension of such schedules),
of this Agreement into such permit. The Parties intend that the
judicial review of any permit conditions which reference this
Agreement shall, to the extent authorized by law, only be
reviewed under the provisions of CERCLA.

15.2 If a permit which is necessary for
implementation of this Agreement is not issued, or is issued or
renewed in a manner which is materially inconsistent with the
requirements of this Agreement, USAF agrees it shall notify
U.S. EPA and Ecology of its intention to propose necessary
amendments to this Agreement to obtain conformance with the

1 permit (or lack thereof). Notification by USAF of its intention
2 to propose amendments shall be submitted within seven (7)
3 calendar days of receipt by USAF of notification that: (1) a
4 permit will not be issued; (2) a permit has been issued or
5 reissued; or (3) a final determination with respect to any appeal
6 related to the issuance of a permit has been entered. Within
7 thirty (30) days from the date it submits its notice of intention
8 to propose amendments, USAF shall submit to U.S. EPA and Ecology
9 its proposed amendments to this Agreement with an explanation of
10 its reasons in support thereof.

11 15.3 U.S. EPA and Ecology shall review USAF's
12 proposed amendments to this Agreement made pursuant to this Part.
13 If USAF submits proposed amendments prior to a final
14 determination of any appeal taken on a permit needed to implement
15 this Agreement, U.S. EPA and Ecology may elect to delay review of
16 the proposed amendments until after such final determination is
17 entered. If U.S. EPA and Ecology elect to delay review, USAF
18 shall continue implementation of this Agreement which can be
19 reasonably implemented pending final resolution of the permit
20 issue(s).

21 15.4 During any appeal of any permit required to
22 implement this Agreement or during review of any of USAF's
23 proposed amendments as provided in Paragraph 15.2 above, USAF
24 shall continue to implement those portions of this Agreement
25 which can be reasonably implemented pending final resolution of
26 the permit issue(s).

1 XVI. RETENTION OF RECORDS

2 16.1 The Parties shall preserve for a minimum of
3 ten (10) years after termination of this Agreement all records
4 and documents in their possession or in the possession of their
5 divisions, employees, agents, accountants, contractors, or
6 attorneys which relate to the presence of hazardous wastes and
7 constituents, hazardous substances, pollutants, and contaminants
8 at the Site or to the implementation of this Agreement, despite
9 any document retention policy to the contrary. After this ten
10 (10) year period, the Parties shall notify one another at least
11 forty-five (45) days prior to destruction or disposal of any such
12 documents or records. Upon request by any Party, all Parties
13 shall make available such records or documents, or true copies to
14 one another. Documents may be converted to permanent electronic
15 or optical media and paper originals disposed of after forty-
16 five (45) days notification to the other Parties.

17
18 XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

19 17.1 The Parties agree that any subsequent
20 proposed plan considered for remedial action at the Site arising
21 out of this Agreement shall comply with public participation
22 requirements of Section 117 of CERCLA, 42 U.S.C. § 9617.

23 17.2 USAF agrees it shall establish and maintain
24 an Administrative Record at or near the Site in accordance with
25 Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), and that a copy of
26 this Agreement shall be placed in the Administrative Record. The

1 Administrative Record developed by USAF shall be periodically
2 updated and a copy of each document included in the
3 Administrative Record will be provided to U.S. EPA and Ecology.
4

5 XVIII. CREATION OF DANGER/EMERGENCY ACTION

6 18.1 In the event U.S. EPA or Ecology determine
7 that activities conducted pursuant to this Agreement, or any
8 other circumstances or activities, are creating an imminent and
9 substantial endangerment to the health or welfare of the people
10 on the Site or in the surrounding area or to the environment,
11 U.S. EPA or Ecology may require or order USAF to stop further
12 implementation of this Agreement for twenty-four (24) hours or,
13 upon agreement of the Parties, such period of time as needed to
14 abate the danger. Any unilateral work stoppage for longer than
15 twenty-four (24) hours requires the concurrence of the U.S. EPA
16 Division Director, in accordance with Paragraph 21.9.

17 18.2 In the event USAF determines that activities
18 undertaken in furtherance of this Agreement or any other
19 circumstances or activities at the Site are creating an imminent
20 and substantial endangerment to the health or welfare of the
21 people on the Site or in the surrounding area or to the
22 environment, USAF may stop implementation of this Agreement for
23 such periods of time necessary for U.S. EPA to evaluate the
24 situation and determine whether USAF should proceed with
25 implementation of the Agreement or whether the work stoppage
26 should be continued until the danger is abated. USAF shall

1 notify the Project Manager as soon as is possible, but not later
2 than twenty-four (24) hours after such stoppage of work, and
3 provide U.S. EPA with documentation of its analysis in reaching
4 this determination. If U.S. EPA disagrees with the USAF
5 determination, it may require USAF to resume implementation of
6 this Agreement.

7 18.3 If U.S. EPA concurs in the work stoppage by
8 USAF, or if U.S. EPA or Ecology require or order a work stoppage,
9 USAF's obligations shall be suspended and the time periods for
10 performance of that work, as well as the time period for any
11 other work dependent upon the work which was stopped, shall be
12 extended, pursuant to Part XXV of this Agreement. Any
13 disagreements pursuant to this Part shall be resolved through the
14 dispute resolution procedures in Part XXI of the Agreement by
15 referral directly to the DRC committee.

