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CITY CLERK CONTRACT/AGREEMENT NO.

Honorable Jack E. Tanner

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, et al. Plaintiffs, v. CITY OF TACOMA Defendant.	No. C89-583T CONSENT DECREE

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Washington, D.C. 20530
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I. BACKGROUND

1. The United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed the Commencement Bay/South Tacoma Channel - Tacoma Landfill Site in Tacoma, Washington (the "Facility" as specifically defined in Paragraph 18 of this Consent Decree) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658 (1983).

2. In response to a release of hazardous substances at or from the Facility, the City of Tacoma, Tacoma Refuse Utility on July 27, 1986, commenced a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to a Response Order by Consent for the Site issued by the State of Washington Department of Ecology ("Ecology").

3. Investigations conducted by the EPA, Ecology, the Settling Defendant and others since 1983 have identified hazardous substances in the soil and groundwater at and around the Site, as well as the migration of landfill gas to adjoining properties. Chlorinated organic compounds, including 1,1,1 - trichloroethane and methylene chloride were detected in three private drinking water wells southwest of the Site.

4. The Settling Defendant completed a Remedial Investigation ("RI") Report on December 18, 1987, and completed a

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Feasibility Study ("FS") Report on December 22, 1987. The FS Report contains a proposed plan for remedial action at the Facility.

5. On or about January 20, 1988, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the completion of the RI/FS and of the proposed plan for remedial action and provided opportunity for public comment to be submitted in writing to EPA by March 4, 1988 or orally at a public meeting held in the City of Tacoma, Washington, on February 11, 1988. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public.

6. Pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), EPA notified the Federal natural resource trustee of negotiations with potentially responsible parties on the subject of addressing the release or threatened release of hazardous substances at the Facility and EPA has encouraged the participation of the Federal natural resource trustee in such negotiations.

7. Certain persons have provided comments on EPA's proposed plan for remedial action, and to such comments EPA provided a summary of responses. Considering the proposed plan for remedial action and the public comments received, EPA has reached a decision on a final remedial action plan, and the defendant signatory to this Consent Decree ("Settling Defendant")

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as defined in Paragraph 18 of this Consent Decree, is in agreement with such plan.

8. EPA's decision on the final remedial action plan is embodied in a document called a Record of Decision ("ROD"), issued March 31, 1988, to which the State has given its concurrence, and which includes a discussion of EPA's reasons for the final plan, a response to each of the significant comments, criticisms and new data submitted during the public comment period for the proposed remedial action plan and any significant changes (and the reasons for such changes) in the proposed remedial action plan.

9. The United States of America ("United States"), on behalf of the United States Environmental Protection Agency and the State of Washington Department of Ecology ("Ecology"), have filed a complaint against the Defendant in this Court pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607 and the State of Washington Model Toxics Control Act (initiative to the Legislature Number 97).

10. The United States and Ecology in their complaint seek (1) reimbursement of response costs incurred to date by EPA and Ecology at the Tacoma Landfill Site in Tacoma, Washington ("the Site"); (2) an injunction requiring the Defendant to

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perform remedial work at the Site, as provided in the Record of Decision ("ROD") signed on March 31, 1988 by the EPA Regional Administrator, Region 10, and concurred with by Ecology, and in conformity with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300 (as amended); (3) recovery of costs that will be incurred by EPA and Ecology in connection with such remedial work; and (4) such other relief as the Court finds appropriate.

11. Pursuant to Section 121(d)(1), the United States, Ecology, and Settling Defendant ("the Settling Parties") believe that the remedial action described in this Consent Decree and adopted by EPA and Ecology will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release which at a minimum assures protection of human health and the environment at the Site.

12. The Settling Parties believe the remedial action described in this Consent Decree adopted by EPA and Ecology will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under federal environmental law or state environmental or facility citing law in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2); and that the remedial action is in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, and with the NCP,

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40 C.F.R. Part 300. Cleanup standards selected are in compliance with § 3(2)(d) of the Model Toxics Control Act which requires such standards to be at least as stringent as those required by CERCLA, § 121, and other applicable state and federal laws.

13. The Settling Defendant agrees to implement the remedial action adopted by EPA and Ecology in the ROD attached hereto as Appendix I to this Consent Decree, and EPA and Ecology have determined that the Work required under the Consent Decree will be done properly by Settling Defendant, and that Settling Defendant is qualified to implement the remedial action contained in the ROD.

14. The Settling Parties recognize, and intend to further the public interest in the expedition of the cleanup of the Site and to avoid prolonged and complicated litigation between the Settling Parties.

15. The Settling Parties have agreed to the entry of this Consent Decree; provided that none of the facts or statements herein related shall constitute or be considered admissions of fact or any acknowledgement of liability or fault by consenting Defendant with respect to claims not related to enforcement of this Decree.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

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II. JURISDICTION

16. This Court has jurisdiction over the subject matter herein, pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 9613 and the Model Toxics Control Act (Initiative 97), and over the parties consenting hereto. No Party hereto shall challenge this Court's jurisdiction to enter and enforce this Consent Decree. The parties stipulate that venue in this court is proper pursuant to 42 U.S.C. § 9613(b) and request that a single judge be assigned to decide all issues arising out of this Consent Decree.

III. PARTIES BOUND

17. This Consent Decree applies to and is binding upon the undersigned parties and their successors, assigns, officers, employees, and agents. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of this Consent Decree and to execute and legally bind that party to it. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and shall require each contractor to provide a copy thereof to any subcontractor retained to perform any part of the Work required by this Consent Decree. Settling Defendant shall condition any contracts for work upon compliance with this

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Consent Decree. Settling Defendant shall be responsible to the United States and the State of Washington to ensure that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

IV. DEFINITIONS

18. Whenever the following terms are used in this Consent Decree and the Exhibits and Appendices attached hereto, the following definitions specified in this Paragraph shall apply.

A. "ARAR" means a federal or state standard, requirement, criterion, or limitation that is legally applicable or relevant and appropriate to cleanup of the Site, within the meaning of 42 U.S.C. § 9621(d).

B. "Architect" or "Engineer" means the company or companies retained by the Settling Defendant to prepare the construction plans and specifications necessary to accomplish the remedial action described in the ROD and Scope of Work which are attached to this Consent Decree as Appendices I and II.

C. "Consent Decree" means this Decree and all Exhibits and Appendices attached hereto.

D. "Contractor" or "Subcontractor" means the company or companies retained by or on behalf of the Settling Defendant to undertake and complete the Work required by this Consent Decree. Each Contractor and Subcontractor shall be

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qualified to do those portions of the Work for which it is retained. Each Contractor and Subcontractor shall be deemed to be related by contract to the Settling Defendant within the meaning of Section 107(b) of CERCLA, 42 U.S.C. § 9607(b).

E. "Ecology" means the Washington Department of Ecology.

F. "EPA" means the United States Environmental Protection Agency.

G. "Government Plaintiffs" means the State of Washington Department of Ecology and the United States of America on behalf of EPA, acting alone or together.

H. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

I. "Institutional Controls" refers to the land use restrictions and other regulations, ordinances, covenants, and controls developed pursuant to the Consent Decree to maintain the integrity and prevent the unauthorized disturbance of the cap, groundwater extraction wells, treatment facilities, and other structures that will be constructed at the Site as part of the remedial actions.

J. "Model Toxics Control Act" means State Initiative to the Legislature Number 97.

K. "National Contingency Plan ('NCP')" is set forth in 40 C.F.R. Part 300, and any revisions thereof.

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L. "Pollutants and Contaminants" shall have the meaning provided in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

M. "Record of Decision ('ROD')" shall mean the EPA Record of Decision set forth as Appendix I to this Consent Decree relating to the Site signed on March 31, 1988, by the Regional Administrator, EPA Region 10, and all attachments thereto.

N. "Remedial Action" shall have the meaning provided in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), and in particular, shall mean all Work required by this Consent Decree, including Appendix II, and all attachments thereto and plans and schedules thereunder, and all amendments to any of the above made in accordance with this Consent Decree.

O. "Remedial Design/Remedial Action Work Plan ('RD/RA Work Plan')" shall mean the plans and their attachments, which describes studies, plans, and remedial actions to be undertaken at and around the site, and includes all studies, plans, standards, schedules, specifications, drawings, and other documents approved or developed by the Government Plaintiffs pursuant to this Consent Decree.

P. "Remedial Investigation/Feasibility Study ('RI/FS')" shall be used as each term is defined in 40 C.F.R. § 300.6.

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Q. "Response Costs" means any past and future costs incurred by the Government Plaintiffs pursuant to CERCLA, including oversight costs.

R. "Scope of Work ('SOW')" means the scope of work for implementation of the remedial design, remedial action, and operation and maintenance of the remedial action at the Site, as set forth in Appendix II.

S. "Settling Defendant" means the City of Tacoma.

T. "Settling Parties" means the United States of America, the State of Washington and the Settling Defendant.

U. "State" refers to the State of Washington.

V. Tacoma Landfill Site ("Site") means the approximately 190 acres of land in Pierce County, located in Tacoma, Washington, that is bordered by South 31st Street on the north, Tyler Street on the east, Orchard Street on the west, and by South 48th Street to the south, as shown on the map attached as Appendix IV, and any portions of other properties that contain hazardous substances as a result of a release at the Landfill.

W. "U.S. DOJ" means the United States Department of Justice.

X. "Work" means the design, construction, and implementation, in accordance with this Consent Decree, of the tasks described in the ROD, Scope of Work, and any schedules or plans required to be submitted pursuant thereto.

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V. GENERAL PROVISIONS

19. Commitment of Government Plaintiffs and Settling Defendant:

A. Settling Defendant agrees to finance and perform the Work.

B. The Work shall be completed in accordance with all of the requirements of this Decree, the ROD, and the Scope of Work (SOW), including performance standards, specifications and time periods set forth in Section VI hereof, and in the SOW and ROD.

C. The Government Plaintiffs agree to perform all reviews required under this Consent Decree within the time periods set forth in Section VI hereof, except that any such conduct by the Government Plaintiffs, jointly or severally, described herein by means of the words "shall," "may," or "will," etc., shall not impose an obligation or duty on the Government Plaintiffs, and shall operate at most and only if legally appropriate as a condition precedent to a duty of the Settling Defendant to perform some act or refrain from acting as appropriate under the terms of this Decree.

20. Permits and Approvals:

A. All activities undertaken by the Settling Defendant pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state,

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and federal laws, regulations, and permits. The Government Plaintiffs have determined that the obligations and procedures authorized under this Consent Decree are consistent with the authority of the Government Plaintiffs under applicable law to establish appropriate remedial measures for the Site.

B. The Government Plaintiffs have determined that no federal, state, or local permits are required for Work conducted entirely on-site as described in the SOW. However, the substantive requirements of the permits shall be met. Settling Defendant shall obtain all permits or approvals necessary for off-site work under federal, state, or local laws and shall submit timely applications and requests for any such permits and approvals.

C. The Settling Parties agree that if Settling Defendant or its Contractors arrange for the storage, treatment, disposal, or transportation of any hazardous substance off-site, then Settling Defendant will, as required, obtain EPA and Ecology prior written approval of the use of any such off-site facility in accordance with 42 U.S.C. § 9621(e) and RCW 70.105 and will comply with the applicable provisions of 40 C.F.R. Parts 261, 262, 263, 264, 265, 268 & any relevant EPA policies or guidances.

D. The standards and provisions of Section XIV describing Force Majeure shall govern delays in obtaining permits required for the Work and also the denial of any such permits. However, Settling Defendant is required to make complete and

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timely application for permits and must provide any additional information needed by the regulatory agency in a timely manner.

E. Settling Defendant shall include in all contracts or subcontracts entered into for Work required under this Consent Decree, provisions stating that such Contractors or Subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. This Consent Decree is not, nor shall it act as, nor is it intended by the Settling Parties to be, a permit issued pursuant to any federal or state statute or regulation.

21. Conveyance of Site/Institutional Controls

A. The restrictions and obligations set forth in this Consent Decree or developed under it shall run with the land and shall be binding upon any and all persons who acquire any interest in any property included in the Site. Within thirty (30) calendar days of entry of this Consent Decree, the Settling Defendant shall record a copy of this Decree with the Auditor's Office, Pierce County, Washington. A copy of the recorded notice shall be sent to Ecology and EPA.

B. The Site as described herein may be freely alienated provided that at least sixty (60) calendar days prior to the date of such alienation, the Settling Defendant notifies the Government Plaintiffs of such proposed alienation, the name of the grantee, and a description of the Settling Defendant's

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obligations, if any, to be performed by such grantee. In the event of such alienation, all of Settling Defendant's obligations pursuant to this Decree shall continue to be met by the Settling Defendant or, subject to EPA and Ecology approval, by Settling Defendant and the grantee.

C. Any deed, title, or other instrument of conveyance regarding the Site shall contain a notice that the Site is the subject of this Consent Decree, setting forth the style of the case, case number, and Court having jurisdiction herein. Said notation shall also notify any potential purchasers of property contained within the Site that:

(1) The land has been used to manage hazardous substances and the hazardous substances, including those listed in Appendix V to this Consent Decree remain under the cap.

(2) Post-remedial action land use is restricted such that use of the property must never be allowed to disturb the integrity of the cap, or any other component of any containment system, or the function of the Site's monitoring system, unless the Regional Administrator for EPA Region 10 and the Ecology Director find that the disturbance:

a. is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or

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b. is necessary to reduce a threat to human health or the environment; and

(3) Restrictions upon the use of groundwater beneath the Site include a prohibition against pumping of groundwater in affected aquifers for purposes other than monitoring or Remedial Action. Anyone seeking to use the groundwater beneath the Site must also comply with all additional present and future restrictions placed on the use of such groundwater by the City of Tacoma or Ecology.

