

IAG COVER SHEET

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Title: MCCHORD AIR FORCE BASE (WASH RACK/TREATMENT AREA)

Subject: Region 10, X

Author: DoD, Air Force, Washington, WA, Department of Ecology

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CERTIFIED MAIL, RETURN RECEIPT REQUESTED

October 26, 1989

SO-125

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Mail Stop PV-11
Olympia, WA 98504

Lt Col George Ash, Esq.
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RE: Interagency Agreement ("IAG") for McChord AFB

Dear Jerry and George:

Please find enclosed a certified true copy of the McChord IAG, dated August 23, 1989, for your files. By this letter, I also transmit the IAG to your Project Managers.

As provided in paragraph 36.1, the Agreement became effective on October 23, 1989, the date by which all parties had signed. However, pursuant to paragraph 14.1, time limitations commence upon receipt. Therefore, the paragraph 9.1 submissions shall be mailed to the Project Managers identified in paragraph 14.1 within five (5) days of your Project Manager's receipt of this letter. I assume that the USAF submittals required by paragraph 24.1 will be timely, i.e. within twenty-one (21) days of receipt of this letter.

As required by paragraph 9.1, the United States Environmental Protection Agency designates Robert Poss as Project Manager.

Gentlemen, thank you and congratulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Monica".

Monica Kirk
Assistant Regional Counsel

ATTACHMENT: Certified true copy of IAG, dated August 23, 1989

cc: Col Dan Benton (w/o attachment)
Fred Gardner (w/attachment)
Mike Grenko (w/attachment)
George Hofer (w/attachment)
Chip Landman (w/attachment)
Pob Poss (w/attachment)

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,
McChord Air Force Base
Area D/American Lake Garden and
Washrack/Treatment Area,
Tacoma, Washington

)
) FEDERAL FACILITY AGREEMENT
) UNDER CERCLA SECTION 120

)
) Administrative Docket Numbers:
) 1088-06-17-120 and
) 1088-06-18-120

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

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I. JURISDICTION

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

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

1.2 U.S. EPA enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA and Executive Order 12580;

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

1.4 USAF enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 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 and Titles
4 70 and 43 of the Revised Code of Washington.

5
6 II. DEFINITIONS

7 2.1 The terms used in this Agreement shall have
8 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
9 § 4601, the NCP, 40 CFR Part 300, and Section 1004 of RCRA,
10 42 U.S.C. § 6903. In addition:

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

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

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

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

25 (E) "Days" shall mean calendar days, unless
26 otherwise specified. Any submittal that under the terms of this

1 Agreement would be due on a Saturday, Sunday, or federal holiday
2 shall be due on the following business day;

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

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

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

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

19 (J) "Part" shall mean one of the thirty-six (36)
20 subdivisions of this Agreement, designated by a Roman numeral;

21 (K) "Parties" shall mean USAF, U.S. EPA, and
22 Ecology.

23 (L) "RCRA" shall mean the Resource Conservation
24 and Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the
25 Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L.
26 98-616;

1 (M) "Site" includes either of two (2) separate
2 locations on McChord Air Force Base and the adjacent American
3 Lake Garden Tract ("ALG") that are listed on the National
4 Priorities List. The first Site is the McChord Area D/American
5 Lake Garden Tract Site. McChord Area D is defined as the
6 approximate geographical area that encompasses Installation
7 Restoration Program ("IRP") Site Numbers 4, 5, 6, 7, 26, 35, 39,
8 and any other local contaminated site not previously identified
9 in the IRP. ALG is located in the northern halves of Sections
10 22 and 23, Township 19 North, Range 2 East in Western Pierce
11 County, Washington, approximately six (6) miles southwest of the
12 City of Tacoma. The second Site is the McChord Washrack/
13 Treatment Area. The Washrack/Treatment Area is defined as IRP
14 Site 54, which includes a former aircraft washing area on the
15 south edge of "D" ramp and the double leaching pits just off the
16 edge of the pavement. Adjacent fuel spill areas are also
17 included in this Site. An approximate area boundary of this
18 Site will be established during the RI/FS scoping process;

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

24 (O) "U.S. EPA" shall mean the United States
25 Environmental Protection Agency, including Region 10, its
26 employees, and authorized representatives; and
27

1 (P) "Work Plan" shall mean the final RI/FS or
2 RD/RA Work Plans, incorporated herein by reference, which are
3 prepared in accordance with Office of Solid Waste and Emergency
4 Response (OSWER) Directive 9355.3.-01 (March 1988) and the NCP.
5

6 III. PURPOSE

7 3.1 The general purposes of this Agreement are
8 to:

9 (A) Ensure that the environmental impacts
10 associated with past and present activities at the Sites are
11 thoroughly investigated and appropriate removal and/or remedial
12 action(s) taken as necessary to protect the public health,
13 welfare, and the environment;

14 (B) Establish a procedural framework and
15 schedule for developing, implementing, and monitoring
16 appropriate response actions at the Sites in accordance with
17 CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA
18 guidance and policy; and,

19 (C) Facilitate cooperation, exchange of
20 information, and participation of the Parties in such actions.

21 3.2 Specifically, the purposes of this Agreement are
22 to:

23 (A) Identify removal and Interim Remedial Action
24 ("IRA") alternatives which are appropriate at the Sites prior to
25 the implementation of final remedial action(s) for the Sites.
26 IRA alternatives shall be identified and proposed to the Parties
27

1 as early as possible prior to formal proposal of IRA(s) to
2 U.S. EPA pursuant to CERCLA. This process is designed to
3 promote cooperation among the Parties in identifying IRA
4 alternatives prior to selection of final IRA(s);

5 (B) Establish requirements for the performance
6 of an RI to determine fully the nature and extent of the threat
7 to the public health or welfare or the environment caused by the
8 release and threatened release of hazardous substances,
9 pollutants, or contaminants at the Sites and to establish
10 requirements for the performance of an FS for the Sites to
11 identify, evaluate, and select alternatives for the appropriate
12 remedial action(s) to prevent, mitigate, or abate the release or
13 threatened release of hazardous substances, pollutants, or
14 contaminants at the Site in accordance with CERCLA;

15 (C) Identify the nature, objective, and schedule
16 of response actions to be taken at the Sites. Response actions
17 at the Sites shall attain that degree of cleanup of hazardous
18 substances, pollutants, or contaminants mandated by CERCLA;

19 (D) Implement the selected interim and final
20 remedial action(s) in accordance with CERCLA and meet the
21 requirements of Section 120(e)(2) of CERCLA for an interagency
22 agreement between U.S. EPA and USAF;

23 (E) Assure compliance, through this Agreement,
24 with other federal and state hazardous waste laws and
25 regulations for matters covered herein;

26 (F) Coordinate response actions at the Sites
27

1 with the mission and support activities at McChord Air Force
2 Base ("McChord AFB");

3 (G) Expedite the cleanup process to the extent
4 consistent with protection of human health and the environment;
5 and

6 (H) Provide Ecology involvement in the
7 initiation, development, and selection of remedial actions to be
8 undertaken at McChord AFB, including the review of all
9 applicable data as it becomes available, and the development of
10 studies, reports, and actions plans; and to identify and
11 integrate state ARARs into the remedial action process.

12
13 IV. PARTIES BOUND

14 4.1 This Agreement shall apply to and be binding
15 upon USAF, U.S. EPA, and the State of Washington. This
16 Agreement shall also apply to subsequent owners and operators of
17 any portion of either Site. USAF agrees to include notice of
18 this Agreement in any document transferring ownership of
19 property owned by the United States to any subsequent owners and
20 operators of any portion of either Site in accordance with
21 Section 120(h) of CERCLA, 40 C.F.R. §§ 264.119 and 264.120 and
22 Part XXXII of this Agreement.

23 4.2 USAF will notify U.S. EPA and Ecology of the
24 identity of its contractors performing work under this
25 Agreement. USAF shall provide copies of this Agreement to all
26 contractors performing any work pursuant to this Agreement.

