UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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| IN THE MATTER OF: | ) |
| | ) |
| MOSES LAKE WELLFIELD CONTAMINATION SITE | ) |
| MOSES LAKE, WASHINGTON | ) |
| | ) |
| | ) INTERAGENCY AGREEMENT |
| THE U.S. Department of Defense | ) TO PERFORM |
| | ) REMEDIAL INVESTIGATION/ |
| | ) FEASIBILITY STUDY |
| | ) |
| | ) |
| | ) |

## I. INTRODUCTION

1.1 This Interagency Agreement ("Agreement") to perform a Remedial Investigation and Feasibility Study ("RI/FS") is entered into by the United States Environmental Protection Agency ("EPA") and the United States Department of Army ("Army") on behalf of the United States Department of Defense ("DOD"). This Agreement concerns the preparation and performance of a RI/FS for the Moses Lake Wellfield Contamination Site in Moses Lake, Washington (Site). The Site involves unique circumstances in which both DOD and EPA have substantial programmatic interests. This Agreement is tailored to address these unique circumstances, to accommodate the programmatic interest of both EPA and DOD at this Site and is not intended to serve as a model for any other site.

## II. JURISDICTION

2.1 EPA and Army enter into this Agreement pursuant to their respective authorities contained in Sections 101, 104, 107,

120 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, 9604, 9607, 9620 and 9622 ("CERCLA"); Executive Order 12580 and 10 U.S.C. § 2701. EPA's authority pursuant to the provisions relied upon by EPA were delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been further redelegated to EPA Region 10, Director of the Office of Environmental Cleanup and the EPA Region 10 Associate Director of the Office of Environmental Cleanup.

## III. STATEMENT OF PURPOSE

3.1 In entering into this Agreement, the objectives of the Parties are:

(a) To perform a Remedial Investigation ("RI") to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site;

(b) To perform a Feasibility Study ("FS") to determine and evaluate alternatives for remedial actions to prevent, mitigate, abate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site in accordance with CERCLA; and

(c) To facilitate cooperation, exchange of information and participation by the Parties in such actions.

3.2 The activities conducted under this Agreement shall provide all necessary information for the RI/FS for a Record of Decision that is consistent with CERCLA and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Agreement shall be conducted in compliance with CERCLA, the NCP and EPA Superfund guidance.

## IV. PARTIES BOUND

4.1 This Agreement shall apply to and be binding upon the Department of Army (through the agency of the United States Army Corps of Engineers ("USACE") and U.S. EPA. The USACE is the agency implementing, performing and administering this Agreement for the Department of Army.

4.2 Army will notify U.S. EPA of the identity of its contractors performing work under this Agreement thirty (30) days after signing of this document for existing contractors and within thirty (30) days of selection of each new contractor. USACE shall provide copies of this Agreement to all contractors performing work under this Agreement.

4.3 Under no condition shall a party under this Agreement utilize the services of any consultant, prime contractor, or subcontractor who has been suspended, debarred, or voluntarily excluded within the scope of 40 C.F.R. Part 32 or under the

Federal Acquisition Regulation ("FAR") at 48 C.F.R. Subpart 9.4 et seq.

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 certifies that he/she is fully authorized to legally bind such Party to this Agreement.

## V. DEFINITIONS

5.1 The terms used in this Agreement shall have the same definitions as the terms defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and the NCP, 40 CFR § 300.5.

5.2 Additionally, the following terms used in this Agreement are defined as follows:

(a) "ARAR" or Applicable or Relevant and Appropriate Requirement" shall mean any standard, requirement, criterion, or limitation as provided in Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), and the NCP;

(b) "Army" or "DA" shall mean the United States Department of the Army and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representative. By letter dated June 29, 1994, Army transmitted to USACE the current FUDS Charter. This letter references the DOD delegation to Army in an April 14, 1994 guidance document for Fiscal Years 1994/1995/1996;

(c) "Day" means calendar day unless otherwise noted in this Agreement. Any submittal that under the terms of this Agreement would be due on a Saturday, Sunday or Federal or State holiday shall be due on the following business day;

(d) "DERA" shall mean the Defense Environmental Restoration Account as established under 10 U.S.C. § 2703;