16 XIX. FIVE YEAR REVIEW

17 19.1 If a remedial action is selected that
18 results in any hazardous substances, pollutants, or contaminants
19 remaining at a Site, the Parties shall review such remedial
20 action no less often than each five (5) years after the
21 initiation of such remedial action to assure that human health
22 and the environment are being protected by the remedial action
23 being implemented. The U.S. EPA Project Manager and the Ecology
24 Project Manager shall advise the USAF Project Manager of their
25 findings in this regard. If USAF determines that additional
26 action is required, the Agreement may be amended pursuant to Part

1 XXXIII. USAF determination under this Part shall be subject to
2 dispute resolution by the other Parties.

3 XX. CONSULTATION WITH U.S. EPA AND ECOLOGY

4 A. Applicability

5 20.1 The provisions of this Part establish the
6 procedures that shall be used by USAF, U.S. EPA, and Ecology to
7 provide the Parties with appropriate notice, review, comment, and
8 response to comments regarding RI/FS and RD/RA documents,
9 specified herein as either primary or secondary documents. In
10 accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and
11 10 U.S.C. § 2705, USAF will normally be responsible for issuing
12 primary and secondary documents to U.S. EPA and Ecology. As of
13 the effective date of this Agreement, all draft and final reports
14 for any deliverable document identified herein shall be prepared,
15 distributed, and subject to dispute in accordance with Paragraphs
16 20.3 through 20.24.

17 20.2 The designation of a document as "draft" or
18 "final" is solely for purposes of consultation with U.S. EPA and
19 Ecology in accordance with this Part. Such designation does not
20 affect the obligation of the Parties to issue documents, which
21 may be referred to herein as "final," to the public for review
22 and comment as appropriate and as required by law.

23 B. General Process for RI/FS and RD/RA documents:

24 20.3 Primary documents include those reports that
25 are major, discrete portions of RI/FS or RD/RA activities.
26 Primary documents are initially issued by USAF in draft subject

1 to review and comment by U.S. EPA and Ecology. Following receipt
2 of comments on a particular draft primary document, USAF will
3 respond to the comments received and issue a draft final primary
4 document subject to dispute resolution. The draft final primary
5 document will become the final primary document either thirty
6 (30) days after the issuance of a draft final document if dispute
7 resolution is not invoked or as modified by decision of the
8 dispute resolution process.

9 20.4 Secondary documents include those reports
10 that are discrete portions of the primary documents and are
11 typically input or feeder documents. Secondary documents are
12 issued by USAF in draft subject to review and comment by U.S. EPA
13 and Ecology. Although USAF will respond to comments received,
14 the draft secondary documents may be finalized in the context of
15 the corresponding primary documents. A secondary document may be
16 disputed at the time the corresponding draft final primary
17 document is issued.

18 C. Primary Reports:

19 20.5 USAF shall complete and transmit draft
20 reports for the following primary documents to U.S. EPA and
21 Ecology for review and comment in accordance with the provisions
22 of this Part:

23 (a) Scope of Work

24 (b) RI/FS Work Plan, including Sampling and Analysis
25 Plan, QAPP (which includes the Data Management
26 Plan and the Data Quality Objectives), Community
 Relations Plan, and Health and Safety Plan

- (c) Baseline Risk Assessments
- (d) RI Report, including the Initial Screening of Alternatives
- (e) FS Report
- (f) Record of Decision
- (g) Remedial Design
- (h) Remedial Action Work Plan

20.6 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. USAF shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XXIV of this Agreement. Primary documents may include target dates for subtasks as provided for in Paragraph 20.8. The purpose of target dates is to assist USAF in meeting deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Parts XXII, XXIV, and/or XXV.

D. Secondary Documents:

20.7 USAF shall complete and transmit draft reports for the following secondary documents to U.S. EPA and Ecology for review and comment in accordance with the provisions of this Part:

- (a) Site Characterization Summary
- (b) Risk Assessment Conceptual Site Model
- (c) Detailed Analysis of Alternatives
- (d) Identification of ARARs and TBC Evaluation

- (e) Treatability Study Work Plan, as needed
- (f) Treatability Studies Report, as needed
- (g) Sampling and Data Results
- (h) Proposed Plan
- (i) Proposed RA Work Plan
- (j) Conceptual RD Report

20.8 Although U.S. EPA and Ecology may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Paragraph 20.3. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXIV of this Agreement.

E. Meetings of the Project Managers on Development of Reports

20.9 The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site on the primary and secondary documents. Prior to preparing any draft report specified in Paragraphs 20.5 and 20.7 above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

F. Identification and Determination of Potential ARARs

20.10 For those primary reports or secondary documents that consist of or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all

1 potential ARARs pertinent to the report being addressed. Draft
2 ARAR determinations shall be prepared by USAF in accordance with
3 Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and
4 pertinent written guidance issued by U.S. EPA and Ecology, which
5 is not inconsistent with CERCLA and the NCP.

6 20.11 In identifying potential ARARs, the Parties
7 recognize that actual ARARs can be identified only on a
8 site-specific basis and that ARARs depend on the specific
9 hazardous substances, pollutants, and contaminants at a site, the
10 particular actions proposed as a remedy, and the characteristics
11 of a site. The Parties recognize that ARAR identification is
12 necessarily an iterative process and that potential ARARs must be
13 re-examined throughout the RI/FS process until a ROD is issued.

14 G. Review and Comment on Draft Reports

15 20.12 USAF shall complete and transmit each draft
16 primary report to U.S. EPA and Ecology on or before the
17 corresponding deadline established for the issuance of the
18 report. USAF shall complete and transmit the draft secondary
19 document in accordance with the target dates established for the
20 issuance of such reports established pursuant to Part XXIV of
21 this Agreement.

22 20.13 Unless the Parties mutually agree to another
23 time period, all draft reports shall be subject to a thirty (30)
24 day period for review and comment. Review of any document by
25 U.S. EPA or Ecology may concern all aspects of the report
26 (including completeness) and should include, but is not limited

1 to, technical evaluation of any aspect of the document, and
2 consistency with CERCLA, the NCP, and any pertinent guidance or
3 policy issued by the U.S. EPA or Ecology. Comments by U.S. EPA
4 and Ecology shall be provided with adequate specificity so that
5 USAF may respond to the comments and, if appropriate, make
6 changes to the draft report. Comments shall refer to any
7 pertinent sources of authority or references upon which the
8 comments are based, and, upon request of USAF, U.S. EPA and
9 Ecology shall provide a copy of the cited authority or reference.
10 In cases involving complex or unusually lengthy reports, U.S. EPA
11 and Ecology may extend the thirty (30) day comment period for an
12 additional twenty (20) days by written notice to USAF prior to
13 the end of the thirty (30) day period. On or before the close of
14 the comment period, U.S. EPA and Ecology shall transmit by next
15 day mail their written comments to USAF.