1 4.3 Each undersigned representative of a Party
2 certifies that he or she is fully authorized to enter into the
3 terms and conditions of this Agreement and to legally bind such
4 Party to this Agreement.

5
6 V. STATUTORY COMPLIANCE

7 5.1 The Parties intend to integrate USAF's
8 CERCLA response obligations and corrective action obligations of
9 other statutes which relate to the release(s) of hazardous
10 substances, hazardous wastes, pollutants, or contaminants
11 covered by this Agreement into this comprehensive Agreement.
12 Therefore, the Parties intend that activities covered by this
13 Agreement will achieve compliance with CERCLA, 42 U.S.C. 9601,
14 et seq., and meet or exceed all applicable or relevant and
15 appropriate federal and state laws and regulations, to the
16 extent required by Section 121 of CERCLA, 42 U.S.C. § 9621, and
17 applicable state law.

18 5.2. Based upon the foregoing, the Parties intend
19 that any remedial action selected, implemented, and completed
20 under this Agreement will be protective of human health and the
21 environment such that remediation of releases covered by this
22 Agreement shall obviate the need for further corrective action.
23 The Parties agree that with respect to releases of hazardous
24 waste covered by this Agreement that have occurred on a site,
25 RCRA and Ch. 70.105 et seq. of the Revised Code of Washington
26 ("RCW") shall be considered ARARs pursuant to Section 121 of
27
28 FEDERAL FACILITY AGREEMENT, McCHORD AFB - Page 10 August 23, 1989

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

13 5.3 The Parties recognize that the requirement
14 to obtain permits for response actions undertaken pursuant to
15 this Agreement shall be as provided for in CERCLA and the NCP.

16 5.4. Nothing in this Agreement shall alter USAF's
17 authority with respect to removal actions conducted pursuant to
18 Section 104 of CERCLA, 42 U.S.C. § 9604.

19
20 VI. FINDINGS OF FACT

21 6.1 For purposes of this Agreement, the
22 following constitutes a summary of the facts upon which this
23 Agreement is based. None of the facts related herein are
24 admissions nor are they legally binding upon any Party with
25 respect to any unrelated claims of persons not a Party to this
26 Agreement.

1 6.2 American Lake Garden is a three hundred and
2 seventy-five (375) acre residential tract located about six (6)
3 miles southwest of Tacoma, Washington. The tract, which is
4 about one (1) mile from east to west and one-half mile wide, is
5 bordered by McChord AFB on the north and east and Fort Lewis
6 Military Reservation on the south and west.

7 6.3 There are no natural surface drainage
8 channels in the tract. Surface runoff is channelled through a
9 storm sewer system into American Lake, about one-half mile
10 northwest of the tract.

11 6.4 Prior to 1986, residents of American Lake
12 Garden obtained potable water from approximately sixty-three
13 (63) domestic wells. Most of those wells obtain groundwater
14 from the glacial outwash gravel that underlies the area.

15 6.5 From 1983 until 1985, U.S. EPA conducted a
16 groundwater investigation at American Lake Garden. The study
17 findings concluded that groundwater moved from McChord AFB
18 westward across the northern boundary of the American Lake
19 Garden Tract. This groundwater was contaminated by the
20 chlorinated solvents 1,2-trans-dichloroethylene and to a lesser
21 extent trichloroethylene. Both contaminants were found at
22 concentrations which exceed drinking water criteria. Study
23 results indicated the probable sources of these solvent
24 contaminants are buried in closed landfills beneath the McChord
25 AFB golf course. The contaminant plume was believed to be less
26 than 250 feet wide as it left the base property line and was

1 present in the water column 40 to 70 feet below the ground
2 surface. Preliminary tests indicated the plume continued to be
3 less than 250 feet wide as it moved into the American Lake
4 Garden Tract. The leading edge of the contaminant plume is to a
5 point approximately 800 feet west of Woodbrook Drive.

6 6.6 On September 25, 1985, a Memorandum of
7 Agreement was executed by USAF, U.S. EPA, Lakewood Water
8 District, Washington Department of Social and Health Services,
9 Washington Department of Ecology, Pierce County, and the Tacoma
10 Pierce County Health Department. The Memorandum of Agreement
11 required the installation of a permanent alternative water
12 supply for American Lake Garden. The installation activities
13 have been completed.

14 6.7 The McChord Air Force Base Washrack/
15 Treatment Area is a former aircraft washing facility located on
16 the South end of "D" ramp, a parking pavement for airplanes.
17 The Site encompasses the pavement area where airplanes were
18 historically washed to remove oil, grease, and other foreign
19 materials with chemical solvents, plus two (2) unlined leach
20 pits that received contaminated washwater runoff from the
21 adjacent pavements. A concrete tank oil skimmer system was
22 added to this location in the 1970s to treat the rinsate. The
23 skimmer outfall was later connected to the sanitary sewer
24 system. The Washrack/Treatment Area was identified as a
25 priority site on the base for further investigation during the
26 Air Force IRP Phase I and Phase II Studies. Groundwater studies
27

1 in the immediate area of the Washrack/Treatment Area revealed
2 groundwater contamination by petroleum products, degreasing
3 solvents, and heavy metals materials. The extent of the
4 contamination plume for this Site has not been determined.

5 6.8 On September 8, 1983, the American Lake
6 Garden Tract Site was proposed for inclusion on the CERCLA
7 National Priorities List. It was listed on September 21, 1984.

8 6.9 On October 15, 1984, the Washrack/Treatment
9 Area Site was proposed for inclusion on the CERCLA National
10 Priorities List. It was listed on July 22, 1987.

12 VII. REGULATORY DETERMINATIONS

13 7.1 For purposes of this Agreement, the
14 following constitutes a summary of the Regulatory Determinations
15 upon which this Agreement is based. None of the Regulatory
16 Determinations related herein are admissions nor are they
17 legally binding upon any party with respect to any unrelated
18 claims of person(s) not a party to this Agreement.

19 7.2 The McChord Area D/American Lake Garden and
20 the Washrack/Treatment Area, located on McChord AFB and American
21 Lake Garden Tract, are each a Site within the meaning of Section
22 101(9) of CERCLA, 42 U.S.C. § 9601(9);

23 7.3 Hazardous substances, pollutants, or
24 contaminants within the meaning of Sections 101(14) and
25 104(9)(2) of CERCLA, 42 U.S.C. §§ 9601(14) and 9604(a)(2), have
26 been disposed of at the Sites;

1 7.4 There have been releases and there continue
2 to be releases and threatened releases of hazardous substances,
3 pollutants, or contaminants into the environment within the
4 meaning of Sections 101(22), 104, 106, and 107 of CERCLA,
5 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607 at and from the
6 Sites;

7 7.5 With respect to those releases and
8 threatened releases, USAF is a responsible person within the
9 meaning of Section 107 of CERCLA, 42 U.S.C. § 9607;

10 7.6 The actions to be taken pursuant to this
11 Agreement are reasonable and necessary to protect the public
12 health or welfare or the environment; and

13 7.7 A reasonable time for beginning and/or
14 completing the actions has been provided.

15
16 VIII. SCOPE OF AGREEMENT

17 A. Work to be Performed

18 8.1 USAF will conduct and finance the cost of
19 the RI/FS consultant study in accordance with the RI/FS Work
20 Plan and implement the RD/RA at each Site in accordance with the
21 RD/RA Work Plan, and all relevant statutes, regulations,
22 policies, guidance, and criteria.

23 8.2 All work performed pursuant to this
24 Agreement shall be under the direction and supervision, or in
25 consultation with a qualified engineer, geologist, or equivalent
26 expert with expertise in hazardous substances Site investigation
27

1 and remediation.

2 8.3 USAF shall perform the tasks and submit
3 plans, reports, and other documents as required by those
4 provisions of the Work Plans.