(e) "DERP" shall mean the Defense Environmental Restoration Program, 10 U.S.C. § 2701 et seq., which is the Secretary of Defense's program of environmental restoration; DERP program includes Formerly Used Defense Sites (FUDS);

(f) "DOD" shall mean the United States Department of Defense;

(g) "FUDS" shall mean Formerly Used Defense Site. Formerly Used Defense Sites are facilities or Sites within in the meaning of the Defense Environmental Restoration Program (DERP) which were under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances;

(h) "Parties" shall mean EPA and Army while "Party" shall mean any one of these entities;

(i) "Site" shall mean the area described in the National Priorities List for Moses Lake Wellfield, 57 Fed. Req. No. 199, 47201 (October 14, 1992) and releases therefrom which includes an area which is located approximately three miles

northwest of the City of Moses Lake, Washington, including but not limited to portions of the former Larson Air Force Base;

(j) "RI/FS Scope of Work" shall mean the plan for the RI/FS work to be performed under this Agreement. The RI/FS Scope of Work is attached hereto and made an enforceable part of this Agreement;

(k) "Remedial Investigation/Feasibility Study Management Plan" shall mean the comprehensive document describing all activities planned within the RI and the FS process. The Management Plan generally includes the Work Plan, Sampling and Analysis Plan, Quality Assurance Plan, Data Management Plan and Treatability Study Work Plan (as needed);

(l) "SAP" shall mean the Sampling and Analysis Plan which shall include the Quality Assurance Project Plan and the Field Sampling Plan as defined by EPA guidance; and

(m) "USACE" shall mean the United States Army Corps of Engineers as the executive agent of the Army for all purposes of this Agreement and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representatives.

## VI. EPA FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered

admissions by any Party and they shall not be used for any purpose other than determining the jurisdictional basis of this Agreement.

6.2 The Site is an area encompassing about 15 square miles, which is located approximately three miles northwest of the City of Moses Lake, Washington, including but not limited to portions of the former Larsen Air Force Base (LAFB).

6.3 The Site consists of a plume(s) of ground water which is contaminated with trichloroethylene (TCE). The TCE plume(s) underlies the southern portion of the former LAFB, and extends past the former LAFB boundaries to the south and west.

6.4 The ground-water contamination was initially identified in early 1988 by the Washington Department of Health (WDOH) as part of routine sampling of municipal drinking water wells in the vicinity. Several of these wells contained TCE. Additional sampling conducted by WDOH later in 1988 indicated that some wells had TCE contamination levels significantly above the Maximum Contaminant Level (MCL) of 5 micrograms per liter (ug/l) set under the Safe Drinking Water Act. The two wells generally range from non-detect to 32 ug/l.

6.5 EPA proposed the Moses Lake Wellfield Contamination Site for the National Priorities List (NPL) in July 1991. (56 Fed. Reg. No. 145, 35844 (July 29, 1991). The Site was listed on the NPL in October 1992. (57 Fed. Reg. No. 199, 47201 (October 14, 1992).

6.6 This Site includes TCE contamination detected in the groundwater flowing beneath and beyond the boundaries of the former Larson Air Force Base and surface and subsurface soil contamination. The Site also includes soil and groundwater contaminated with tetraethyl lead, radionuclides and total petroleum hydrocarbons.

6.7 The U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry (ATSDR), through the WDOH, prepared a Preliminary Public Health Assessment for the Site, dated June 13, 1993. The ATSDR/WDOH report warns that exposure to TCE in the drinking water at levels above the MCL should cease. The Health Report recommended that users of public and private water supplies so contaminated be provided with an acceptable alternate source.

## VII. EPA REGULATORY DETERMINATIONS

7.1 For purposes of this Agreement, the following constitutes a summary of EPA's Regulatory Determinations upon which this Agreement is based. None of the Regulatory Determinations related herein are admissions nor are they legally binding upon any Party with respect to any unrelated claims of person(s) not a Party to this Agreement.