16 20.14 Representatives of USAF shall make
17 themselves readily available to U.S. EPA and Ecology during the
18 comment period for purposes of informally responding to questions
19 and comments on draft reports. Oral comments made during such
20 discussions need not be the subject of a written response by USAF
21 on the close of the comment period.

22 20.15 In commenting on a draft report which
23 contains a proposed ARAR determination, U.S. EPA and Ecology
24 shall include a reasoned statement of whether they object to any
25 portion of the proposed ARAR determination. To the extent that
26 U.S. EPA and Ecology do object, they shall explain the basis for

1 their objection in detail and shall identify any ARARs which they
2 believe were not properly addressed in the proposed ARAR
3 determination.

4 20.16 Following the close of the comment period
5 for a draft report, USAF shall give full consideration to all
6 written comments on the draft report submitted during the comment
7 period. Within thirty (30) days of the close of the comment
8 period on a draft secondary report, USAF shall transmit to
9 U.S. EPA and Ecology its written response to comments received
10 within the comment period. Within thirty (30) days of the close
11 of the comment period on a draft primary report, USAF shall
12 transmit to U.S. EPA and Ecology a draft final primary report,
13 which shall include USAF's response to all written comments,
14 received within the comment period. While the resulting draft
15 final report shall be the responsibility of USAF, it shall be the
16 product of consensus to the maximum extent possible.

17 20.17 USAF may extend the thirty (30) day period
18 for either responding to comments on a draft report or for
19 issuing the draft final primary report for an additional twenty
20 (20) days by providing notice to U.S. EPA and Ecology. In
21 appropriate circumstances, this time period may be further
22 extended in accordance with Part XXV.

23 H. Availability of Dispute Resolution for
24 Draft Final Primary Documents

25 20.18 Dispute resolution shall be available to the
26 Parties for draft final primary reports as set forth in Part XXI.

1 20.19 When dispute resolution is invoked on a draft
2 primary report, work may be stopped in accordance with the
3 procedures set forth in Part XXI regarding dispute resolution.

4 I. Finalization of Reports:

5 20.20 The draft final primary report shall serve as the
6 final primary report if no Party invokes dispute resolution
7 regarding the document or, if invoked, at completion of the
8 dispute resolution process should USAF's position be sustained.
9 If USAF's determination is not sustained in the dispute
10 resolution process, USAF shall prepare, within not more than
11 thirty-five (35) days, a revision of the draft final report which
12 conforms to the results of dispute resolution. In appropriate
13 circumstances, the time period for this revision period may be
14 extended in accordance with Part XXV hereof.

15 J. Subsequent Modifications of Final Reports

16 20.21 Following finalization of any primary report
17 pursuant to Paragraph 20.20 above, U.S. EPA, Ecology, or USAF may
18 seek to modify the report, including seeking additional field
19 work, pilot studies, computer modeling, or other supporting
20 technical work, only as provided in Paragraphs 20.22 and 20.23.

21 20.22 U.S. EPA, Ecology, or USAF may seek to modify a
22 report after finalization if it determines, based on new
23 information (i.e., information that became available, or
24 conditions that became known, after the report was finalized)
25 that the requested modification is necessary. U.S. EPA, Ecology,
26 or USAF may seek such a modification by submitting a concise

1 written request to the Project Managers of the other Parties.

2 The request shall specify the nature of the requested
3 modification and how the request is based on new information.

4 20.23 In the event that a consensus among the Parties
5 is reached, the modification shall be incorporated by reference
6 and become fully enforceable under the Agreement pursuant to Part
7 XXXIII. In the event that a consensus is not reached by the
8 Project Managers on the need for a modification, either U.S. EPA,
9 Ecology, or USAF may invoke dispute resolution as provided in
10 Part XXI to determine if such modification shall be conducted.
11 Modification of a report shall be required only upon a showing
12 that: (1) the requested modification is based on significant new
13 information, and (2) the requested modification could be of
14 significant assistance in evaluating impacts on the public health
15 or the environment, in evaluating the selection of remedial
16 alternatives, or in protecting human health and the environment.

17 20.24 Nothing in this Subpart shall alter
18 U.S. EPA's or Ecology's ability to request the performance of
19 additional work which was not contemplated by this Agreement.
20 USAF's obligation to perform such work must be established by
21 either a modification of a report or document or by amendment to
22 this Agreement.

23 24 XXI. RESOLUTION OF DISPUTES

25 21.1 Except as specifically set forth elsewhere
26 in this Agreement, if a dispute arises under this Agreement, the

1 procedures of this Part shall apply. All Parties to this
2 Agreement shall make reasonable efforts to informally resolve
3 disputes at the Project Manager or immediate supervisor level.
4 If resolution cannot be achieved informally, the procedures of
5 this Part shall be implemented to resolve a dispute.

6 21.2 Within thirty (30) days after: (1) the
7 issuance of a draft final primary document pursuant to this
8 Agreement, or (2) any action which leads to or generates a
9 dispute, the disputing Party shall submit to the Dispute
10 Resolution Committee ("DRC") a written statement of dispute
11 setting forth the nature of the dispute, the work affected by the
12 dispute, the disputing Party's position with respect to the
13 dispute and the technical, legal, or factual information the
14 disputing Party is relying upon to support its position.

15 21.3 Prior to any Party's issuance of a written
16 statement of dispute, the disputing Party shall engage the other
17 Party in informal dispute resolution among the Project Managers
18 and/or their immediate supervisors. During this informal dispute
19 resolution period the Parties shall meet as many times as are
20 necessary to discuss and attempt resolution of the dispute.