5 8.4 These matters are set forth in more detail
6 below and in the RI/FS and RD/RA Work Plans. This Agreement
7 fully incorporates the provisions of the Work Plans which relate
8 to the implementation of this Agreement, including, but not
9 limited to, definitions and procedures for submission, review,
10 and approval of documents. In the event of any inconsistency
11 between this Agreement and the Work Plan, this Agreement shall
12 govern unless and until duly amended pursuant to Part XXXIII of
13 this Agreement.

14 B. Interim Remedial Actions

15 8.5 USAF shall develop and implement Interim
16 Remedial Actions ("IRAs"), set forth in the RI/FS Work Plan and
17 pursuant to Part XX. The IRA(s) shall be consistent with the
18 purposes set forth in Part III of this Agreement.

19 C. Remedial Investigations

20 8.6 USAF shall develop, implement, and report
21 upon remedial investigations of the Sites which comply with
22 applicable requirements of CERCLA, the NCP, and pertinent
23 written guidance and established written U.S. EPA policy, and
24 which is in accordance with the requirements and time schedules
25 set forth in this Agreement.
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2 D. Feasibility Studies

3 8.7 USAF shall design, propose, undertake, and
4 report upon feasibility studies for the Sites which comply with
5 applicable requirements of CERCLA, the NCP, and relevant
6 guidance and established U.S. EPA policy, and which is in
7 accordance with the requirements and time schedules set forth in
8 this Agreement.

9 E. Remedial Actions

10 8.8 USAF shall develop and submit its proposed
11 remedial action alternative following completion and approval of
12 an RI and FS. Ecology may recommend the remedial action
13 alternative it deems appropriate to U.S. EPA. Pursuant to Part
14 XX, the U.S. EPA Administrator, in consultation with USAF and
15 Ecology, shall make final selection of the remedial action(s)
16 for the Sites. The final selection of remedial action(s) by the
17 U.S. EPA Administrator shall be final and not subject to
18 dispute. Notwithstanding this Part, or any other Part of this
19 Agreement, Ecology does not waive any right to seek judicial
20 review of an interim or final remedial action in accordance with
21 Sections 113 and 121 of CERCLA, 42 U.S.C. §§ 9613 and 9621.

22 IX. PROJECT MANAGERS

23 9.1 Not later than five (5) days after the
24 effective date of this Agreement, USAF, Ecology, and U.S. EPA
25 shall each designate a Project Manager and alternate. Each
26

1 Project Manager shall be responsible for overseeing his
2 principal's duties concerning the implementation of this
3 Agreement. All written communications between USAF and the
4 regulatory agencies (including communication by letter, reports,
5 notices, etc.), concerning activities related to this Agreement
6 shall be directed or a copy sent to the appropriate Project
7 Manager(s).

8 9.2 Each Project Manager shall be, or rely on, a
9 qualified and competent person with experience in hazardous
10 substances Site investigations and remedial actions and having
11 the skills necessary to implement this Agreement.

12 9.3 USAF, Ecology, and U.S. EPA may change their
13 respective Project Manager(s) by sending a written notification
14 to the other Parties no later than five (5) days before the date
15 of such change.

16 9.4 The Project Managers may, in accordance with
17 Part XX(J) of this Agreement, make modifications to the work to
18 be performed pursuant to this Agreement, or in techniques,
19 procedures, or design utilized in carrying out this Agreement,
20 which are necessary to the completion of the project.

21 9.5 The Project Managers for USAF shall be
22 physically present on site or reasonably available to supervise
23 work performed at the Sites during implementation of the work
24 performed pursuant to this Agreement and be available to the
25 U.S. EPA and Ecology Project Managers for the pendency of this
26 Agreement. The absence of the regulatory agency Project
27

1 Managers from the Sites shall not be cause for work stoppage or
2 delay.

3
4 X. ACCESS

5 10.1 Without limitation on any authority
6 conferred on them by law, the U.S. EPA, Ecology, and/or their
7 authorized representatives, shall have authority to enter the
8 Sites at all reasonable times for the purposes of, among other
9 things: (1) inspecting records, operating logs, contracts, and
10 other documents relevant to implementation of this Agreement;
11 (2) reviewing the progress of USAF, its response action
12 contractors, or agents in implementing this Agreement; (3)
13 conducting such tests as Ecology and U.S. EPA Project Managers
14 deem necessary; and (4) verifying the data submitted to U.S. EPA
15 and Ecology by USAF. USAF shall honor all requests for such
16 access by U.S. EPA and Ecology, subject to any statutory or
17 regulatory requirement as may be necessary to protect national
18 security or mission-essential activities.

19 10.2 To the extent that this Agreement requires
20 access to property not owned and controlled by USAF, USAF shall
21 exercise its authorities to obtain access pursuant to Section
22 104(e) of CERCLA, 42 U.S.C. § 9604(e), and shall make every
23 reasonable effort to obtain signed access agreements for itself,
24 its contractors, and agents, and provide U.S. EPA and Ecology
25 with copies of such agreements. With respect to non-USAF
26 property upon which monitoring wells, pumping wells, treatment
27 facilities, or other
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1 response actions are to be located, the access agreements to the
2 extent possible shall also provide that no conveyance of title,
3 easement, or other interest in the property shall be consummated
4 without provisions for the continued operation of such wells,
5 treatment facilities, or other response actions on the
6 property. The access agreements shall also provide to the
7 extent possible that the owners of any property where monitoring
8 wells, pumping wells, treatment facilities, or other response
9 actions are located shall notify the USAF, Ecology, and the
10 U.S. EPA by certified mail, at least thirty (30) days prior to
11 any conveyance, of the property owner's intent to convey any
12 interest in the property and of the provisions made for the
13 continued operation of the monitoring wells, treatment
14 facilities, or other response actions installed pursuant to this
15 Agreement.

16
17 XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

18 11.1 The Parties shall make available to each
19 other quality assured results of sampling, tests, or other data
20 generated by any Party, or on their behalf, with respect to the
21 implementation of this Agreement within forty-five (45) days of
22 their collection or field testing. If quality assurance is not
23 completed within forty-five (45) days, preliminary data or
24 results shall be made available within the forty-five (45) days
25 period and quality assured data or results shall be submitted as
26 they become available but in no event later than ninety (90)
27

1 days after the sampling or testing. These periods can be
2 extended upon mutual agreement among the Project Managers.

3 11.2 At the request of either the Ecology or
4 U.S. EPA Project Manager, USAF shall allow split or duplicate
5 samples to be taken by Ecology or U.S. EPA during sample
6 collection conducted during the implementation of this
7 Agreement. USAF's Project Manager shall notify the U.S. EPA and
8 Ecology Project Managers not less than ten (10) business days in
9 advance of any well drilling, sample collection, or other
10 monitoring activity, conducted pursuant to this Agreement. The
11 ten-day notification can be waived upon mutual agreement among
12 the Project Managers for USAF, U.S. EPA, and Ecology.

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

17 XII. QUALITY ASSURANCE

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

1 guidelines. USAF shall require each laboratory it uses to
2 perform any analysis according to approved U.S. EPA methods and
3 to participate in a quality assurance/quality control program
4 equivalent to that which is followed by U.S. EPA and which is
5 consistent with U.S. EPA document QAMS-005/80.

6
7 XIII. REPORTING

8 13.1 USAF shall submit to Ecology and U.S. EPA
9 quarterly or, at the option of USAF, more frequent written
10 progress reports which describe the actions which USAF has taken
11 during the previous quarter to implement the requirements of
12 this Agreement. Progress reports shall also describe the
13 activities scheduled to be taken during the upcoming quarter.
14 Progress reports shall be prepared and submitted in accordance
15 with the Work Plans.

16
17 XIV. NOTICE TO THE PARTIES

18 14.1 All Parties shall expeditiously transmit
19 primary and secondary documents, and all notices required
20 herein. Time limitations shall commence upon receipt.