7.2 The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7.3 Substances identified at the Site, including TCE, are "hazardous substances" as defined in Section 101(14) of CERCLA,

42 U.S.C. § 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare as set forth in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

7.4 The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

7.5 DOD is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7.6 DOD (U.S. Air Force) was an owner and/or operator at the time disposal of hazardous substances at the facility within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607. The USACE, on behalf of DOD pursuant to 10 U.S.C. § 2701 et seq., will undertake the RI/FS envisioned in this agreement.

7.7 The actions required by this agreement are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

## VIII. NOTICE

8.1 By providing a copy of this Agreement to the State of Washington, EPA is notifying the State of Washington of this Agreement.

## IX. WORK TO BE PERFORMED

9.1 All work performed under this Agreement shall be under the direction and supervision of or in consultation with qualified personnel with expertise in hazardous substances remedial investigation.

9.2 Army shall be responsible for ensuring that activities and deliverables are performed in accordance with the terms and conditions of this Agreement and SOW. All work under this Agreement shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidance referenced therein, and guidance referenced in the RI/FS SOW. The activities and deliverables identified in the attached Scope Of Work (SOW) shall be developed, in detail, as specified in the RI/FS Study Management Plan and shall be submitted to EPA as provided in this Agreement. All work performed under this Agreement shall be in accordance with the schedules set forth in the SOW, and in full

accordance with the standards, specifications, and other requirements of the RI/FS Study Management Plan.

9.3 Army agrees to fully correct all deficiencies and incorporate and integrate all information in comments supplied by EPA pursuant to Paragraph 10.4, unless one of the Parties invokes dispute resolution.

9.4 If a revised submittal, or if subsequent submittals do not fully reflect EPA's comments as set forth in Paragraph 9.3, EPA retains the right to perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement for its costs; and/or seek any other appropriate relief, including stipulated penalties under Section XXIV.

9.5 If EPA takes over some of the tasks, but not the preparation of the RI/FS, Army shall incorporate and integrate information supplied by EPA into the final RI/FS report.

## X. SUBMITTAL AND FINALIZATION OF DELIVERABLES

10.1 The provisions of this Section establish the procedures that shall be used to prepare and finalize RI/FS deliverables.

10.2 The Project Managers shall meet approximately once a month, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site and the preparation of deliverables.

10.3 Army shall complete and transmit each deliverable to EPA on or before the corresponding deadline established for the

issuance of the report. Deliverables are initially issued by Army, in draft, subject to review and comment by EPA. Following receipt of comments on a particular draft document, a deliverable shall be prepared in accordance with Paragraph 9.3.

10.4 Unless the Parties mutually agree to another time period, all deliverables shall be subject to a 30-day period for review and comment. Review of any deliverable by the EPA may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the deliverable, and consistency with CERCLA, the NCP and any pertinent guidance or policy promulgated by the EPA. Comments by the EPA shall be provided with adequate specificity so that the Army may respond to the comment and make changes to the deliverable. Comments shall refer to any pertinent sources of authority or references upon which the comments are based. Upon request of the Army, the EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA may extend the 30-day comment period for an additional 20 days by written notice to USACE prior to the end of the 30-day period. In unusual circumstances, EPA may request, in writing, Army to extend the current period for an additional twenty (20) days, and Army will not unreasonably deny such request. On or before the close of the comment period, EPA shall transmit by next day mail written comments to Army.

10.5 Draft ARAR determinations shall be prepared in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP and pertinent written guidance issued by EPA which is not inconsistent with CERCLA and the NCP. The parties recognize that ARARs are identified on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants, and contaminants at a site, the particular actions proposed as a remedy, and the characteristics of the site. The Parties recognize that ARAR identification is an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

## XI. SUBSEQUENT MODIFICATIONS OF FINAL REPORT

11.1 Following finalization of any deliverable pursuant to Section X above, any Party may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in this Section.

11.2 Either Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Manager(s) of the other Party. The request shall specify the nature of the

requested modification and how the request is based on new information.

11.3 In the event that a written consensus among the Parties is reached, the modification shall be incorporated by reference and become fully enforceable under the Agreement. In the event that a consensus is not reached by the Project Managers on the need for a modification, dispute resolution may be invoked by any Party to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

(1) The requested modification is based on significant new information.