21 21.4 The DRC will serve as a forum for resolution
22 of disputes for which agreement has not been reached through
23 informal dispute resolution. The Parties shall each designate
24 one individual and an alternate to serve on the DRC. The
25 individuals designated to serve on the DRC shall be employed at
26 the policy level (SES or equivalent) or be delegated the

1 authority to participate on the DRC for the purposes of dispute
2 resolution under this Agreement. The U.S. EPA representative on
3 the DRC is the Hazardous Waste Division Director ("Division
4 Director") of U.S. EPA's Region 10. USAF's designated member is
5 the Director of Environmental Management, Headquarters, Strategic
6 Air Command. Ecology's designated member is the Program Manager,
7 Hazardous Waste Investigation and Cleanup, Washington Department
8 of Ecology. Written notice of any delegation of authority from a
9 Party's designated representative on the DRC shall be provided to
10 all other Parties.

11 21.5 Following elevation of a dispute to the DRC,
12 the DRC shall have twenty-one (21) days to unanimously resolve
13 the dispute and issue a written decision. If the DRC is unable to
14 unanimously resolve the dispute within this twenty-one (21) day
15 period the written statement of dispute shall be forwarded to the
16 Senior Executive Committee (SEC) for resolution, within seven (7)
17 days after the close of the twenty-one (21) day resolution
18 period.

19 21.6 The SEC will serve as the forum for
20 resolution of disputes for which agreement has not been reached
21 by the DRC. The U.S. EPA representative on the SEC is the
22 Regional Administrator of U.S. EPA's Region 10. USAF's
23 representative on the SEC is the Deputy Assistant Secretary of
24 the Air Force for Environment, Safety and Occupational Health.
25 Ecology's representative on the SEC is the Director of the
26 Washington Department of Ecology. The SEC members shall, as

appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. USAF or Ecology may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that USAF or Ecology elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, USAF and/or Ecology shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

21.7 Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Paragraph 21.6, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with USAF's Secretariat Representative and a representative from Ecology to discuss the issue(s) under dispute. The Administrator will provide notice to all Parties of any Party's request to meet or confer with respect to any such dispute and will provide an adequate opportunity for all Parties to participate in any meeting or conference convened to resolve such dispute. Upon resolution, the Administrator shall provide USAF and Ecology with a written final decision setting forth resolution of the dispute.

1 The duties of the Administrator set forth in this Part shall not
2 be delegated.

3 21.8 The pendency of any dispute under this Part
4 shall not affect USAF's responsibility for timely performance of
5 the work required by this Agreement, except that the time period
6 for completion of work affected by such dispute shall be extended
7 for a period of time usually not to exceed the actual time taken
8 to resolve any good faith dispute in accordance with the
9 procedures specified herein. All elements of the work required
10 by this Agreement which are not affected by the dispute shall
11 continue and be completed in accordance with the applicable
12 schedule.

13 21.9 When dispute resolution is in progress, work
14 affected by the dispute will immediately be discontinued if the
15 Division Director for U.S. EPA's Region 10 or the Ecology Program
16 Manager request, in writing, that work related to the dispute be
17 stopped because, in U.S. EPA's or Ecology's opinion, such work is
18 inadequate or defective, and such inadequacy or defect is likely
19 to yield an adverse effect on human health or the environment, or
20 is likely to have a substantial adverse effect on the remedy
21 selection or implementation process. To the extent possible,
22 U.S. EPA and Ecology shall consult with all Parties prior to
23 initiating a work stoppage request. After stoppage of work, if
24 USAF believes that the work stoppage is inappropriate or may have
25 potential significant adverse impacts, USAF may meet with the
26 U.S. EPA Division Director and Ecology equivalent to discuss the

1 work stoppage. Following this meeting, and further consideration
2 of the issues, the U.S. EPA Division Director will issue, in
3 writing, a final decision with respect to the work stoppage. The
4 final written decision of the U.S. EPA Division Director may
5 immediately be subjected to formal dispute resolution. Such
6 dispute may be brought directly to either the DRC or the SEC, at
7 the discretion of USAF or Ecology.

8 21.10 Within twenty-one (21) days of resolution of
9 a dispute pursuant to the procedures specified in this Part, USAF
10 shall incorporate the resolution and final determination into the
11 appropriate plan, schedule, or procedures and proceed to
12 implement this Agreement according to the amended plan, schedule,
13 or procedures.

14 21.11 Resolution of a dispute pursuant to this
15 Part of the Agreement constitutes a final resolution of that
16 dispute arising under this Agreement. All Parties shall abide by
17 all terms and conditions of any final resolution of dispute
18 obtained pursuant to this Part of this Agreement.

19 XXII. ENFORCEABILITY

20 22.1 The Parties agree that:

21 (a) Upon its effective date, this Agreement is
22 enforceable by any person pursuant to Section 310 of CERCLA,
23 42 U.S.C. § 9659, and any violation of such standard, regulation,
24 condition, requirement, or order contained herein will be subject
25 to civil penalties under Sections 310(c) and 109 of CERCLA,
26 42 U.S.C. §§ 9659(c) and 9609;

(b) All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

(c) All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines, or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609; and

(d) Any final resolution of a dispute pursuant to Part XXI of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such term, condition, timetable, deadline, or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609.

22.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

22.3 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

FEDERAL FACILITY AGREEMENT

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January 24, 1990

XXIII. STIPULATED PENALTIES

23.1 In the event that USAF fails to submit a primary document to U.S. EPA and Ecology pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, U.S. EPA may assess, after consultation with Ecology, a stipulated penalty against USAF. A stipulated penalty may be assessed in an amount not to exceed five thousand dollars (\$5,000) for the first week (or part thereof), and ten thousand dollars (\$10,000) for each additional week (or part thereof) for which a failure set forth in this paragraph occurs.

23.2 Upon determining that USAF has failed in a manner set forth in Paragraph 23.1, U.S. EPA shall so notify USAF in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, USAF shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did, in fact, occur. USAF shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

23.3 The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with

1 respect to each final assessment of a stipulated penalty against
2 USAF under this Agreement, each of the following:

- 3 a. The facility responsible for the failure;
- 4 b. A statement of the facts and circumstances
5 giving rise to the failure;
- 6 c. A statement of any administrative or other
7 corrective action taken at the relevant
8 facility, or a statement of why such
9 measures were determined to be
10 inappropriate;
- 11 d. A statement of any additional action taken
12 by or at the facility to prevent recurrence
13 of the same type of failure; and
- 14 e. The total dollar amount of the stipulated
15 penalty assessed for the particular failure.