21 14.2 Notice to the individual Parties shall be
22 provided under this Agreement to the following addresses:

23
24 (a) For the USAF:
25 62 ABG/DEEV
26 Attn: Michael Grenko
27 McChord AFB, Washington 98438-5436
28 (206) 984-3913

1 (b) For U.S. EPA:
2 Robert A. Poss
3 Region 10
4 U.S. Environmental Protection Agency
5 1200 Sixth Avenue, HW-114
6 Seattle, Washington 98101
7 (206) 442-1388

8 (c) For the State of Washington
9 Washington State Department of Ecology
10 Attn: Fred Gardner
11 Mail Stop PV-11
12 Olympia, Washington 98504-8711
13 (206) 438-3014

14 XV. PERMITS

15 15.1 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 The Parties further recognize ongoing hazardous waste management
19 activities at the Site may require the issuance of permits under
20 federal and state laws. This Agreement does not affect the
21 requirements, if any, to obtain such permits. However, if a
22 permit is issued for ongoing hazardous waste management
23 activities at either Site, U.S. EPA shall reference and
24 incorporate any appropriate provisions, including appropriate
25 schedules (and the provisions for extension of such schedules),
26 of this Agreement into such permit. The Parties intend that the
27 judicial review of any permit conditions which reference this
28 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

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

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

25 15.4 During any appeal of any permit required to
26 implement this Agreement or during review of any of USAF's
27

1 proposed modifications as provided in Paragraph 15.2 above, USAF
2 shall continue to implement those portions of this Agreement
3 which can be reasonably implemented pending final resolution of
4 the permit issue(s).

5
6 XVI. RETENTION OF RECORDS

7 16.1 The Parties shall preserve for a minimum of
8 ten (10) years after termination of this Agreement all records
9 and documents in their possession or in the possession of their
10 divisions, employees, agents, accountants, contractors, or
11 attorneys which relate to the presence of hazardous wastes and
12 constituents, hazardous substances, pollutants, and contaminants
13 at the Site or to the implementation of this Agreement, despite
14 any document retention policy to the contrary. After this ten
15 (10) year period, the Parties shall notify one another at least
16 forty-five (45) days prior to destruction or disposal of any
17 such documents or records. Upon request by any Party, all
18 Parties shall make available such records or documents, or true
19 copies to one another, subject to attorney-client privilege.
20

21 XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

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

26 17.2 USAF agrees it shall establish and maintain
27

1 separate Administrative Records at or near the Sites in
2 accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k),
3 and that a copy of this Agreement shall be placed in each of the
4 two (2) Administrative Records. Each Administrative Record
5 developed by USAF shall be periodically updated and a copy of
6 each document included in each Administrative Record will be
7 provided to U.S. EPA and Ecology.
8

9 XVIII. CREATION OF DANGER/EMERGENCY ACTION

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

21 18.2 In the event USAF determines that activities
22 undertaken in furtherance of this Agreement or any other
23 circumstances or activities at either Site are creating an
24 imminent and substantial endangerment to the health or welfare
25 of the people on the Site or in the surrounding area or to the
26 environment, USAF may stop implementation of this Agreement
27

1 for such periods of time necessary for U.S. EPA to evaluate the
2 situation and determine whether USAF should proceed with
3 implementation of the Agreement or whether the work stoppage
4 should be continued until the danger is abated. USAF shall
5 notify the Project Manager as soon as is possible, but not later
6 than twenty-four (24) hours after such stoppage of work, and
7 provide U.S. EPA with documentation of its analysis in reaching
8 this determination. If U.S. EPA disagrees with the USAF
9 determination, it may require USAF to resume implementation of
10 this Agreement.

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

20 XIX. FIVE YEAR REVIEW

21 19.1 If a remedial action is selected that
22 results in any hazardous substances, pollutants, or contaminants
23 remaining at a Site, the Parties shall review such remedial
24 action no less often than each five (5) years after the
25 initiation of such remedial action to assure that human health
26

1 and the environment are being protected by the remedial action
2 being implemented. The U.S. EPA Project Manager and the Ecology
3 Project Manager shall advise the USAF Project Manager of their
4 findings in this regard. If USAF determines that additional
5 action is required, the Agreement may be amended pursuant to
6 Part XXXIII. USAF determination under this Part shall be
7 subject to dispute resolution by the other Parties.
8

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

10 A. Applicability

11 20.1 The provisions of this Part establish the
12 procedures that shall be used by USAF, U.S. EPA, and Ecology to
13 provide the Parties with appropriate notice, review, comment,
14 and response to comments regarding RI/FS and RD/RA documents,
15 specified herein as either primary or secondary documents. In
16 accordance with Section 120 of CERCLA and 10 U.S.C. § 2705, USAF
17 will normally be responsible for issuing primary and secondary
18 documents to U.S. EPA and Ecology. As of the effective date of
19 this Agreement, all draft and final reports for any deliverable
20 document identified herein shall be prepared, distributed, and
21 subject to dispute in accordance with Paragraphs 20.3 through
22 20.24.

23 20.2 The designation of a document as "draft" or
24 "final" is solely for purposes of consultation with U.S. EPA and
25 Ecology in accordance with this Part. Such designation does not
26 affect the obligation of the Parties to issue documents, which
27

1 may be referred to herein as "final," to the public for review
2 and comment as appropriate and as required by law.

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

4 20.3 Primary documents include those reports that
5 are major, discrete portions of RI/FS or RD/RA activities.
6 Primary documents are initially issued by USAF in draft subject
7 to review and comment by U.S. EPA and Ecology. Following
8 receipt of comments on a particular draft primary document, USAF
9 will respond to the comments received and issue a draft final
10 primary document subject to dispute resolution. The draft final
11 primary document will become the final primary document either
12 thirty (30) days after the issuance of a draft final document if
13 dispute resolution is not invoked or as modified by decision of
14 the dispute resolution process.

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

24 C. Primary Reports:

25 20.5 USAF shall complete and transmit draft
26 reports for the following primary documents to U.S. EPA and
27

Ecology for review and comment in accordance with the provisions of this Part:

- (a) Scope of Work
- (b) RI/FS Work Plan, including Sampling and Analysis Plan, QAPP, Community Relations Plan, Data Management Plan, and Health and Safety Plan
- (c) Risk Assessment
- (d) RI Report, including the Initial Screening of Alternatives
- (e) FS Report
- (f) Proposed Plan
- (g) Record of Decision
- (h) Remedial Design
- (i) 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) Initial Remedial Action/Data Quality Objectives
- (b) Site Characterization Summary
- (c) Detailed Analysis of Alternatives
- (d) Post-Screening Investigation Work Plan
- (e) Treatability Studies
- (f) Sampling and Data Results

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.

1 F. Identification and Determination of Potential ARARs

2 20.10 For those primary reports or secondary
3 documents that consist of or include ARAR determinations, prior
4 to the issuance of a draft report, the Project Managers shall
5 meet to identify and propose, to the best of their ability, all
6 potential ARARs pertinent to the report being addressed. Draft
7 ARAR determinations shall be prepared by USAF in accordance with
8 Section 121(d)(2) of CERCLA, the NCP, and pertinent guidance
9 issued by U.S. EPA and Ecology, which is not inconsistent with
10 CERCLA and the NCP.

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

20 G. Review and Comment on Draft Reports

21 20.12 USAF shall complete and transmit each draft
22 primary report to U.S. EPA and Ecology on or before the
23 corresponding deadline established for the issuance of the
24 report. USAF shall complete and transmit the draft secondary
25 document in accordance with the target dates established for the
26 issuance of such reports established pursuant to Part VIII of

1 this Agreement.