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

11.4 Nothing in this Section shall alter EPA's ability to request the performance of additional work which was not contemplated by this Agreement.

## XII. CREATION OF DANGER/EMERGENCY ACTION

12.1 In the event that EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, may create an imminent and substantial endangerment to the health or welfare of the people on the site

or in the surrounding area or the environment, EPA may require or order USACE to stop further implementation of this Agreement for such period of time as needed to abate the danger. Any unilateral work stoppage for longer then twenty-four (24) hours requires the concurrence of EPA Region 10 Director of the Office of Environmental Cleanup ("OEC Director").

12.2 In the event that USACE determines that activities undertaken in furtherance of this Agreement or any other circumstances or activities at the site may create an imminent and substantial endangerment to the health or welfare of the people on the site or in the surrounding area or to the environment, USACE may stop implementation of this Agreement for such periods of time necessary for EPA to evaluate the situation and determine whether USACE should proceed with implementation of the Agreement or whether the work stoppage should be continued until the danger is abated. USACE shall notify EPA as soon as is possible, but not later than twenty-four hours after such stoppage of work, and provide EPA with documentation of its analysis in reaching this determination. If EPA disagrees with the USACE determination, it may require USACE to resume implementation of this Agreement.

12.3 If EPA concurs in the work stoppage by USACE, or if EPA requires or orders a work stoppage, USACE's obligations shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the

work that was stopped, shall be extended, pursuant to this Agreement. Any disagreements pursuant to this Section shall be resolved through the dispute resolution procedures of this Agreement by referral directly to the DRC.

12.4 Upon notification by EPA that there is an imminent threat to human health, welfare or the environment, such as the presence of TCE above MCLs in domestic wells, USACE shall take all appropriate action to remove the threat, to include the provision of alternative domestic water unless USACE shows the hazardous substances are not related to military operations.

## XIII. QUALITY ASSURANCE

13.1 Throughout all sample collection, transportation, and analyses activities conducted in connection with this Agreement, USACE shall use procedures for quality assurance, for quality control, and for chain-of-custody in accordance with approved EPA methods, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," QAMS-005/80, "Data Quality Objective Guidance," EPA 1540/687/003 and 004, and subsequent amendments to such guidelines. USACE shall require each laboratory it uses to perform any analysis according to approved EPA methods and to demonstrate a quality assurance/quality control program consistent with that followed by EPA and consistent with EPA document QAMS-005/80.

## XIV. PUBLIC PARTICTPATION AND ADMINISTRATIVE RECORD

14.1 EPA has responsibility for community relations, public involvement and maintaining the administrative record for this Site. Both Parties will work cooperatively to implement these activities consistent with each Party's programs.

14.2 A copy of EPA's administrative record shall be established at the Moses Lake Public Library and the EPA Regional Office.

## XV. PROGRESS REPORTS

15.1 In addition to the deliverables set forth in this Agreement, Army shall provide to EPA monthly progress reports by the 10th day of the following month. These progress reports shall: (1) describe the actions which have been taken to comply with this Agreement during that month; (2) include all results of sampling and tests and all other data received by Army; (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## XVI. SAMPLING, AND DATA AVAILABILITY/ADMISSIBILITY

16.1 The Parties shall make available to each other quality-assured results of sampling, tests, or other data generated by or on behalf of any Party under this Agreement within sixty (60)

days following completion of the field event. This period can be extended upon mutual agreement among the Project Mangers.

16.2 Army will notify EPA at least 15 days prior to conducting significant field events as described in the RI/FS SOW, the RI/FS work plan or sampling and analysis plan. At the request of the EPA Project Manager, Army shall allow split or duplicate samples to be taken by EPA (or its authorized representatives) of any samples collected in implementing this Agreement.

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

16.4 Laboratory reports shall be made available for review by the Parties immediately upon completion of laboratory analysis.

## XVII. ACCESS

17.1 Without limitation on any authority conferred on them by law, authorized representatives of the Parties shall have authority to enter the work areas under Army control at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing the progress of Army, its response action, contractors, or agents in implementing this Agreement; (3) conducting such

tests as the EPA Project Manager deems necessary; and (4) verifying the data submitted to EPA by Army.