16 23.4 Stipulated penalties assessed pursuant to
17 this Part shall be payable to the Hazardous Substances Response
18 Trust Fund only in the manner and to the extent expressly
19 provided for in Acts authorizing funds for, and appropriations
20 to, DOD.

21 23.5 In no event shall this Part give rise to a
22 stipulated penalty in excess of the amount set forth in Section
23 109 of CERCLA, 42 U.S.C. § 9609.

24 23.6 This Part shall not affect USAF's ability to
25 obtain an extension of a timetable, deadline, or schedule
26 pursuant to Part XXV of this Agreement.

27 23.7 Nothing in this Agreement shall be construed
28 to render any officer or employee of USAF personally liable for
the payment of any stipulated penalty assessed pursuant to this

1 Part.

2 XXIV. DEADLINES

3 24.1 With respect to the Operable Units
4 identified in Paragraph 8.1(a), deadlines (subject to extension
5 pursuant to Part XXV) for the draft primary documents are
6 established as follows:

	<u>Date</u>
7 a. Scope of Work	January 15, 1990
8 b. RI/FS Work Plan	March 15, 1990
9 c. Risk Assessment	September 30, 1991
10 d. RI Report, including the 11 Initial Screening of 12 Alternatives	December 15, 1991
13 e. FS Report	March 15, 1992
14 f. Record of Decision	September 30, 1992

15 24.2 In the Scope of Work provided pursuant to
16 Paragraph 24.1(a), USAF shall propose target dates for completion
17 of the draft secondary documents identified in Paragraph 20.7(a)
18 through (h), and deadlines for completion of the draft primary
19 documents identified in Paragraph 20.5(b) through (f) for the
20 remaining hazardous waste units.

21 24.3 Within twenty-one (21) days of issuance of
22 each Record of Decision, USAF shall propose target dates for
23 completion of the draft secondary documents identified in
24 Paragraph 20.7(i) through (j) and deadlines for completion of the
25 following draft primary documents:

26 a. Remedial Design

1 b. Remedial Action Work Plan

2 24.4 Within fifteen (15) days of receipt of the
3 proposed deadlines submitted pursuant to Paragraph 24.3,
4 U.S. EPA, in conjunction with Ecology, shall review and provide
5 comments to USAF regarding the proposed deadlines. Within
6 fifteen (15) days following receipt of the comments USAF shall,
7 as appropriate, make revisions and reissue the proposal. The
8 Parties shall meet as necessary to discuss and finalize the
9 proposed deadlines. If the Parties agree on proposed deadlines,
10 the finalized deadlines shall be incorporated into the
11 appropriate Work Plans. If the Parties fail to agree within
12 thirty (30) days on the proposed deadlines, the matter shall
13 immediately be submitted for dispute resolution pursuant to Part
14 XXI of this Agreement. The final deadlines established pursuant
15 to this paragraph shall be published by U.S. EPA, in conjunction
16 with Ecology.

17 24.5 The deadlines set forth in this Part, or to
18 be established as set forth in this Part, may be extended
19 pursuant to Part XXV of this Agreement. The Parties recognize
20 that one possible basis for extension of the deadlines for
21 completion of the RI/FS Reports is the identification of
22 significant new Site conditions during the performance of the RI.

23 XXV. EXTENSIONS

24 25.1 Either a timetable and deadline or a
25 schedule shall be extended upon receipt of a timely request for
26 extension and when good cause exists for the requested extension.

1 Any request for extension by USAF shall be submitted in writing
2 to the Project Managers and shall specify:

- 3 a. The timetable and deadline or the schedule that
4 is sought to be extended;
- 5 b. The length of the extension sought;
- 6 c. The good cause(s) for the extension; and
- 7 d. Any related timetable and deadline or schedule
8 that would be affected if the extension were
9 granted.

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

- 11 a. An event of force majeure;
- 12 b. A delay caused by another Party's failure to meet
13 any requirement of this Agreement;
- 14 c. A delay caused by the good faith invocation of
15 dispute resolution or the initiation of judicial
16 action;
- 17 d. A delay caused, or which is likely to be caused,
18 by the grant of an extension in regard to another
19 timetable and deadline or schedule; and
- 20 e. Any other event or series of events mutually
21 agreed to by the Parties as constituting good
22 cause.

23 25.2 Absent agreement of the Parties with respect
24 to the existence of good cause, USAF may seek and obtain a
25 determination through the dispute resolution process that good
26 cause exists.

27 25.3 Within seven (7) days of receipt of a
28 request for an extension of a timetable and deadline or a
schedule, U.S. EPA and Ecology shall advise USAF in writing of
their respective position on the request. Any failure by
U.S. EPA or Ecology to respond within the seven (7) day period

1 shall be deemed to constitute concurrence in the request for
2 extension. If U.S. EPA or Ecology does not concur in the
3 requested extension, it shall include in its statement of
4 nonconcurrence an explanation of the basis for its position.

5 25.4 If there is consensus among the Parties that
6 the requested extension is warranted, USAF shall extend the
7 affected timetable and deadline or schedule accordingly. If
8 there is no consensus among the Parties as to whether all or part
9 of the requested extension is warranted, the timetable and
10 deadline or schedule shall not be extended except in accordance
11 with determination resulting from the dispute resolution process.

12 25.5 Within seven (7) days of receipt of a
13 statement of nonconcurrence with the requested extension, USAF
14 may invoke dispute resolution.

15 25.6 A timely and good faith request for an
16 extension shall toll any assessment of stipulated penalties or
17 application for judicial enforcement of the affected timetable
18 and deadline or schedule until a decision is reached on whether
19 the requested extension will be approved. If dispute resolution
20 is invoked and the requested extension is denied, stipulated
21 penalties may be assessed and may accrue from the date of the
22 original timetable and deadline or schedule. Following the grant
23 of an extension, an assessment of stipulated penalties or an
24 application for judicial enforcement may be sought only to compel
25 compliance with the timetable and deadline or schedule as most
26 recently extended.