2 20.13 Unless the Parties mutually agree to another
3 time period, all draft reports shall be subject to a thirty (30)
4 day period for review and comment. Review of any document by
5 U.S. EPA or Ecology may concern all aspects of the report
6 (including completeness) and should include, but is not limited
7 to, technical evaluation of any aspect of the document, and
8 consistency with CERCLA, the NCP, and any pertinent guidance or
9 policy issued by the U.S. EPA or Ecology. Comments by U.S. EPA
10 and Ecology shall be provided with adequate specificity so that
11 USAF may respond to the comments and, if appropriate, make
12 changes to the draft report. Comments shall refer to any
13 pertinent sources of authority or references upon which the
14 comments are based, and, upon request of USAF, U.S. EPA and
15 Ecology shall provide a copy of the cited authority or
16 reference. In cases involving complex or unusually lengthy
17 reports, U.S. EPA and Ecology may extend the thirty (30) day
18 comment period for an additional twenty (20) days by written
19 notice to USAF prior to the end of the thirty (30) day period.
20 On or before the close of the comment period, U.S. EPA and
21 Ecology shall transmit by next day mail their written comments
22 to USAF.

23 20.14 Representatives of USAF shall make
24 themselves readily available to U.S. EPA and Ecology during the
25 comment period for purposes of informally responding to
26 questions and comments on draft reports. Oral comments made
27

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1 during such discussions need not be the subject of a written
2 response by USAF on the close of the comment period.

3 20.15 In commenting on a draft report which
4 contains a proposed ARAR determination, U.S. EPA and Ecology
5 shall include a reasoned statement of whether they object to any
6 portion of the proposed ARAR determination. To the extent that
7 U.S. EPA and Ecology do object, they shall explain the basis for
8 their objection in detail and shall identify any ARARs which
9 they believe were not properly addressed in the proposed ARAR
10 determination.

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

25 20.17 USAF may extend the thirty (30) day period
26 for either responding to comments on a draft report or for

1 issuing the draft final primary report for an additional twenty
2 (20) days by providing notice to U.S. EPA and Ecology. In
3 appropriate circumstances, this time period may be further
4 extended in accordance with Part XXV.

5 H. Availability of Dispute Resolution for
6 Draft Final Primary Documents

7 20.18 Dispute resolution shall be available to the
8 Parties for draft final primary reports as set forth in Part XXI.

9 20.19 When dispute resolution is invoked on a draft
10 primary report, work may be stopped in accordance with the
11 procedures set forth in Part XXI regarding dispute resolution.

12 I. Finalization of Reports:

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

23 J. Subsequent Modifications of Final Reports

24 20.21 Following finalization of any primary report
25 pursuant to Paragraph 20.20 above, U.S. EPA, Ecology, or USAF
26 may seek to modify the report, including seeking additional
27

1 field work, pilot studies, computer modeling, or other
2 supporting technical work, only as provided in Paragraphs 20.22
3 and 20.23.

4 20.22 U.S. EPA, Ecology, or USAF may seek to modify a
5 report after finalization if it determines, based on new
6 information (i.e., information that became available, or
7 conditions that became known, after the report was finalized)
8 that the requested modification is necessary. U.S. EPA,
9 Ecology, or USAF may seek such a modification by submitting a
10 concise written request to the Project Managers of the other
11 Parties. The request shall specify the nature of the requested
12 modification and how the request is based on new information.

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

1 20.24 Nothing in this Subpart shall alter
2 U.S. EPA's or Ecology's ability to request the performance of
3 additional work which was not contemplated by this Agreement.
4 USAF's obligation to perform such work must be established by
5 either a modification of a report or document or by amendment to
6 this Agreement.

7
8 XXI. RESOLUTION OF DISPUTES

9 21.1 Except as specifically set forth elsewhere
10 in this Agreement, if a dispute arises under this Agreement, the
11 procedures of this Part shall apply. All Parties to this
12 Agreement shall make reasonable efforts to informally resolve
13 disputes at the Project Manager or immediate supervisor level.
14 If resolution cannot be achieved informally, the procedures of
15 this Part shall be implemented to resolve a dispute.

16 21.2 Within thirty (30) days after: (1) the
17 issuance of a draft final primary document pursuant to this
18 Agreement, or (2) any action which leads to or generates a
19 dispute, the disputing Party shall submit to the Dispute
20 Resolution Committee ("DRC") a written statement of dispute
21 setting forth the nature of the dispute, the work affected by
22 the dispute, the disputing Party's position with respect to the
23 dispute and the technical, legal, or factual information the
24 disputing Party is relying upon to support its position.

25 21.3 Prior to any Party's issuance of a written
26 statement of dispute, the disputing Party shall engage the other
27

1 Party in informal dispute resolution among the Project Managers
2 and/or their immediate supervisors. During this informal
3 dispute resolution period the Parties shall meet as many times
4 as are necessary to discuss and attempt resolution of the
5 dispute.

6 21.4 The DRC will serve as a forum for resolution
7 of disputes for which agreement has not been reached through
8 informal dispute resolution. The Parties shall each designate
9 one individual and an alternate to serve on the DRC. The
10 individuals designated to serve on the DRC shall be employed at
11 the policy level (SES or equivalent) or be delegated the
12 authority to participate on the DRC for the purposes of dispute
13 resolution under this Agreement. The U.S. EPA representative on
14 the DRC is the Hazardous Waste Division Director ("Division
15 Director") of U.S. EPA's Region 10. USAF's designated member is
16 the Chairman, Environmental Protection Committee, Headquarters
17 Military Airlift Command. Ecology's designated member is the
18 Program Manager, Hazardous Waste Investigation and Cleanup,
19 Washington Department of Ecology. Written notice of any
20 delegation of authority from a Party's designated representative
21 on the DRC shall be provided to all other Parties.

22 21.5 Following elevation of a dispute to the DRC,
23 the DRC shall have twenty-one (21) days to unanimously resolve
24 the dispute and issue a written decision. If the DRC is unable
25 to unanimously resolve the dispute within this twenty-one (21)
26 day period the written statement of dispute shall be forwarded
27

1 to the Senior Executive Committee (SEC) for resolution, within
2 seven (7) days after the close of the twenty-one (21) day
3 resolution period.

4 21.6 The SEC will serve as the forum for
5 resolution of disputes for which agreement has not been reached
6 by the DRC. The U.S. EPA representative on the SEC is the
7 Regional Administrator of U.S. EPA's Region 10. USAF's
8 representative on the SEC is the Deputy Assistant Secretary of
9 the Air Force for Environment, Safety and Occupational Health.
10 Ecology's representative on the SEC is the Director of the
11 Washington Department of Ecology. The SEC members shall, as
12 appropriate, confer, meet, and exert their best efforts to
13 resolve the dispute and issue a written decision. If unanimous
14 resolution of the dispute is not reached within twenty-one (21)
15 days, U.S. EPA's Regional Administrator shall issue a written
16 position on the dispute. USAF or Ecology may, within fourteen
17 (14) days of the Regional Administrator's issuance of U.S. EPA's
18 position, issue a written notice elevating the dispute to the
19 Administrator of U.S. EPA for resolution in accordance with all
20 applicable laws and procedures. In the event that USAF or
21 Ecology elect not to elevate the dispute to the Administrator
22 within the designated fourteen (14) day escalation period, USAF
23 and/or Ecology shall be deemed to have agreed with the Regional
24 Administrator's written position with respect to the dispute.

25 21.7 Upon escalation of a dispute to the
26 Administrator of U.S. EPA pursuant to Paragraph 21.6, the
27

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1 Administrator will review and resolve the dispute within
2 twenty-one (21) days. Upon request, and prior to resolving the
3 dispute, the U.S. EPA Administrator shall meet and confer with
4 USAF's Secretariat Representative and a representative from
5 Ecology to discuss the issue(s) under dispute. The
6 Administrator will provide notice to all Parties of any Party's
7 request to meet or confer with respect to any such dispute and
8 will provide an adequate opportunity for all Parties to
9 participate in any meeting or conference convened to resolve
10 such dispute. Upon resolution, the Administrator shall provide
11 USAF and Ecology with a written final decision setting forth
12 resolution of the dispute. The duties of the Administrator set
13 forth in this Part shall not be delegated.