D. The Settling Defendant shall perform all actions necessary or appropriate to implement the above-referenced Institutional Controls on site properties within its jurisdiction. The Settling Defendant shall use its best efforts to perform or cause to be performed all actions necessary or appropriate to implement the above-referenced institutional controls on site properties outside its jurisdiction. Such actions and efforts shall include, but not be limited to: the recording of notices, plot plans, and other similar documents; and giving notice to local zoning authorities or other governmental entities. The Settling Defendant shall report to the Government Plaintiffs concerning its performance of all such actions.

22. Incorporation of Documents

All exhibits, appendices, and attachments to this Consent Decree and any and all reports, plans, specifications,

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schedules, and other documents required by the terms of this Consent Decree and approved or developed by the Government Plaintiffs in accordance with the provisions of this Consent Decree (including its exhibits, appendices, and attachments) are incorporated into this Consent Decree and enforceable under it.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

23. All remedial design work to be performed by the Settling Defendant pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional architect or engineer with experience in hazardous waste management. Prior to the initiation of remedial design work for the Site, the Settling Defendant shall notify EPA and Ecology in writing, of the name, title, and qualifications of any engineer or architect proposed to be used in carrying out the remedial design work to be performed pursuant to this Consent Decree.

24. All remedial action work to be performed by the Settling Defendant pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional engineer. Within thirty (30) calendar days prior to the initiation of the remedial action work at the Site, the Settling Defendant shall notify EPA and Ecology in writing, of the name, title, and qualifications of the proposed engineer, and the names of principal contractors and/or subcontractors proposed to be

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used in carrying out the work to be performed pursuant to this Consent Decree.

25. Appendix II to this Consent Decree provides a Scope of Work ("SOW") for the completion of remedial design and remedial action at the Site. This SOW is incorporated into and made an enforceable part of this Consent Decree.

26. The following Work shall be performed:

A. Within thirty (30) calendar days of the date of the lodging of this Consent Decree with the Court, the Settling Defendant shall submit a Project Management Plan to Ecology and EPA for the remedial design and remedial action at the Site. Additional work plans and reports shall be submitted as required by the SOW. The Project Management Plan, work plans, and reports shall be developed in conformance with the ROD, SOW, "EPA Superfund Remedial Design and Remedial Action Guidance," and the National Contingency Plan (NCP).

B. The Work Plan submittals shall include, but not be limited to, the following project plans: (1) sampling and analysis plans; (2) a health and safety plan; (3) a quality assurance project plan; (4) construction schedules; and (5) an operations and maintenance plan. The Project Management and Work Plans shall include a schedule for implementation of the RD/RA tasks and submittal of RD/RA reports.

C. The Project Management Plan and all other required work plans, documents and reports (hereinafter referred

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to as "documents") shall be subject to review, modification, and approval by the Government Plaintiffs, consistent with this Consent Decree and Scope of Work.

D. Within thirty (30) calendar days of any document required by this Decree, the Government Plaintiffs shall notify the Settling Defendant, in writing, of approval or disapproval of the document, or any part thereof. In the event that a longer review period is required, the Government Plaintiffs shall notify Settling Defendant of that fact within twenty-five (25) calendar days of receipt of the document. In the event of disapproval, the Government Plaintiffs shall specify, in writing, any deficiencies and required modifications to the document. Nothing in this provision shall negate the Government Plaintiffs' right to approve or disapprove a submittal by the Settling Defendant should the time periods stated in this paragraph be exceeded by Ecology or EPA.

E. Within thirty (30) calendar days of receipt of any document disapproval, the Settling Defendant shall submit a revised document to Ecology and EPA which incorporates the Government Plaintiffs' modifications or shall provide a notice of dispute pursuant to Section XV below.

F. Settling Defendant shall proceed to implement the work detailed in the Project Management and Work Plan upon approval of such plans by the Government Plaintiffs. Unless otherwise directed by the Government Plaintiffs in

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writing, the Settling Defendant shall not commence field activities until approval by the Government Plaintiffs of the plan covering such activities. A copy of the fully approved Project Management and Work Plans shall be filed with this Court and shall be deemed incorporated into and made an enforceable part of this Consent Decree. All Work shall be conducted in accordance with CERCLA, the Model Toxics Control Act, the NCP, the "EPA Superfund Remedial Design and Remedial Action Guidance," and the requirements of this Consent Decree, including the standards, specifications, and schedules contained in the Project Management and Work Plans.

27. The Settling Parties acknowledge and agree that the SOW and the RD/RA Work Plans and Project Management Plan do not constitute a warranty or representation of any kind by the Government Plaintiffs that the SOW or Project Management and RD/RA Work Plans, will achieve the performance goals and standards set forth in the ROD and in this Consent Decree; and shall not foreclose the Government Plaintiffs from seeking compliance with all terms and conditions of this Consent Decree, including the achievement of the applicable performance goals and cleanup standards.

28. The Performance Goals and Cleanup Standards are described in the attached Record of Decision and Scope of Work, and include, but are not limited to, the following:

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A. Groundwater Cleanup Levels

Drinking water standards, or established and approved health based criteria.

B. Performance Levels for Treatment System Discharge To Surface Water (μg/L) *

Constituent	Fresh Water	Marine Water
Benzene	5.0	700.0
Chloroethane	20.0	1130.0
1,1-dichloroethane	20.0	1130.0
1,2-dichloroethane	5.0	1130.0
Ethyl benzene	320.0	4.3 **
Methylene Chloride	5.0	6400.0
Toluene	175.0	5000.0
1,1,1-trichloroethane	200.0	312.0
Vinyl chloride	2.0	2.0 **
Xylenes	10.0	10.0 **

* This table shall be supplemented to include the entire list of indicator parameters selected under section 3.1.2.2 of the SOW.

** Value set at fresh water criteria unless other discharge limits can be established from other guidance documents or technical research, as approved by the Government Plaintiffs.

Treatment system effluent must also meet water quality standards, as set forth in WAC 173-201.

C. Performance Levels for Discharge to a Sanitary Sewer

The Settling Defendant shall meet the discharge limits established pursuant to WAC 173-216 and approved by the Government Plaintiffs, and must meet pretreatment regulations, City of Tacoma Code, Chapter 12.08, as revised.

29. No modification by the Settling Defendant shall be made in the performance of the Work which varies from the

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standards, specifications, or schedules of completion contained in the SOW or the approved Project Management and work plans without prior written approval of the Government Plaintiffs after written notification setting forth the nature of and the reasons for any such requested modification; provided, however, that minor modifications approved by the RPM/On-Scene Coordinator (OSC) and recorded in field notes or meeting minutes and signed by the RPM/OSC, shall satisfy the requirements of this paragraph. The RPM/OSC shall not have authority to modify the performance goals and cleanup standards set forth in paragraph 28 above.

30. The Settling Defendant may petition the Government Plaintiffs for relief from the requirements of the SOW if they can demonstrate, based upon new information, that the Work requirements are inconsistent with CERCLA or the NCP. Any disputes arising under this Section shall be resolved pursuant to the dispute resolution procedures of Section XV.

VII. ADDITIONAL WORK

31. The Settling Defendant shall be required to conduct an abbreviated RI/FS to explore alternative remedial actions should either one of the following events occur:

A. At the end of the pilot study conducted pursuant to the SOW, the Government Plaintiffs determine that groundwater extraction and treatment will not satisfy the requirements of the ROD and Scope of Work.