1 XXVI. FORCE MAJEURE

2 26.1 Force Majeure shall mean any event arising
3 from causes beyond the control of a Party that causes a delay in
4 or prevents the performance of any obligation under this
5 Agreement, including, but not limited to:

6 a. acts of God; fire, war; insurrection; civil
7 disturbance; or explosion;

8 b. unanticipated breakage or accident to machinery,
9 equipment, or lines of pipe despite reasonably diligent
10 maintenance;

11 c. adverse weather conditions that could not be
12 reasonably anticipated, or unusual delay in transportation;

13 d. restraint by court order or order of public
14 authority;

15 e. inability to obtain, at a reasonable cost and
16 after exercise of reasonable diligence, any necessary
17 authorizations, approvals, permits, or licenses due to action or
18 inaction of any governmental agency or authority other than USAF;

19 f. delays caused by compliance with applicable
20 statutes or regulations governing contracting, procurement, or
21 acquisition procedures, despite the exercise of reasonable
22 diligence; and

23 g. insufficient availability of appropriated funds,
24 if USAF shall have made timely request for such funds as part of
25 the budgetary process as set forth in Section XXVII of this
26 Agreement. If such an event occurs, Ecology may exercise its

rights as provided in Paragraph 27.6, but U.S. EPA shall be bound by this Force Majeure and shall not assess stipulated penalties.

26.2 Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

26.3 Any claim of Force Majeure shall be subject to dispute resolution and, where applicable, to the limitations of Paragraph 27.6.

XVII. FUNDING

27.1 It is the expectation of the Parties to this Agreement that all obligations of USAF arising under this Agreement will be fully funded. USAF agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

27.2 In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. § 9620(e)(5)(B), USAF shall provide to DOD for its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

27.3 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the U.S. Department of Defense Appropriation Act and allocated by the DASD(E) to USAF will be the source of funds for activities required by this Agreement consistent with Section

1 211 of SARA, 10 U.S.C. Chapter 160. However, should the
2 Environmental Restoration, Defense appropriation be inadequate in
3 any year to meet the total USAF CERCLA implementation
4 requirements, DOD shall employ and USAF shall follow a
5 standardized DOD prioritization process which allocates that
6 year's appropriations in a manner which maximizes the protection
7 of human health and the environment. A standardized DOD
8 prioritization model shall be developed and utilized with the
9 assistance of U.S. EPA and Ecology.

10 27.4 Any requirement for the payment or
11 obligation of funds, including stipulated penalties, by USAF
12 established by the terms of this Agreement shall be subject to
13 the availability of appropriated funds, and no provision herein
14 shall be interpreted to require obligation or payment of funds in
15 violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases
16 where payment or obligation of funds, including stipulated
17 penalties, would constitute a violation of the Anti-Deficiency
18 Act, the dates established requiring the payment or obligation of
19 such funds shall be appropriately adjusted.

20 27.5 If appropriated funds are not available to
21 fulfill USAF's obligations under this Agreement, U.S. EPA and
22 Ecology reserve the right to initiate an action against any other
23 person or to take any response action which would be appropriate
24 absent this Agreement.

25 27.6 USAF maintains that any requirement for the
26 payment or obligation of funds under this Agreement is subject to

1 the availability of appropriated funds, and that the
2 unavailability of such funds constitutes a valid defense to any
3 judicial action that might be brought to enforce the terms of
4 this Agreement. Notwithstanding Paragraphs 27.1, 27.2, 27.3,
5 27.4, and 27.5 above, Ecology does not agree that lack of
6 appropriation or funding constitutes a valid defense to
7 performance by USAF. However, the Parties agree and stipulate
8 that it is premature to raise and adjudicate the validity of such
9 a defense at this time. If sufficient funds are not available to
10 fulfill USAF's obligations under this Agreement, the Parties
11 shall meet to discuss the funding shortfall, the ways of
12 resolving it, and whether it is appropriate to adjust the
13 deadlines set forth pursuant to Part XXIV affected by the funding
14 shortfall. Any Party may elevate the issue(s) directly to the
15 SEC for resolution. Six (6) months following the failure of USAF
16 to meet a deadline because of lack of funding, Ecology shall have
17 the right to seek judicial enforcement of this Agreement. This
18 Paragraph is not subject to Part XXI, but does not exclude the
19 consensual use of Part XXV. Acceptance of this Paragraph 27.6
20 does not constitute a waiver by USAF of the applicability of any
21 appropriate provisions of the Anti-Deficiency Act, 31 U.S.C.
22 § 1341, to the terms of this Agreement.

23 XXVIII. RECOVERY OF EXPENSES

24 28.1 USAF and U.S. EPA agree to amend this Part
25 at a later date in accordance with any subsequent resolution of
26 the currently contested issue of cost reimbursement.

1 28.2 USAF agrees to request funding and reimburse
2 Ecology, subject to the conditions and limitations set forth in
3 this Part and subject to Section XXVII, for all reasonable costs
4 it incurs in providing services in direct support of USAF's
5 environmental restoration activities at the Site pursuant to this
6 Agreement.

7 28.3 Reimbursable expenses shall consist only of
8 actual expenditures required to be made and actually made by
9 Ecology in providing the following assistance to USAF:

10 (a) Timely technical review and substantive comment
11 on reports or studies which USAF prepares in support of its
12 response actions and submits to Ecology;

13 (b) Identification and explanation of unique state
14 requirements applicable to military installations in performing
15 response actions, especially state ARARs;

16 (c) Field visits to ensure cleanup activities are
17 implemented in accordance with appropriate state requirements, or
18 in accordance with agreed upon conditions between Ecology and
19 USAF that are established in the framework of this Agreement;

20 (d) Support and assistance to USAF in conducting the
21 public participation activities in accordance with federal and
22 state requirements for public involvement;

23 (e) Participation in the review and comment functions
24 of USAF Technical Review Committees; and

25 (f) Other services specified in this Agreement.