14 21.8 The pendency of any dispute under this Part
15 shall not affect USAF's responsibility for timely performance of
16 the work required by this Agreement, except that the time period
17 for completion of work affected by such dispute shall be
18 extended for a period of time usually not to exceed the actual
19 time taken to resolve any good faith dispute in accordance with
20 the procedures specified herein. All elements of the work
21 required by this Agreement which are not affected by the dispute
22 shall continue and be completed in accordance with the
23 applicable schedule.

24 21.9 When dispute resolution is in progress, work
25 affected by the dispute will immediately be discontinued if the
26 Division Director for U.S. EPA's Region 10 or the Ecology
27

1 Program Manager request, in writing, that work related to the
2 dispute be stopped because, in U.S. EPA's or Ecology's opinion,
3 such work is inadequate or defective, and such inadequacy or
4 defect is likely to yield an adverse effect on human health or
5 the environment, or is likely to have a substantial adverse
6 effect on the remedy selection or implementation process. To
7 the extent possible, U.S. EPA and Ecology shall consult with all
8 parties prior to initiating a work stoppage request. After
9 stoppage of work, if USAF believes that the work stoppage is
10 inappropriate or may have potential significant adverse impacts,
11 USAF may meet with the U.S. EPA Division Director and Ecology
12 equivalent to discuss the work stoppage. Following this
13 meeting, and further consideration of the issues, the U.S. EPA
14 Division Director will issue, in writing, a final decision with
15 respect to the work stoppage. The final written decision of the
16 U.S. EPA Division Director may immediately be subjected to
17 formal dispute resolution. Such dispute may be brought directly
18 to either the DRC or the SEC, at the discretion of USAF or
19 Ecology.

20 21.10 Within twenty-one (21) days of resolution of
21 a dispute pursuant to the procedures specified in this Part,
22 USAF shall incorporate the resolution and final determination
23 into the appropriate plan, schedule, or procedures and proceed
24 to implement this Agreement according to the amended plan,
25 schedule, or procedures.

26 21.11 Resolution of a dispute pursuant to this
27

1 Part of the Agreement constitutes a final resolution of that
2 dispute arising under this Agreement. All Parties shall abide
3 by all terms and conditions of any final resolution of dispute
4 obtained pursuant to this Part of this Agreement.
5

6 XXII. ENFORCEABILITY

7 22.1 The Parties agree that:

8 (A) Upon its effective date, this Agreement is
9 enforceable by any person pursuant to Section 310 of CERCLA,
10 42 U.S.C. § 9659, and any violation of such standard,
11 regulation, condition, requirement, or order contained herein
12 will be subject to civil penalties under Sections 310(c) and 109
13 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

14 (B) All timetables or deadlines associated with
15 the RI/FS shall be enforceable by any person pursuant to Section
16 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such
17 timetables or deadlines will be subject to civil penalties under
18 Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

19 (C) All terms and conditions of this Agreement
20 which relate to interim or final remedial actions, including
21 corresponding timetables, deadlines, or schedules, and all work
22 associated with the interim or final remedial actions, shall be
23 enforceable by any person pursuant to Section 310(c) of CERCLA,
24 42 U.S.C. § 9659(c), and any violation of such terms or
25 conditions will be subject to civil penalties under Sections
26 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609; and
27

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1 (D) Any final resolution of a dispute pursuant
2 to Part XXI of this Agreement which establishes a term,
3 condition, timetable, deadline, or schedule shall be enforceable
4 by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C.
5 § 9659(c), and any violation of such term, condition, timetable,
6 deadline, or schedule will be subject to civil penalties under
7 Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609.

8 22.2 Nothing in this Agreement shall be construed
9 as authorizing any person to seek judicial review of any action
10 or work where review is barred by any provision of CERCLA,
11 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

12 22.3 The Parties agree that all Parties shall
13 have the right to enforce the terms of this Agreement.

14
15 XXIII. STIPULATED PENALTIES

16 23.1 In the event that USAF fails to submit a
17 primary document to U.S. EPA and Ecology pursuant to the
18 appropriate timetable or deadline in accordance with the
19 requirements of this Agreement, or fails to comply with a term
20 or condition of this Agreement which relates to an interim or
21 final remedial action, U.S. EPA may assess, after consultation
22 with Ecology, a stipulated penalty against USAF. A stipulated
23 penalty may be assessed in an amount not to exceed \$5,000 for
24 the first week (or part thereof), and \$10,000 for each
25 additional week (or part thereof) for which a failure set forth
26 in this paragraph occurs.

1 23.2 Upon determining that USAF has failed in a
2 manner set forth in Paragraph 23.1, U.S. EPA shall so notify
3 USAF in writing. If the failure in question is not already
4 subject to dispute resolution at the time such notice is
5 received, USAF shall have fifteen (15) days after receipt of the
6 notice to invoke dispute resolution on the question of whether
7 the failure did in fact occur. USAF shall not be liable for the
8 stipulated penalty assessed by U.S. EPA if the failure is
9 determined, through the dispute resolution process, not to have
10 occurred. No assessment of a stipulated penalty shall be final
11 until the conclusion of dispute resolution procedures related to
12 the assessment of the stipulated penalty.

13 23.3 The annual reports required by Section
14 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with
15 respect to each final assessment of a stipulated penalty against
16 USAF under this Agreement, each of the following:

- 17 A. The facility responsible for the failure;
18 B. A statement of the facts and circumstances
19 giving rise to the failure;
20 C. A statement of any administrative or other
21 corrective action taken at the relevant
22 facility, or a statement of why such
23 measures were determined to be inappropriate;
24 D. A statement of any additional action taken
25 by or at the facility to prevent recurrence
26 of the same type of failure; and
27

1 E. The total dollar amount of the stipulated
2 penalty assessed for the particular failure.

3 23.4 Stipulated penalties assessed pursuant to
4 this Part shall be payable to the Hazardous Substances Response
5 Trust Fund only in the manner and to the extent expressly
6 provided for in Acts authorizing funds for, and appropriations
7 to, DOD.

8 23.5 In no event shall this Part give rise to a
9 stipulated penalty in excess of the amount set forth in Section
10 109 of CERCLA, 42 U.S.C. § 9609.

11 23.6 This Part shall not affect USAF's ability to
12 obtain an extension of a timetable, deadline, or schedule
13 pursuant to Part XXV of this Agreement.

14 23.7 Nothing in this Agreement shall be construed
15 to render any officer or employee of USAF personally liable for
16 the payment of any stipulated penalty assessed pursuant to this
17 Part.

18
19 XXIV. DEADLINES

20 24.1 Within twenty-one (21) days of the effective
21 date of this Agreement, USAF shall propose deadlines for
22 completion of the following draft primary documents:

- 23 A. Scope of Work
24 B. RI/FS Work Plan, including Sampling and
25 Analysis Plan, QAPP, Community Relations
26 Plan, Data Management Plan, and Health and
27 Safety Plan
28 C. Risk Assessment

- D. RI Report, including the Initial Screening of Alternatives
- E. FS Report
- F. Proposed Plan
- G. Record of Decision

24.2 With respect to the McChord Area D/ALG Site, the deadlines have been met for the submittal of the Scope of Work, and the RI/FS Work Plan, including Sampling and Analysis Plan, QAPP, Community Relations Plan, Data Management Plan, and Health and Safety Plan pursuant to this Agreement.

24.3 With respect to the McChord Washrack/Treatment Site, USAF shall submit a Scope of Work by no later than September 15, 1989. Within one hundred and fifty (150) days of receipt of U.S. EPA and Ecology's comments, USAF shall submit a draft RI/FS Work Plan. It is the expectation of the Parties that USAF will submit the final RI/FS Report no later than September 15, 1991.