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B. Following certification of the completion of the Remedial Action, contamination levels in the surface water, or groundwater on site exceed the performance standards set forth in the Consent Decree and the ROD.

32. Any alternatives considered by the Settling Defendant shall be evaluated for consistency with the NCP and submitted to EPA and Ecology for review and approval. Before the Government Plaintiffs select an alternative remedial action, they shall provide for a public comment period and EPA shall amend the ROD as appropriate. The Settling Defendant is not relieved of its obligations under this Consent Decree until the performance goals and cleanup standards set forth in this Consent Decree are met.

33. Any additional work determined to be necessary by the Settling Defendant and approved by the Government Plaintiffs or determined to be necessary by the Government Plaintiffs to meet the performance goals and cleanup standards shall be completed by the Settling Defendant in accordance with the standards, specifications, and schedules approved by the Government Plaintiffs.

VIII. PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

34. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, the Governments Plaintiffs shall review the Remedial Action at the

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Site at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being adequately protected by the Remedial Action being implemented. If upon such review, the Government Plaintiffs determine that further response action in accordance with Section 104 or 106 of CERCLA or further remedial action in accordance with the Model Toxics Control Act is appropriate at the Site, then, consistent with Section XIX of this Consent Decree, the Government Plaintiffs may take or require such action.

35. The Settling Defendant shall be provided with an opportunity to confer with the Government Plaintiffs on any response action required as a result of the Government Plaintiffs' 5-year review and to submit written comments for the record. After the period for submission of written comments is closed, the Government Plaintiffs, shall, in writing, either affirm, modify, or rescind the determination of the need for further response action. The final decision of the Government Plaintiffs shall be subject to review pursuant to the dispute resolution provisions in Section XV to the extent permitted by Section 113 of CERCLA, 42 U.S.C. § 9613.

IX. IMPLEMENTATION OF REMEDIAL ACTION

36. In the event that the Government Plaintiffs determine that the Settling Defendant has failed to implement the Remedial Action, the Government Plaintiffs may, after notice to

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the Settling Defendant and consistent with the Dispute Resolution procedures of Section XV, perform any or all portions of the Remedial Action that remain incomplete. If the Government Plaintiffs perform all or portions of the Remedial Action because of the Settling Defendant's failure to comply with their obligations under this Consent Decree, the Settling Defendant shall reimburse the Government Plaintiffs for the costs of doing such work and all interest due within one hundred and twenty (120) days of receipt of demand for payment of such costs, provided that the Settling Defendant is not obligated under this section to reimburse the Plaintiffs for costs incurred for work inconsistent with or beyond the scope of the Remedial Action, unless it is work carried out under the five year reopener provided for by CERCLA as amended, which is referenced in Section VIII, or is work carried out as additional work, which is identified in Section VII. In any proceeding for costs under this section, the Settling Defendant shall have the burden of proving that costs claimed by the Government Plaintiffs were for work inconsistent with or beyond the scope of the Remedial Action, or were inconsistent with the NCP.

X. QUALITY ASSURANCE

37. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications for Preparing

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Quality Assurance Project Plans" (QAM-005/80), EPA's "Data Quality Objective Guidance" (EPA/540/G87/003 and 004), and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Consent Decree and in accordance with the schedule and requirements delineated in or established pursuant to the SOW, Settling Defendant shall submit Quality Assurance Project Plans (QAPPs) to EPA and Ecology. The Government Plaintiffs, after review of Settling Defendant's QAPPs, shall notify the Settling Defendant of any required modifications, conditional approval, disapproval, or approval of the QAPPs. Upon notification of disapproval or any need for modifications, Settling Defendant shall make all required modifications in the QAPPs subject to the dispute resolution provisions of Section XV. Sampling data generated consistent with the QAPPs shall be admissible as evidence, including in any proceeding under Section XV of this Decree or any proceeding to enforce this decree.

38. Selection of any laboratory to be utilized by Settling Defendant in implementing this Consent Decree is subject to approval by the Government Plaintiffs. Settling Defendant shall ensure that EPA and Ecology and their authorized representatives have access to each laboratory, laboratory worker, laboratory record, and item of equipment utilized in implementing this Consent Decree. Settling Defendant shall also require each laboratory selected to submit a quality assurance

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plan for Ecology and EPA review. Any laboratory selected shall be certified in timely fashion pursuant to Chapter 173-50 WAC. In addition, Settling Defendant shall require each laboratory to perform analyses of samples provided by EPA and Ecology according to EPA and Ecology specified methods, to demonstrate the quality of each laboratory's analytical data.

XI. SITE ACCESS, SAMPLING, DOCUMENT AVAILABILITY

39. To the extent that the site or other areas where work is to be performed hereunder are presently owned or leased by parties other than those bound by this Consent Decree, Settling Defendant shall use its best efforts to obtain signed access agreements for itself, its contractors and agents, and EPA and Ecology and their contractors and agents from the present owners and lessees no less than ninety (90) days in advance of the date such work is scheduled to commence, or such other time frame approved by the Government Plaintiffs. Said access agreements shall be provided to the Government Plaintiffs within five (5) days of their execution. If the work includes the installation and operation of monitoring wells, pumping wells, or treatment facilities, or other response actions, Settling Defendant shall use its best efforts to obtain access agreements that provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property, and also provide that

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the owners of any property where monitoring wells, pumping wells, treatment facilities or other response actions are located shall notify the Government Plaintiffs and Settling Defendant by Certified Mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made or to be made for the continued operation of the monitoring wells, pumping wells, treatment facilities, or other response actions installed pursuant to this Consent Decree.

40. In the event that the Settling Defendant does not obtain adequate access agreements within the time period prescribed, Settling Defendant shall notify the Government Plaintiffs in writing within five (5) calendar days after the close of such period regarding both the lack of such agreements and the efforts made to obtain them. In the event that the Government Plaintiffs obtain access for the Settling Defendant, Settling Defendant agrees to indemnify the Government Plaintiffs for all costs incurred in obtaining such access. Payment shall be made in accordance with the provisions of section XVII (Reimbursement).

41. The Government Plaintiffs or any authorized representative of the Government Plaintiffs shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purpose of, inter alia: inspecting records, operation logs, and contracts related to the

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Site; reviewing the progress in carrying out the terms of this Consent Decree; conducting such tests or collecting samples as they may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Consent Decree; and verifying the data submitted to the Government Plaintiffs by the Settling Defendant. Before entering the landfill property, the Government Plaintiffs shall notify the Refuse Utility of their intent to enter the landfill property, unless other arrangements are agreed to by the parties or otherwise provided for by court order. Nothing in this consent decree shall be construed to limit any rights of entry the Government Plaintiffs have under either State or Federal law.