26 28.4 Within ninety (90) days after the end of

1 each quarter of the federal fiscal year, Ecology shall submit to
2 USAF an accounting of all state costs actually incurred during
3 that quarter in providing direct support services under this
4 Part. Such accounting shall be accompanied by cost summaries and
5 be supported by documentation which meets federal auditing
6 requirements. The summaries will set forth employee hours and
7 other expenses by major type of support service. All costs
8 submitted must be for work directly related to implementation of
9 this Agreement and not inconsistent with either the NCP or the
10 requirements described in OMB Circulars A-87 (Cost Principles for
11 State and Local Governments) and A-128 (Audits for State and
12 Local Cooperative Agreements with State and Local Governments)
13 and Standard Forms 424 and 270. USAF has the right to audit cost
14 reports used by the State to develop the cost summaries. Before
15 the beginning of each fiscal year, the State shall supply a
16 budget estimate of what it plans to do in the next year in the
17 same level of detail as the billing documents.

18 28.5 Except as allowed pursuant to Paragraphs
19 28.6 and 28.7, within ninety (90) days of receipt of the
20 accounting provided pursuant to Paragraph 28.4, USAF shall
21 reimburse the State in the amount set forth in the accounting.

22 28.6 In the event USAF contends that any of the
23 costs set forth in the accounting provided pursuant to Paragraph
24 28.4 are not properly payable, the matter shall be resolved
25 through a bilateral dispute resolution process set forth at
26 Paragraph 28.9.

28.7 The amount of reimbursement from USAF to Ecology shall not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) during the lifetime of this Agreement and not more than ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) during any single fiscal year. Either USAF or Ecology may request, on the basis of significant upward or downward revisions in the USAF estimate of its total lifetime costs through construction used above, a renegotiation of the above amounts. Failing an agreement, either USAF or Ecology may initiate dispute resolution in accordance with Paragraph 28.9. Circumstances could arise whereby fluctuations in USAF estimates or actual final costs through the construction of the final remedial action creates a situation where Ecology receives reimbursement in excess of the estimated amount of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate. This negotiated reimbursement amount reflects the judgment of USAF and Ecology that:

(a) Funding of support services must be constrained so as to avoid unnecessary diversion of the limited Defense Environmental Restoration Account funds available for the overall cleanup; and

(b) Support services should not be disproportionate to overall project costs and budget.

28.8 Ecology agrees to seek reimbursement for its

1 expenses solely through the mechanisms established in this Part,
2 and reimbursement provided under this Section shall be in
3 settlement of any claims for state response costs relative to
4 USAF's environmental restoration activities at the Site.

5 28.9 Part XXI notwithstanding, this Paragraph
6 shall govern any dispute between USAF and Ecology regarding the
7 application of this Part or any matter controlled by this Part
8 including, but not limited to, allowability of expenses and
9 limits on reimbursement. While it is the intent of USAF and
10 Ecology that these procedures shall govern resolution of disputes
11 concerning Ecology reimbursement, informal dispute resolution is
12 encouraged.

13 (a) USAF and Ecology Project Managers shall be the
14 initial points of contact for coordination of dispute resolution
15 under Paragraph 28.9.

16 (b) If USAF and Ecology Project Managers are unable
17 to resolve a dispute, the matter shall be referred to the
18 Director of Environmental Management, Headquarters, Strategic Air
19 Command, or his designated representative, and the Assistant
20 Director, Waste Management, Washington Department of Ecology, as
21 soon as practicable, but in any event within five (5) working
22 days after the dispute is elevated by the Project Managers.

23 (c) If the Director of Environmental Management,
24 Headquarters, Strategic Air Command, and the Assistant Director,
25 Waste Management, Washington Department of Ecology, are unable to
26 resolve the dispute within ten (10) working days, the matter

1 shall be elevated to the Director, Washington Department of
2 Ecology, and the Deputy Assistant Secretary of the Air Force for
3 Environment, Safety and Occupational Health.

4 (d) In the event the Director, Washington Department
5 of Ecology, and the Deputy Assistant Secretary of the Air Force
6 for the Environment, Safety and Occupational Health, are unable
7 to resolve a dispute, Ecology retains any legal and equitable
8 remedies it may have to recover its expenses. In addition,
9 Ecology may withdraw from this Agreement by giving ninety (90)
10 days notice to the other Parties.

11 28.10 Nothing herein shall be construed to limit
12 the ability of USAF to contract with Ecology for technical
13 services that could otherwise be provided by a private contractor
14 including, but not limited to:

- 15 (a) Identification, investigation, and cleanup of any
16 contamination beyond the boundaries of Fairchild
17 AFB;
18 (b) Laboratory analysis; or
19 (c) Data collection for field studies.

20 28.11 USAF and Ecology agree that the terms and
21 conditions of this Part shall become null and void when Ecology
22 enters into a Defense/State Memorandum of Agreement ("DSMOA")
23 with the U.S. Department of Defense ("DOD") which addresses
24 Ecology reimbursement.
25
26

1 XXIX. OTHER CLAIMS

2 29.1 Nothing in this Agreement shall constitute
3 or be construed as a bar or release from any claim, cause of
4 action, or demand in law or equity by or against any persons,
5 firm, partnership, or corporation not a signatory to this
6 Agreement for any liability it may have arising out of or
7 relating in any way to this Agreement or the generation, storage,
8 treatment, handling, transportation, release, or disposal of any
9 hazardous substances, hazardous wastes, hazardous constituents,
10 pollutants, or contaminants found at, taken to, or taken from
11 Fairchild AFB.

12 29.2 U.S. EPA and Ecology shall not be held as a
13 Party to any contract entered into by USAF to implement the
14 requirements of this Agreement.

15 29.3 USAF shall notify the appropriate federal
16 and state natural resource trustees as required by Section
17 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of
18 Executive Order 12580. Except as provided herein, USAF is not
19 released from any liability which it may have pursuant to any
20 provisions of state and federal law, including any claim for
21 damages for liability to destruction or loss of natural
22 resources.