17.2 To the extent that this Agreement requires access to property not owned and controlled by Parties to this Agreement, Army shall make best efforts to obtain access and to obtain signed access agreements for itself, its contractors, agents, and EPA, and provide EPA with copies of such agreements. Army may request the assistance of EPA in obtaining access, and, upon such request, EPA may obtain the required access.

17.3 Nothing in this Agreement shall be construed to limit the discretion of Army or EPA to exercise the authority of the President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

## XVIII. PROJECT MANAGERS

18.1 EPA and Army shall each designate a Project Manager for the purpose of overseeing the implementation of this Agreement. Any Party may change its designated Project Manager by notifying the other Party, in writing, within five (5) days of the change. Communications between the Parties concerning the terms and conditions of the Agreement shall be directed through the Project Managers as set forth in this Agreement. Each Project Manger shall be responsible for assuring that all communications from the other Manager are appropriately disseminated and processed by the respective Agencies.

18.2 Each Project Manger shall be responsible for overseeing the implementation of this Agreement. To the maximum extent

possible, communications among the Parties shall be directed to the Project Manager by mail with copies to such other persons as EPA may respectively designate. Communications among currently identified Project Managers shall be as follows:

(a) Five copies of documents submitted to EPA should be sent to:

Lynda E. Priddy
Remedial Project Manager
Superfund Remedial Branch
U.S. EPA, Region X, M/S ECL-113
1200 Sixth Avenue
Seattle, WA 98101

(b) One copy of documents should be sent to USACE at:

M. Kathy LeProwse
Project Manager
Environmental Management Branch
Programs and Project Management Division
(CENWS-PM-HW)
U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, Washington 98124-3755

18.4 EPA's Project Manager shall have the authority lawfully vested in a Remedial Project Manager and On Scene Coordinator by the NCP. In addition, EPA's Project Manger shall have the authority consistent with the NCP, to take any necessary response action when s/he determines that conditions at the site may present an immediate endangerment to public health or welfare or the environment.

## XIX. RECORD PRESERVATION

19.1 Army shall preserve for a minimum of seven (7) years after termination of this Agreement all records and documents in its possession or in the possession of its divisions, employees,

agents, accountants contractors, or attorneys that relate to the presence of hazardous wastes and constituents, hazardous substances, pollutants, and contaminants at the Site or to the implementation of this Agreement, despite any document retention policy to the contrary. After this seven (7) year period, Army shall notify EPA at least forty-five (45) days prior to destruction or disposal of any such documents or records. Upon request by EPA, USACE shall make available such records or documents, or true copies to EPA. After termination of this Agreement, documents may be converted to permanent electronic or optical media and paper originals disposed of after forty-five (45) days notification to EPA, unless otherwise required by law.

## XX. DISPUTE RESOLUTION

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section apply.

20.2 All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

20.3 Within thirty (30) days after any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee ("DRC") a written statement of dispute setting forth the nature of the dispute, the disputing

Party's position with respect to the dispute and the technical, legal and factual information the disputing Party is relying upon to support its position.

20.4 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project managers and/or immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as necessary to discuss and attempt resolution of the dispute.

20.5 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Associate Director of the Office of Environmental Cleanup of EPA, Region 10 or his/her designate. The Army's designated member is the United States Army Corps of Engineers, Seattle District Commander or his/her designate. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to the other Party.

20.6 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the

Party's position with respect to the dispute and the technical, legal and factual information the disputing Party is relying upon to support its position.

20.4 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project managers and/or immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as necessary to discuss and attempt resolution of the dispute.

20.5 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Associate Director of the Office of Environmental Cleanup of EPA, Region 10 or his/her designate. The Army's designated member is the United States Army Corps of Engineers, Seattle District Commander or his/her designate. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to the other Party.

20.6 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the

dispute and issue a written decision signed by the Parties. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee ("SEC") for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

20.7 The Senior Executive Committee (SEC) will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA, Region 10. The DOD representative on the SEC is the Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health [DASA(ESOH)] or his/her designate. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute.