24.4 Within fifteen (15) days of receipt of the proposed deadlines submitted pursuant to Paragraph 24.1, U.S. EPA, in conjunction with Ecology, shall review and provide comments to USAF regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments USAF shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall

1 immediately be submitted for dispute resolution pursuant to Part
2 XXI of this Agreement. The final deadlines established pursuant
3 to this paragraph shall be published by U.S. EPA, in conjunction
4 with Ecology.

5 24.5 Within twenty-one (21) days of issuance of
6 each Record of Decision, USAF shall propose deadlines for
7 completion of the following draft primary documents:

8 A. Remedial Design

9 B. Remedial Action Work Plan

10 These deadlines shall be proposed, finalized, and
11 published utilizing the same procedures set forth in Paragraphs
12 24.1 and 24.4 above.

13 24.6 The deadlines set forth in this Part, or to
14 be established as set forth in this Part, may be extended
15 pursuant to Part XIII of this Agreement. The Parties recognize
16 that one possible basis for extension of the deadlines for
17 completion of the RI/FS Reports is the identification of
18 significant new Site conditions during the performance of the RI.
19

20 XXV. EXTENSIONS

21 25.1 Either a timetable and deadline or a
22 schedule shall be extended upon receipt of a timely request for
23 extension and when good cause exists for the requested
24 extension. Any request for extension by USAF shall be submitted
25 in writing to the Project Managers and shall specify:
26
27

- A. The timetable and deadline or the schedule that is sought to be extended;
- B. The length of the extension sought;
- C. The good cause(s) for the extension; and
- D. Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

- A. An event of force majeure;
- B. A delay caused by another Party's failure to meet any requirement of this Agreement;
- C. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- D. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
- E. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

25.3 Within seven (7) days of receipt of a 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 7-day period shall be deemed to constitute concurrence in the request for extension.

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

4 25.4 If there is consensus among the Parties that
5 the requested extension is warranted, USAF shall extend the
6 affected timetable and deadline or schedule accordingly. If
7 there is no consensus among the Parties as to whether all or
8 part of the requested extension is warranted, the timetable and
9 deadline or schedule shall not be extended except in accordance
10 with determination resulting from the dispute resolution process.

11 25.5 Within seven (7) days of receipt of a
12 statement of nonconcurrence with the requested extension, USAF
13 may invoke dispute resolution.

14 25.6 A timely and good faith request for an
15 extension shall toll any assessment of stipulated penalties or
16 application for judicial enforcement of the affected timetable
17 and deadline or schedule until a decision is reached on whether
18 the requested extension will be approved. If dispute resolution
19 is invoked and the requested extension is denied, stipulated
20 penalties may be assessed and may accrue from the date of the
21 original timetable, deadline, or schedule. Following the grant
22 of an extension, an assessment of stipulated penalties or an
23 application for judicial enforcement may be sought only to
24 compel compliance with the timetable and deadline or schedule as
25 most 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

27
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1 rights as provided in Paragraph 27.6, but U.S. EPA shall be
2 bound by this force majeure and shall not assess stipulated
3 penalties.

4 26.2 Force Majeure shall also include any strike
5 or other labor dispute, whether or not within the control of the
6 Parties affected thereby. Force Majeure shall not include
7 increased costs or expenses of response actions, whether or not
8 anticipated at the time such response actions were initiated.

9 26.3 Any claim of Force Majeure shall be subject
10 to dispute resolution and, where applicable, to the limitations
11 of Paragraph 27.6.

12
13 XVII. FUNDING

14 27.1 It is the expectation of the Parties to this
15 Agreement that all obligations of USAF arising under this
16 Agreement will be fully funded. USAF agrees to seek sufficient
17 funding through the DOD budgetary process to fulfill its
18 obligations under this Agreement.

19 27.2 In accordance with Section 120(e)(5)(B) of
20 CERCLA, 42 U.S.C. § 9620(e)(5)(B), USAF shall provide to DOD for
21 its annual report to Congress the specific cost estimates and
22 budgetary proposals associated with the implementation of this
23 Agreement.

24 27.3 Funds authorized and appropriated annually
25 by Congress under the "Environmental Restoration, Defense"
26 appropriation in the U.S. Department of Defense Appropriation
27 Act and

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

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

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

1 27.6 USAF maintains that any requirement for the
2 payment or obligation of funds under this Agreement is subject
3 to the availability of appropriated funds, and that the
4 unavailability of such funds constitutes a valid defense to any
5 judicial action that might be brought to enforce the terms of
6 this Agreement. Notwithstanding Paragraphs 27.1, 27.2, 27.3,
7 27.4, and 27.5 above, Ecology does not agree that lack of
8 appropriation or funding constitutes a valid defense to
9 performance by USAF. However, the Parties agree and stipulate
10 that it is premature to raise and adjudicate the validity of
11 such a defense at this time. If sufficient funds are not
12 available to fulfill USAF's obligations under this Agreement,
13 the Parties shall meet to discuss the funding shortfall, the
14 ways of resolving it, and whether it is appropriate to adjust
15 the deadlines set forth pursuant to Part XXIV affected by the
16 funding shortfall. Any Party may elevate the issue(s) directly
17 to the SEC for resolution. Six (6) months following the failure
18 of USAF to meet a deadline because of lack of funding, Ecology
19 shall have the right to seek judicial enforcement of this
20 Agreement. This Paragraph is not subject to Part XXI, but does
21 not exclude the consensual use of Part XXV. Acceptance of this
22 Paragraph 27.6 does not constitute a waiver by USAF of the
23 applicability of any appropriate provisions of the
24 Anti-Deficiency Act, 31 U.S.C. § 1341, to the terms of this
25 Agreement.
26
27

1 XXVIII. RECOVERY OF EXPENSES

2 28.1 USAF and U.S. EPA agree to amend this Part
3 at a later date in accordance with any subsequent resolution of
4 the currently contested issue of cost reimbursement.

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

11 28.3 Reimbursable expenses shall consist only of
12 actual expenditures required to be made and actually made by
13 Ecology in providing the following assistance to USAF:

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

17 (b) Identification and explanation of unique state
18 requirements applicable to military installations in performing
19 response actions, especially state ARARs;

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

24 (d) Support and assistance to USAF in the conduct of
25 public participation activities in accordance with federal and
26 state requirements for public involvement;

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

3 (f) Other services specified in this Agreement.

4 28.4 Within ninety (90) days after the end of
5 each quarter of the federal fiscal year, Ecology shall submit to
6 USAF an accounting of all state costs actually incurred during
7 that quarter in providing direct support services under this
8 Part. Such accounting shall be accompanied by cost summaries
9 and be supported by documentation which meets federal auditing
10 requirements. The summaries will set forth employee hours and
11 other expenses by major type of support service. All costs
12 submitted must be for work directly related to implementation of
13 this Agreement and not inconsistent with either the NCP or the
14 requirements described in OMB Circulars A-87 (Cost Principles
15 for State and Local Governments) and A-128 (Audits for State and
16 Local Cooperative Agreements with State and Local Governments)
17 and Standard Forms 424 and 270. USAF has the right to audit
18 cost reports used by the State to develop the cost summaries.
19 Before the beginning of each fiscal year, the State shall supply
20 a budget estimate of what it plans to do in the next year in the
21 same level of detail as the billing documents.

22 28.5 Except as allowed pursuant to Paragraphs
23 28.6 and 28.7, within ninety (90) days of receipt of the
24 accounting provided pursuant to Paragraph 28.4, USAF shall
25 reimburse the State in the amount set forth in the accounting.

26 28.6 In the event USAF contends that any of the
27

1 costs set forth in the accounting provided pursuant to Paragraph
2 28.4 are not properly payable, the matter shall be resolved
3 through a bilateral dispute resolution process set forth at
4 Paragraph 28.9.