42. Settling Defendant shall make available to the Government Plaintiffs the results of all sampling and/or tests, quality assurance data, and other data generated by Settling Defendant with respect to the implementation of this Consent Decree within ninety (90) days of sample collection or field testing or within fifteen (15) days of receipt of all results for a sampling event, whichever is sooner, and shall submit these results in the monthly progress report as described in Section XII of this Consent Decree within thirty (30) calendar days of receipt of the data, provided that where Settling Defendant has or gathers, data not required by this Consent Decree, such data shall be submitted within fifteen (15) days of a request therefore in writing.

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43. At the request of the Government Plaintiffs, or its designated representatives, Settling Defendant shall allow split or replicate samples to be taken by the Government Plaintiffs, and/or their authorized representatives, of any samples collected by Settling Defendant pursuant to the implementation of this Consent Decree. As required by 42 U.S.C. § 9604(e)(4)(b), the Government Plaintiffs and their representatives shall provide to Consenting Defendant a receipt for all samples taken, provide, if requested, a portion of all samples taken, and provide a copy of the results of any analysis made of samples taken. Settling Defendant shall notify the Government Plaintiffs not less than seven (7) calendar days in advance of any well installation or sample collection activity. In addition, the Government Plaintiffs shall have the right to take any additional samples that the Government Plaintiffs deem necessary.

XII. REPORTING REQUIREMENTS

44. Settling Defendant shall provide or cause their contractors or agents to prepare and provide to the Government Plaintiffs written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) include all results of sampling and tests and all other data received by Settling Defendant during the previous month regarding the Work;

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(3) include all work products completed under the Project Management and Work Plans during the previous month; (4) describe all actions, data, and deliverables which are scheduled for the next two months and provide other information relating to the progress of construction as is customary in the industry; (5) include information regarding percentage of completion of the RD/RA Work, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the RD/RA Work, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to the Government Plaintiffs by the tenth day of every month following the first full month after the effective date of this Consent Decree.

45. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or state, city, or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

46. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and pursuant to 40 C.F.R. § 300.63, requires reporting to the National Response Center, Settling Defendant shall within twenty-four (24) hours orally notify the RPMs, and the Emergency Response Section, Region 10, United States Environmental Protection Agency, in addition to the reporting

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required by Section 103 of CERCLA. Within twenty (20) calendar days of the onset of such an event, Settling Defendant shall furnish to the Government Plaintiffs a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) calendar days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all final actions taken to respond thereto.

XIII. DESIGNATION OF REMEDIAL PROJECT MANAGER/ON-SCENE COORDINATOR AND PROJECT COORDINATOR

47. EPA and Ecology shall each designate a Remedial Project Manager (RPM) and alternate for the Site, and the Government Plaintiffs may designate other representatives, including EPA and Ecology employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The RPMs shall have the authority lawfully vested in RPMs and On-Scene Coordinators by the National Contingency Plan, 40 C.F.R. Part 300. In addition, the RPMs shall have authority to halt, conduct, or direct any work required by this Consent Decree and to take any necessary response action when, in the opinion of the RPM, conditions at the Site may or do present or contribute to an imminent and substantial endangerment to public health or welfare or to the environment. In the event the RPM does require such cessation of the Work, the RPM/OSC then shall have the authority

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to require the Settling Defendant to take actions in accordance with the instructions of the RPM to avoid or mitigate the endangerment or release which the RPM believes may occur. If the Settling Defendant objects to any order by the RPM, it may petition the Court to stay or set aside the order of the RPM. The filing of such a petition shall not operate to stay the effectiveness of such order, nor shall it in any way operate to preclude the Government Plaintiffs from taking response actions, or from seeking to enforce such order. Settling Defendant shall also designate a Project Coordinator who will have primary responsibility for ensuring the implementation of the Work at the Site.

48. To the maximum extent possible, except as specifically provided in this Consent Decree, communications between Settling Defendant and the Government Plaintiffs concerning the implementation of the Work under this Consent Decree shall be made between the Project Coordinator and the RPMs.

49. Within twenty (20) calendar days of the effective date of this Consent Decree, Settling Defendant and the Government Plaintiffs shall notify each other, in writing, of the name, address, and telephone number of the designated Project Coordinator and Alternate Project Coordinator, and the RPMs for EPA and Ecology and their Alternates. Any Party may change its respective project manager/coordinator by notifying the other

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Party, in writing, at least ten (10) calendar days prior to the change.

XIV. FORCE MAJEURE

50. Force Majeure for purposes of this Consent Decree is defined as any event arising from causes entirely beyond the control of the Settling Defendant which Settling Defendant could not avoid by the exercise of due diligence and which delays or prevents the performance of any obligation under this Consent Decree. Force Majeure shall not include increased costs or expenses in connection with the performance of the Work under the Consent Decree, or changed financial circumstances of Settling Defendant.

51. When circumstances occur which may delay the completion of any phase of the Work or delay access to the Site or to any property on which any part of the Work is to be performed, whether or not caused by a force majeure event, Settling Defendant shall promptly orally notify the RPMs, or in the event of the RPMs' unavailability, the alternates. Within five (5) working days of the event which Settling Defendant contend is responsible for the delay, Settling Defendant shall supply to Government Plaintiffs in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendant to prevent or minimize the delay, and

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the timetable for implementation of such measures. Failure to give oral notice to the RPMs and to give written explanation to Government Plaintiff in a timely manner shall constitute a waiver of any claim of force majeure.

52. Upon the occurrence of an event which Settling Defendant allege is a force majeure event, Settling Defendant may request an extension of schedule in accordance with Section XXII.

53. If the Government Plaintiffs and Settling Defendant cannot agree that the reason for the delay was a force majeure event, or that the duration of the delay is or was warranted under the circumstances, the Settling Parties shall resolve the dispute according to Section XV hereafter. Settling Defendant has the burden of proving force majeure as a defense to compliance with this Consent Decree.

XV. DISPUTE RESOLUTION

54. The parties to this Consent Decree shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Decree or any Work required hereunder. Informal negotiations between the parties to the dispute may last for a period of up to fourteen (14) calendar days from the date that notice of the existence of the dispute is first given.

55. In the event that any dispute arising under this Consent Decree is not resolved informally within the time period

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indicated in paragraph 54 above, any party desiring dispute resolution under this Section shall give written notice to the other parties to the Decree within ten (10) calendar days of the end of the informal dispute resolution period.

56. Within ten (10) calendar days of the service of notice of dispute pursuant to paragraph 55, the party who gave the notice shall serve on the other parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). Opposing parties shall serve their Statements of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the complaining party's Statement of Position. In the event that these ten-day time periods for exchange of Statements of Position may cause a delay in the Work, they shall be shortened in accordance with written notice by the Government Plaintiffs.

57. An administrative record of any dispute under this Section shall be maintained by the Government Plaintiffs. The record shall include the written notification of such dispute and the Statements of Positions served pursuant to the preceding paragraph. The record shall be available for review by all parties.

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58. Upon review of the administrative record the Government Plaintiffs shall issue a final decision and order resolving the dispute.