20.8 The DASA(ESOH) may within twenty-one days of the issuance of the EPA's written position, issue a written notice elevating a dispute of a nationally significant matter to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the DASA(ESOH) elects not to elevate the dispute to the Administrator of EPA within the designated twenty-one day escalation period, USACE

shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

20.9 Upon escalation of a dispute to the Administrator of EPA pursuant to Paragraph 20.8, the Administrator or her designee will review and resolve the dispute within twenty-one days. Upon request, and prior to resolving the dispute, the EPA Administrator or her designee, shall meet and confer with the DASA(ESOH) to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Parties with her written final decision setting forth resolution of the dispute. The Administrator may designate only the Assistant Administrator for Enforcement and Compliance Assurance.

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

20.11 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the OEC Director for EPA Region 10 requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such

work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the OEC Director for EPA Region 10 will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the OEC Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

20.12 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, Army shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedures and proceed to implement this Agreement according to the amended plan, schedule, or procedures.

20.13 Resolution of a dispute pursuant to this Section of this Agreement constitutes a final resolution of any dispute

arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

## XXI. EXTENSIONS

21.1 Either a timetable or deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for a extension shall be submitted in writing and shall specify:

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

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

1. An event of force majeure;
2. A delay caused by another Party's failure to meet any requirement of this Agreement;
3. A delay caused by good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

5. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

21.4 Within seven days of receipt of a request for an extension, EPA shall advise Army in writing of its respective position on the request. Any failure by EPA to respond within the seven day period shall be deemed to constitute concurrence in the request for an extension. If EPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

21.5 If there is consensus among the Parties that an extension is warranted, the affected timetable and deadline aor schedule shall be extended accordingly. If there is no consensus among the Parties, the timetable and deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

21.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the Army may invoke dispute resolution.

21.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application of

judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

## XXII. FORCE MAJEURE

22.1 A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than USACE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition

procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if USACE shall have made timely request for such funds as part of the budgetary process as set forth in Section XXIII of this Agreement. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

## XXIII. FUNDING

23.1 It is the expectation of the Parties to this Agreement that all obligations of Army arising under this Agreement will be fully funded. Army agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement. The current FUDS Funded Work Plan for FY 99 for the Former Larson AFB/Moses Lake Wellfield is $1.5 million.

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

23.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by Army established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the

Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, and 1511-1519. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

23.4 If funds are not available to fulfill Army's obligations under this Agreement, EPA reserves the right to initiate an action consistent with its authorities, or to take any response action, which would be appropriate absent this Agreement.

23.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, Army (Formerly Used Defense Sites) appropriation in the Department of Defense Appropriation Act will be the source of funds for Army's responsibility arising from this Agreement. However, should this appropriation be inadequate in any year to meet the total DA(FUDs) implementation requirements, the Army shall follow a standardized prioritization process which allocates that year's appropriations in a manner which maximize the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

23.6 Consistent with law and applicable OMB regulations and policies concerning the release of budgetary information, Army shall timely apprise EPA of budget information, available to it, that may adversely affect project schedules. Army shall honor

all reasonable EPA requests for budget information related to extension of project schedules, Force Majeure, or other event based on budget limitation.

## XXIV. STIPULATED PENALTIES

24.1 In the event that Army fails to submit a deliverable to EPA 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, EPA may assess a stipulated penalty against Army. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

24.2 Upon determining that Army has failed in a manner set forth in this Section, EPA shall notify Army in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, Army 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. Army shall not be liable for the stipulated penalty assessed by 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.

24.3 Any annual reports prepared under Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5) shall include, with respect to

each final assessment of a stipulated penalty against Army under this Agreement, each of the following:

a. The facility responsible for the failure;

b. A statement of the facts and circumstances giving rise to the failure.

c. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

d. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

e. The total dollar amount of the stipulated penalty assessed for the particular failure.

24.4 Stipulated penalties assessed pursuant to this Section shall be payable to the EPA-Hazardous Substance Response Trust Fund and mailed to EPA Region 10, Attn.: Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251.

24.5 Stipulated penalties assessed pursuant to this Section shall be payable to the EPA-Hazardous Substance Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DOD.