5 28.7 The amount of reimbursement from USAF to
6 Ecology shall not exceed \$ 300,000.00 during the lifetime of
7 this Agreement and not more than \$ 75,000.00 during any single
8 fiscal year. Either USAF or Ecology may request, on the basis
9 of significant upward or downward revisions in the USAF estimate
10 of its total lifetime costs through construction used above, a
11 renegotiation of the Cap. Failing an agreement, either USAF or
12 Ecology may initiate dispute resolution in accordance with
13 Paragraph 28.9. Circumstances could arise whereby fluctuations
14 in USAF estimates or actual final costs through the construction
15 of the final remedial action creates a situation where Ecology
16 receives reimbursement in excess of the estimated amount of
17 these costs. Under these circumstances, the State remains
18 entitled to payment for services rendered prior to the
19 completion of a new estimate if the services are within the
20 ceiling applicable under the previous estimate. This negotiated
21 reimbursement amount reflects the judgment of USAF and Ecology
22 that:

23 (a) Funding of support services must be constrained
24 so as to avoid unnecessary diversion of the limited Defense
25 Environmental Restoration Account funds available for the
26 overall cleanup; and
27

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

3 28.8 Ecology agrees to seek reimbursement for its
4 expenses solely through the mechanisms established in this Part,
5 and reimbursement provided under this Section shall be in
6 settlement of any claims for state response costs relative to
7 USAF's environmental restoration activities at the Sites.

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

16 (a) USAF and Ecology Project Managers shall be the
17 initial points of contact for coordination of dispute resolution
18 under Paragraph 28.9.

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

1 (c) If the Chairman, Environmental Protection
2 Committee, Headquarters Military Airlift Command, and the
3 Assistant Director, Waste Management, Washington Department of
4 Ecology, are unable to resolve the dispute within ten (10)
5 working days, the matter shall be elevated to the Director,
6 Washington Department of Ecology, and the Deputy Assistant
7 Secretary of the Air Force for Environment, Safety and
8 Occupational Health.

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

16 28.10 Nothing herein shall be construed to limit
17 the ability of USAF to contract with Ecology for technical
18 services that could otherwise be provided by a private
19 contractor including, but not limited to:

- 20 (a) Identification, investigation, and cleanup of any
21 contamination beyond the boundaries of McChord
22 AFB;
23 (b) Laboratory analysis; or
24 (c) Data collection for field studies.

25 28.11 USAF and Ecology agree that the terms and
26 conditions of this Part shall become null and void when Ecology

1 enters into a Defense/State Memorandum of Agreement ("DSMOA")
2 with the U.S. Department of Defense ("DOD") which addresses
3 Ecology reimbursement.
4

5 XXIX. OTHER CLAIMS

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

16 29.2 U.S. EPA and Ecology shall not be held as a
17 Party to any contract entered into by USAF to implement the
18 requirements of this Agreement.

19 29.3 USAF shall notify the appropriate federal
20 and state natural resource trustees as required by Section
21 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of
22 Executive Order 12580. Except as provided herein, USAF is not
23 released from any liability which they may have pursuant to any
24 provisions of state and federal law, including any claim for
25 damages for liability to destruction or loss of natural
26 resources.
27

1 29.4 This Agreement shall not restrict U.S. EPA
2 and/or Ecology from taking any legal or response action for any
3 matter not covered by this Agreement.
4

5 XXX. OTHER APPLICABLE LAWS

6 30.1 All actions required to be taken pursuant to
7 this Agreement shall be undertaken in accordance with the
8 requirements of all applicable state and federal laws and
9 regulations unless an exemption from such requirements is
10 provided in this Agreement, CERCLA, or the NCP.
11

12 XXXI. CONFIDENTIAL INFORMATION

13 31.1 USAF may assert on its own behalf, or on
14 behalf of a contractor, subcontractor, or consultant, a
15 confidentiality claim covering all or part of the information
16 requested by this Agreement pursuant to 42 U.S.C. § 9604(e) and
17 32 C.F.R. Part 806. Analytical data shall not be claimed as
18 confidential by USAF. Information determined to be confidential
19 by USAF pursuant to 32 C.F.R. Part 806 shall be afforded the
20 protection specified therein and such information shall be
21 treated by Ecology as confidential, to the extent permitted by
22 state law. If Ecology is unable to afford the confidentiality
23 protection, USAF is not required to submit the data to Ecology.
24 If no claim of confidentiality accompanies the information when
25 it is submitted to either regulatory agency, the information may
26 be made available to the public without further notice to USAF.
27

1
2 XXXII. TRANSFER OF PROPERTY

3 32.1 Conveyance of title, easement, or other
4 interest in McChord AFB shall be in accordance with Section 120
5 of CERCLA, 42 U.S.C. § 9620.
6

7 XXXIII. AMENDMENT OF AGREEMENT

8 33.1 This Agreement may be amended by unanimous
9 agreement of USAF, Ecology, and U.S. EPA. Any such amendment
10 shall be in writing, shall have as the effective date that date
11 on which it is signed by all the Parties, and shall be
12 incorporated into and modify this Agreement.
13

14 XXXIV. SEVERABILITY

15 34.1 If any provision of this Agreement is ruled
16 invalid, illegal, or unconstitutional, the remainder of the
17 Agreement shall not be affected by such ruling.
18

19 XXXV. TERMINATION AND SATISFACTION

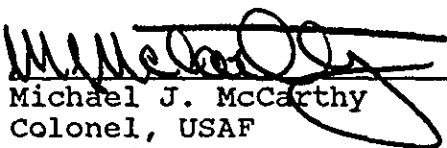
20 35.1 The provisions of this Agreement shall be
21 deemed satisfied upon a consensus of the Parties that USAF has
22 completed its obligations under the terms of this Agreement.
23 Any Party may propose in writing the termination of this
24 Agreement upon a showing that the requirements of this Agreement
25 have been satisfied. A Party opposing termination of this
26 Agreement shall serve its objection upon the proposing Party
27

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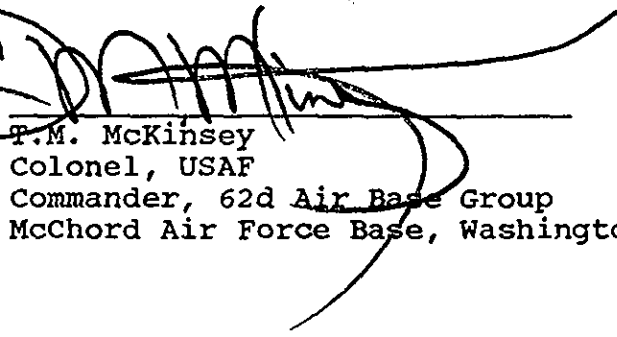
1 within thirty (30) days of receipt of the proposal. Any
2 objection shall describe in detail the additional work needed to
3 satisfy the requirements of the Agreement. Any Party may invoke
4 dispute resolution as to the request for or objection to a
5 proposal to terminate.
6

7 XXVI. EFFECTIVE DATE

8 36.1 This Agreement is effective upon signature
9 by all the Parties to this Agreement.
10
11

12 
13 Michael J. McCarthy
14 Colonel, USAF
15 Commander, 62 MAW
McChord Air Force Base, Washington

21 SEPT 89
Date

16 
17 P.M. McKinsey
18 Colonel, USAF
19 Commander, 62d Air Base Group
McChord Air Force Base, Washington

21 SEPT 89
Date

1
2
3 Christine O. Gregoire
4 Christine O. Gregoire
5 Director
6 Washington Department of Ecology
7 State of Washington

10/4/89
Date

8 Kenneth O. Eikenberry
9 Kenneth O. Eikenberry, Esq.
10 Attorney General
11 State of Washington

Oct. 5, 1989
Date

12 Robie G. Russell
13 Robie G. Russell
14 Regional Administrator
15 Region 10
16 United States Environmental Protection Agency

October 23, 1989
Date

17 REPRESENTED BY:

18 Jerry Ackerman, Esq.
19 Lt. Col. W. D. Benton, Esq.
20 Lt. Col. John S. Hannah, Esq.
21 Monica M. Kirk, Esq.