59. Any decision and order of the Government Plaintiffs pursuant to the preceding Paragraph 58 shall be binding unless a Notice of Judicial Appeal is filed with this Court within ten (10) calendar days of receipt of the Government Plaintiffs' decision and order. In any event, judicial review will be conducted on the administrative record, using an arbitrary and capricious standard. The Settling Defendant shall bear the burden of proof for demonstrating that the decision is arbitrary and capricious. The filing of a judicial appeal shall not stay Settling Defendant's obligation to pay stipulated penalties pursuant to Section XVIII. After the date of termination of this Consent Decree specified in Section XXXII hereof, judicial review will be available only by instituting new action(s) to the extent permitted by law.

60. The invocation of the procedures stated in this Section shall not extend or postpone Settling Defendant's obligations under this Consent Decree with respect to the disputed issue unless and until the Government Plaintiffs find, or the Court orders, otherwise.

61. In no event will the performance standards for the Work be subject to dispute resolution.

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62. Any dispute arising under this Consent Decree between the Government Plaintiffs shall be resolved in accordance with a Memorandum of Agreement (MOA) executed by the Government Plaintiffs, which shall be filed with the Court and be deemed incorporated into this Consent Decree.

XVI. RETENTION AND AVAILABILITY OF INFORMATION

63. Settling Defendant shall make available to EPA and Ecology, and shall retain, during the pendency of this Consent Decree and for a period of ten (10) years after its termination, all records, data, and documents in their possession, custody, or control which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by any of them, or on their behalf, with respect to the Site and all documents pertaining to their own or any other person's liability for response action or costs under CERCLA. Settling Defendant shall require all such records in the possession of contractors or agents to be provided to it and shall retain originals or true copies of all such records. After the ten (10) year period of document retention, Settling Defendant shall notify U.S. DOJ, EPA, and Ecology at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. DOJ, EPA or Ecology,

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Settling Defendant shall relinquish custody of the documents to the requesting party.

64. Settling Defendant may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7)(A) of CERCLA, 42 U.S.C. § 9604(e)(7)(A), and pursuant to 40 C.F.R. § 2.203(b).

65. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B, and such information shall be treated by Ecology consistent with Ch. 42.17 RCW and Ch. 43.21A RCW. If no such claim accompanies the information when it is submitted to the EPA or Ecology, the public may be given access to such information without further notice to Settling Defendant.

66. Information acquired or generated by Settling Defendant in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by Settling Defendant.

XVII. REIMBURSEMENT

67. Settling Defendant shall pay $1,000,027.70 within sixty (60) days of the lodging of this Consent Decree, plus interest due. Interest shall accrue on $511,138.25, beginning on September 30, 1990. Payment shall be made in the form of a

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certified or cashier check payable to "EPA-Hazardous Substance Superfund." The check(s) shall reference the Site name, civil action number of this case and Department of Justice number (DOJ No. 90-11-2-381), and shall be sent to:

EPA Superfund, Region 10
P.O. Box 371003M
Pittsburgh, Pennsylvania 15231

A copy of each check with an explanatory transmittal letter shall be submitted to:

a. Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

b. United States Attorney
800 Fifth Avenue
Seattle, Washington 98104

and to EPA as follows:

Director of the Hazardous Waste Division
U.S. Environmental Protection Agency
Region 10, HW-111
1200 Sixth Avenue
Seattle, Washington.

68. The payments made under Paragraph 67 of this Section are reimbursement of any costs incurred through September 30, 1990 for EPA costs, including state cooperative agreement costs, TES and other contract costs, EPA payroll costs, indirect costs, and EPA regional travel costs, claimed by the United States in this action. Nothing herein shall be construed as limiting the rights of the United States to seek any cost recovery from liable persons not a party to this Decree. In consideration of the monies received under Paragraph 67 of this Section, the United States covenants not to sue Settling

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Defendant for such past costs pursuant to CERCLA, 42 U.S.C. § 9601 et seq.

69. Settling Defendant shall pay $156,917.00 within sixty (60) days of the lodging of this Consent Decree, plus interest due. Interest shall accrue on $83,601.85, beginning on September 30, 1990 to the State Toxics Control Account of the State of Washington. Such payment shall be sent to the appropriate account, identified by Ecology, in the form of a certified or cashier check Payable to the "State of Washington," and shall contain the site name and civil action number. The payment made under this paragraph is reimbursement of costs incurred through December 31, 1990 (past costs) claimed by Ecology in this action. Payment of funds pursuant to this Paragraph shall fully satisfy the Settling Defendant's obligations for past costs incurred by Ecology as of December 31, 1990. Nothing herein shall be construed as limiting the rights of Ecology to seek any cost recovery from liable persons not party to this Decree. In consideration of the monies received under this paragraph, the State of Washington covenants not to sue Settling Defendant for any past costs. To the extent not otherwise provided herein, interest on all amounts owed to the State of Washington under this Consent Decree, shall be calculated as provided for in RCW 4.56.110 and 19.52.020.

70. Settling Defendant shall pay all Response Costs incurred by the United States and the State of Washington

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relating to the Site incurred prior to the entry of this Consent Decree and not covered by paragraphs 67, 68, and 69, including any interest due, within ninety (90) days of the submission of itemized cost statements and supporting documentation. Such costs include but are not limited to, payroll, travel, indirect and contracting costs. Settling Defendant shall also pay costs incurred by the United States after the effective date of this Consent Decree for oversight of the Remedial Design and Remedial Action. Payments to the United States shall be made by the Settling Defendant on an annual basis and within sixty (60) calendar days of the submission of itemized cost statements and supporting documentation, and include any interest due. The United States shall submit its oversight cost claims following the end of each federal fiscal year. Payments shall be made as specified in paragraph 67 above, and shall include any interest due. In consideration of and upon payment of all Response Costs as required by this paragraph, the United States covenants not to sue Settling Defendant for any costs incurred in overseeing the Work.

71. The Settling Defendant agrees to reimburse the State Toxics Control Account of the State of Washington, for Ecology's reasonable and appropriate costs, including costs due under paragraph 70, as shown by an itemized statement of such costs compiled and presented in conformance with State of Washington Financial Management standards and procedures

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associated with Ecology's oversight of the Remedial Design and Remedial Action that are consistent with the NCP or the Model Toxics Control Act. Within ninety (90) days of the end of such fiscal quarter, Ecology will submit to the Settling Defendant an itemized statement of Ecology's expenses for the previous quarter. Following receipt of the itemized statement, the Settling Defendant shall pay, within ninety (90) days, into the State Toxics Control Account of the State of Washington, the required sum, which shall include any interest due.

72. If oversight costs are outstanding at the time the United States and the State of Washington plan to terminate this Consent Decree, Settling Defendant shall, within sixty (60) calendar days of the submission of an itemized cost statement and supporting documentation by the United States and/or the State of Washington, and before termination of this Consent Decree, pay such oversight costs and any interest due.

73. The Response Costs set forth in this Section are not inconsistent with the NCP.

XVIII. STIPULATED PENALTIES

74. Settling Defendant shall pay stipulated penalties in the amounts set forth in Paragraph 81 for each violation of the requirements of this Consent Decree or of the Project Management and Work Plans approved pursuant to this Consent Decree, unless the Government Plaintiffs determine that such

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failure is excused under Section XIV ("Force Majeure"). Violations by Settling Defendant shall include, but are not limited to, failure to complete an activity under this Consent Decree within the specified time schedules in and approved under this Consent Decree. Modifications of the time for performance shall be made pursuant to Section XXII ("Extension of Schedules").