23 29.4 This Agreement shall not restrict U.S. EPA
24 and/or Ecology from taking any legal or response action for any
25 matter not covered by this Agreement.

1 XXX. OTHER APPLICABLE LAWS

2 30.1 All actions required to be taken pursuant to
3 this Agreement shall be undertaken in accordance with the
4 requirements of all applicable state and federal laws and
5 regulations unless an exemption from such requirements is
6 provided in this Agreement, CERCLA, or the NCP.

7
8 XXXI. CONFIDENTIAL INFORMATION

9 31.1 USAF may assert on its own behalf, or on
10 behalf of a contractor, subcontractor, or consultant, a
11 confidentiality claim covering all or part of the information
12 requested by this Agreement pursuant to Section 104 of CERCLA,
13 42 U.S.C. § 9604(e), and 32 C.F.R. Part 806. Analytical data
14 shall not be claimed as confidential by USAF. Information
15 determined to be confidential by USAF pursuant to 32 C.F.R. Part
16 806 shall be afforded the protection specified therein and such
17 information shall be treated by Ecology as confidential, to the
18 extent permitted by state law. If Ecology is unable to afford
19 the confidentiality protection, USAF is not required to submit
20 the data to Ecology. If no claim of confidentiality accompanies
21 the information when it is submitted to either regulatory agency,
22 the information may be made available to the public without
23 further notice to USAF.

24
25 XXXII. TRANSFER OF PROPERTY

26 32.1 Conveyance of title, easement, or other

1 interest in Fairchild AFB shall be in accordance with Section 120
2 of CERCLA, 42 U.S.C. § 9620.

4 XXXIII. AMENDMENT OF AGREEMENT

5 33.1 This Agreement may be amended by unanimous
6 agreement of USAF, Ecology, and U.S. EPA. Any such amendment
7 shall be in writing, shall have as the effective date that date
8 on which it is signed by all the Parties, and shall be
9 incorporated into and modify this Agreement.

10 XXXIV. SEVERABILITY

11 34.1 If any provision of this Agreement is ruled
12 invalid, illegal, or unconstitutional, the remainder of the
13 Agreement shall not be affected by such ruling.

15 XXXV. TERMINATION AND SATISFACTION

16 35.1 The provisions of this Agreement shall be
17 deemed satisfied upon a consensus of the Parties that USAF has
18 completed its obligations under the terms of this Agreement. Any
19 Party may propose in writing the termination of this Agreement
20 upon a showing that the requirements of this Agreement have been
21 satisfied. A Party opposing termination of this Agreement shall
22 serve its objection upon the proposing Party within thirty (30)
23 days of receipt of the proposal. Any objection shall describe in
24 detail the additional work needed to satisfy the requirements of
25 the Agreement. Any Party may invoke dispute resolution as to the
26 request for or objection to a proposal to terminate.

27 FEDERAL FACILITY AGREEMENT

28 FAIRCHILD AIR FORCE BASE - Page 60

January 24, 1990

XXXVI. PUBLIC PARTICIPATION

36.1 Within fifteen (15) days of the execution of this Agreement, USAF shall publish notice in at least one (1) major local daily or weekly newspaper of general circulation and broadcast over local radio stations that this Agreement is available for a forty-five (45) day period of public review and comment.

36.2 Promptly upon the completion of the comment period, USAF shall transmit to the other Parties copies of all comments received within the comment period. The Parties shall review all such comments and, within thirty (30) days of the close of the comment period, USAF shall prepare a written response to comments for the review and concurrence of U.S. EPA and Ecology. Within sixty (60) days of the close of the comment period, the Parties shall determine that either:

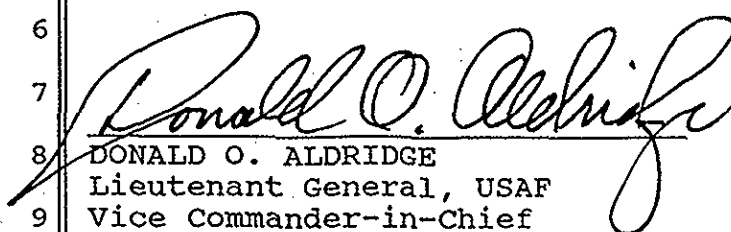
(a) the Agreement shall remain effective in its present form; or

(b) seek to modify the Agreement pursuant to Part XXXIII herein, in response to the comments received. Absent or pending an Amendment of the Agreement pursuant to Part XXXIII, the Agreement will remain effective in its present form.

XXXVII. EFFECTIVE DATE

37.1 This Agreement is effective upon signature by all the Parties to this Agreement.

1 Signature sheet for the foregoing Federal Facility
2 Agreement for the Fairchild Air Force Base, among the
3 U.S. Environmental Protection Agency, the U.S. Department of the
4 Air Force, and the Washington State Department of Ecology.
5
6

7 
8 DONALD O. ALDRIDGE
9 Lieutenant General, USAF
10 Vice Commander-in-Chief
11 Strategic Air Command
12
13

8 8 FEB 1990

Date

14 REPRESENTED BY:

15 Raymond T. Swenson, Esq.
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Signature sheet for the foregoing Federal Facility
Agreement for the Fairchild Air Force Base, among the
U.S. Environmental Protection Agency, the U.S. Department of the
Air Force, and the Washington State Department of Ecology.

Christine O. Gregoire
CHRISTINE O. GREGOIRE
Director
Washington Department of Ecology
State of Washington

3/19/90

Date

Kenneth O. Eikenberry
KENNETH O. EIKENBERRY, Esq.
Attorney General
State of Washington

3/22/90

Date

REPRESENTED BY:

Jerry Ackerman, Esq.

Signature sheet for the foregoing Federal Facility
Agreement for the Fairchild Air Force Base, among the
U.S. Environmental Protection Agency, the U.S. Department of the
Air Force, and the Washington State Department of Ecology.

Randall F. Smith

March 27, 1990
Date

THOMAS P. DUNNE
Acting Regional Administrator
Region 10
United States Environmental Protection Agency

REPRESENTED BY:

Monica Kirk, Esq.