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

24.7 This Section shall not affect Army's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XXI of this Agreement.

24.8 Nothing in this Agreement shall be construed to render any officer or employee of DOD, Army or USACE personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

## XXV. RECOVERY OF EXPENSES

25.1 Army agrees to provide for reimbursement of EPA's oversight costs (including interest) under Section 104(a) through (1) of CERCLA, 42 U.S.C. §§ 9604(a) through (1), taking all actions necessary with DOJ to obtain an agreement with other Potential Responsible Parties (PRPs) (which may include direct payment from those other PRPs to EPA, and/or the payment of funds from the Judgment Fund), and (2) a formal request for authorization and appropriation for such purpose to the extent of DOD's liability for the contamination at the site or otherwise directed by Office of Management and Budget (OMB), or (3) any combination of the above.

25.2 Army agrees to use its best efforts to formalize the funding arrangement identified in sub-paragraph (1) of Paragraph 25.1, for the payment of oversight costs, within ninety (90) days of the effective date of this Agreement. Annually, EPA will bill for oversight costs and Army will transmit the bill to the appropriate authority responsible for funding under those funding arrangements, if different from Army. If EPA does not receive payment within sixty (60) days after submitting each bill to Army, interest at the rate established pursuant to Section 107

(a) of CERCLA, 42 U.S.C. § 9607(a), will begin to accrue on the date EPA submits its bill. In the event that the funding source identified in sub-paragraph (2) is relied on by Army to provide the reimbursement of EPA oversight costs under 25.1, Army shall submit its formal request to DOD for submission to OMB as part of the first DOD fiscal year budget submission following receipt of EPA's estimate of total oversight costs that are expected to be incurred with respect to work performed by Army under this Agreement.

25.3 Army and EPA agree to work cooperatively with DOJ to seek recovery of response costs of the United States from other PRPs.

## XXVI. RESERVATIONS OF RIGHTS

26.1 Except as provided in Section XXVII, nothing in this Agreement shall be construed as a restriction or waiver of any rights that EPA or Army may have under CERCLA, RCRA or any other statute.

## XXVII. OTHER CLAIMS

27.1 Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity by or against any persons, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous

wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

27.2 EPA shall not be held as a Party to any contract entered into by DOD, Army, or USACE to implement the requirements of this Agreement.

## XXVIII. OTHER APPLICABLE LAWS

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

## XXIX. EFFECTIVE DATE

29.1 The effective date of this Agreement shall be the date it is signed by all Parties.

## XXX. MODIFICATION/AMENDMENT OF AGREEMENT

30.1 Modifications, extensions, and/or actions taken pursuant to Section X (Submittal and Finalization of Deliverables), Section XIII (Quality Assurance) Section XVI (Sampling and Data/Document Availability) and Section XXI (Extensions) may be effected by the unanimous agreement of the Project Managers.

30.2 Modifications or amendments not permitted by Paragraph 30.1 may be effected only by the unanimous written agreement of the signatories or upon completion of Dispute Resolution, as applicable.

30.3 Any modification or amendment allowed in 30.1 shall be reduced to writing; shall be effective as of the date it is signed by all the Project managers or signatories, as applicable; and shall be incorporated into, and modify, this Agreement.

## XXXI. TERMINATION

31.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that Army has completed its obligations under the terms of this Agreement. Any Party may propose in writing the termination of this Agreement upon a showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objection upon the proposing Party within thirty (30) days of receipt of the proposal. No Party shall unreasonably withhold or delay termination of this Agreement. Termination of this Agreement shall not terminate Army's obligations under Section XIX (Record Preservation), Section XXV (Recovery of Expenses), and Section XVI (Reservation of Rights).

Signature sheet for the foregoing Interagency Agreement for the Moses Lake Site between the U.S. Environmental Protection Agency and the United States Department of Army.

Raymond J. Fatz

RAYMOND J. FATZ
Deputy Assistant Secretary of the Army
Environmental Safety and Occupational Health

MAR 0 2 1999
Date

Signature sheet for the foregoing Interagency Agreement for the Moses Lake Site between the U.S. Environmental Protection Agency and the United States Department of Defense.

CHUCK CLARKE
Regional Administrator

2/11/99
Date