75. All penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

76. Following the determination by the Government Plaintiffs that Settling Defendant has failed to comply with any requirement of this Consent Decree, the Government Plaintiffs shall give Settling Defendant written notification of the same and describe the noncompliance. This notice shall also indicate the amount of penalties currently due, and the rate of accrual for continuous violations.

77. All penalties owed under this Section shall be payable within thirty (30) calendar days of receipt of the notification of noncompliance, unless Settling Defendant invokes the dispute resolution procedures under Section XV. Penalties shall accrue from the date of violation regardless of whether the

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Government Plaintiffs have notified Settling Defendant of a violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to Paragraph 84 of this Section. Such penalties shall be paid by certified check one-half to the "Hazardous Substances Superfund" and one-half to the State Toxics Control Account, and shall contain Settling Defendant's complete and correct address, the site name, and the civil action number. All checks to the Hazardous Substance Superfund shall be mailed to U.S. Attorney's Office, Attn: Barbara Brouner, 800 Fifth Avenue, Seattle, Washington, 98101. All checks to the State Toxics Control Account shall be sent to the appropriate account, identified by Ecology.

78. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Settling Defendant's obligation to fully perform the requirements of this Consent Decree.

79. Settling Defendant may dispute the Government Plaintiffs' right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV. Penalties shall accrue but need not be paid during the dispute resolution period. If the District Court becomes involved in the resolution of the dispute, the period of dispute shall end upon the rendering of a decision by the District Court regardless of whether any party appeals such decision. If Settling Defendant does not prevail upon resolution, the Government Plaintiffs have

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the right to collect all penalties which accrue prior to and during the period of dispute. In the event of an appeal, such penalties shall be placed into an escrow account until a decision has been rendered by the final court of appeal. If Settling Defendant prevails upon resolution, no penalties shall be payable.

80. No penalties shall accrue for violations of this Consent Decree caused by events determined by the Government Plaintiffs to be beyond the control of Settling Defendant as identified in Section XIV ("Force Majeure"). Settling Defendant has the burden of proving force majeure or compliance with this Consent Decree.

81. The following stipulated penalties shall be payable per violation per day for any noncompliance identified in Paragraph 74 above. The Government Plaintiffs shall assess the stipulated penalties at or above the minimum and at or below the maximum. Such assessment is committed to the sole discretion of the Government Plaintiffs and is not subject to dispute.

Minimum	Maximum	Period of Noncompliance
$2,000	$5,000	1st through 14th day
$5,000	$10,000	15th through 30th day
$10,000	$25,000	31st day and beyond

82. No payments made under this Section shall be tax deductible.

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83. This Section shall remain in full force and effect for the term of this Consent Decree.

84. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling charge will be assessed at the end of each thirty day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within ninety (90) calendar days of the due date.

85. If Settling Defendant fails to pay stipulated penalties, the Government Plaintiffs may institute proceedings to collect the penalties. Notwithstanding the stipulated penalties provisions of this Section, the Government Plaintiffs may elect to assess civil penalties and/or bring an action in U.S. District Court pursuant to Section 109 of CERCLA, as amended, or other applicable law to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude the Government Plaintiffs from electing to pursue any other remedy or sanction to enforce this Consent Decree, including seeking additional penalties for court or criminal contempt proceedings, and nothing shall preclude the Government Plaintiffs from seeking statutory penalties against Settling Defendant for violations of any statutory or regulatory requirements.

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XIX. COVENANT NOT TO SUE

86. In consideration of actions which will be performed and payments which will be made by the Settling Defendant under the terms of this Consent Decree, and except as otherwise specifically provided in this Decree, the Government Plaintiffs covenant not to sue the Settling Defendant or its officers, directors, employees, or agents for Covered Matters. With respect to suits brought by the Government Plaintiffs, Covered Matters shall include the civil claims with respect to the Site asserted by Plaintiff United States on behalf of EPA, under Sections 106 and 107 of CERCLA and by the State of Washington on behalf of Ecology, under CERCLA or the Model Toxics Control Act, in the Complaint filed herein. With respect to future liability, this covenant not to sue shall take effect upon certification by the Government Plaintiffs of the completion of the Remedial Action concerning the Site.

87. "Covered Matters" does not include:

A. Liability arising from hazardous substances removed from the Site;

B. Natural resource damages;

C. Criminal liability;

D. Claims based on a failure by the Settling Defendant to meet the requirements of this Consent Decree;

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E. Liability for violations of Federal and State law which occur during implementation of the remedial action;

F. Any matters for which the Government Plaintiffs are owed indemnification under Section XXI hereof;

G. Liability for costs incurred by the Government Plaintiffs arising from the past, present, or future disposal of hazardous substances outside of this Site;

H. Liability for contamination at the Site by contaminants not identified in the ROD and those contaminants not subject to Maximum Contaminant Levels promulgated pursuant to the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300 et seq.

XX. RESERVATION OF RIGHTS

88. Notwithstanding any other provision in this Consent Decree, the Government Plaintiffs reserve the right to institute proceedings in this action or in a new action or to issue an order seeking to compel the Settling Defendant to perform any additional response work at the Site or necessitated by a release from the Site, and the Government Plaintiffs reserve the right to institute proceedings in this action or in a new

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action seeking to reimburse the Government Plaintiffs for their Response Costs relating to the Site, if:

A. for proceedings prior to certification of completion of the Remedial Action concerning the Site;

(i) conditions at the Site, previously unknown to the United States or the State of Washington, are discovered after the entry of this Consent Decree, or

(ii) information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information indicates that the Remedial Action is not adequately protective of human health or the environment; and

B. for proceedings subsequent to the certification of completion of the Remedial Action concerning the Site,

(i) conditions at the Site, previously unknown to the United States or the State of Washington, are discovered after the certification of completion by the Government Plaintiffs, or

(ii) information is received, in whole or

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in part, after the certification of completion,

and these previously unknown conditions or this information indicates that the remedial action is not adequately protective of human health or the environment.

89. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in Section XIX shall not relieve the Settling Defendant of its obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD, which are incorporated herein. The United States and the State of Washington reserve their rights to take response actions at the Site in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: (1) resulting from such a breach; (2) relating to any portion of the Work funded or performed by the United States and the State of Washington; or (3) incurred by the United States and the State of Washington as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Site.

90. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site. The Government

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Plaintiffs expressly reserve the right to sue any person other than the Settling Defendant, in connection with the Site.

XXI. INDEMNIFICATION; OTHER CLAIMS

91. Settling Defendant agrees to indemnify, save, and hold harmless the United States, EPA, the State of Washington, Ecology and/or their agents, employees and representatives from any and all claims or causes of action arising from acts or omissions of Settling Defendant and/or its officers, employees, agents, contractors or representatives in carrying out the activities pursuant to this Consent Decree. EPA and Ecology shall notify Settling Defendant of any such claims or actions within sixty (60) working days of receiving notice that such a claim or action is anticipated or has been filed. EPA and Ecology agree not to act with respect to any such claim or action without first providing Settling Defendant an opportunity to participate. Settling Defendant does not hereby assume liability or responsibility for claims or liabilities arising from the negligence of the Government Plaintiffs, its officers, agents or representatives.

92. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, corporation, or state or local government entity not a signatory to this Consent Order for any liability it may have arising out

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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.

93. EPA and Ecology are not to be construed as parties to, and do not assume any liability for any contract entered into by Settling Defendant in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of Settling Defendant.

94. Settling Defendant waives its right to assert any claims against the Hazardous Substances Superfund under CERCLA that are related to any past costs or costs incurred in the Work performed pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as EPA's preauthorization of a claim against the Hazardous Substances Superfund.

95. Settling Defendant waives its right to assert any claims against the State Toxics Control Account under the Model Toxics Control Act that are related to any past costs or costs incurred in the work performed pursuant to this Consent Decree, and nothing in this Consent Decree shall be considered as Ecology's preauthorization of a claim against the State Toxics Control Account.

96. Nothing in this Consent Decree shall be construed to limit the right of the City of Tacoma to apply for grants from

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the local toxics control account, pursuant to Section 7(3) of the Model Toxics Control Act and any regulations promulgated thereunder, or any other financial assistance which may become available in the future from any source.

97. The Settling Defendant covenants not to sue or assert any claims or causes of action against the United States and the state of Washington, their employees, the Hazardous Substance Superfund and the State Toxics Control Account for costs, damages or attorney's fees arising out of response activities at the site.

XXII. EXTENSION OF SCHEDULES

98. Any request by Settling Defendant for an extension shall be submitted in writing and shall specify:

A. the timetable, or schedule for which an extension is sought;

B. the length of the extension sought;

C. the cause for the extension; and

D. any related timetable, deadline or schedule that would be affected if the extension were granted.

99. The Government Plaintiffs may extend timetables and schedules upon receipt of a timely request for extension. An extension may be sought in the event of any one of the following:

A. An event of force majeure as defined in Article XIV;

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B. A delay caused by the Government Plaintiff's failure to meet any requirement of this Consent Decree; or

C. A stoppage of work pursuant to Section XXIII, or Paragraph 47 of this Consent Decree.

100. If the Government Plaintiffs agree that an extension of schedule is warranted under the circumstances, the Settling Parties may modify the RD/RA Work schedule to provide such additional time necessary to allow the completion of the specific phase of the Work and/or any succeeding phase of the work affected by such delay. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable or schedule shall not be extended except in accordance with the determination resulting from the dispute resolution process.

101. In addition, the Government Plaintiffs' designated remedial project managers may provide extensions of up to thirty (30) days in other circumstances if they jointly determine in their collective discretion that such extensions are appropriate. Such determinations are not subject to dispute resolution.

102. Upon any modification of schedules as provided herein, the Government Plaintiffs shall file a notice reflecting such modifications with the Court.

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XXIII. ENDANGERMENT

103. In the event the Government Plaintiffs determine or concur in a determination by another local, state, or federal agency that activities implementing this Consent Decree, or any other circumstances or activities, are creating or have the potential to create an imminent and substantial endangerment to the public health or welfare or the environment, the Government Plaintiffs may order the Settling Defendant to stop further implementation of this Consent Decree for such period of time as needed to abate the danger.

104. In the event the Settling Defendant determines that activities undertaken in furtherance of this Consent Decree or any other circumstances or activities are creating or have the potential to create an imminent and substantial endangerment to the people on the Site or in the surrounding area or to the environment, the Settling Defendant may stop implementation of this Consent Decree for such periods of time necessary for the Government Plaintiffs to evaluate the situation and determine whether the Settling Defendant should proceed with implementation of the Consent Decree or whether the work stoppage should be continued until the danger is abated. The Settling Defendant shall notify the project managers as soon as possible, but not later than twenty-four (24) hours if the stoppage occurs on a weekday, and forty-eight (48) hours if the stoppage occurs on a weekend or holiday, after such stoppage of work, and provide the

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Government Plaintiffs with documentation of its analysis in reaching its determination that it was necessary to stop work. If the Government Plaintiffs disagree with the determination by the Settling Defendant it may order the Settling Defendant to resume implementation of the Consent Decree.

105. Any disagreements pursuant to this clause shall be resolved through the dispute resolution procedures.

XXIV. NOTICES

106. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XV hereof, such correspondence shall be directed to the following individuals at the addresses specified:

As to EPA:

Three copies to:

a. Tacoma Landfill Remedial Project Manager (HW-113)
Superfund Branch
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

As to the State of Washington or Ecology,

Three copies to:

b. Tacoma Landfill Site Manager
Department of Ecology
Hazardous Waste Investigations and Cleanup Program
Mail Stop PV-11
Olympia, Washington 98504-8711

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As to Settling Defendant,

One copy to:

c. Tacoma City Attorney
1120 Municipal Building
747 Market Street
Tacoma, Washington 98402

d. Tacoma Director of Public Works
420 Municipal Building
747 Market Street
Tacoma, Washington 98402-3769

XXV. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

107. The Consenting Parties and Settling Defendant agree that if the Government Plaintiffs determine that the Work is properly performed as set forth in Section V and VI hereof, then the Work is consistent with the provisions of the NCP pursuant to 42 U.S.C. § 9605.

XXVI. COMPLIANCE WITH LAWS

108. Subject to the limitations of Paragraph 107, all actions carried out by the Consenting Parties pursuant to this Consent Decree shall be done in accordance with all applicable federal and state statutes, rules, regulations and ordinances.

XXVII. RESPONSE AUTHORITY

109. Nothing in this Consent Decree shall be deemed to limit the response authority of the Government Plaintiffs under 42 U.S.C. §§ 9604 and 9606, and the Model Toxics Control Act, or to alter the applicable legal principles governing the judicial

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review of EPA's Record of Decision concerning remedial action at the Site.

XXVIII. MODIFICATION

110. Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all parties to this Consent Decree.

XXVIX. PUBLIC PARTICIPATION

111. The Government Plaintiffs shall publish a notice of this Consent Decree's availability for review and comment upon its lodging with the United States District Court as a proposed settlement in this matter pursuant to the provisions of 42 U.S.C. § 9622 and 28 C.F.R. § 50.7. The Government Plaintiffs will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during at least a thirty (30) calendar day period following such notice. The Government Plaintiffs will file with the Court a copy of any comments received and the responses of the Government Plaintiffs to such comments. After the closing of the public comment period, the Government Plaintiffs reserve the right after review of such comments to withdraw their consent to the settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

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112. Ecology has provided public notice and held a hearing on this proposed settlement in compliance with Section 4(4)(a) of the Model Toxics Control Act. Ecology finds that this Consent Decree will lead to a more expeditious cleanup and is in compliance with cleanup standards under Section 3(2)(d) and remedial orders issued by Ecology.

XXX. COMMUNITY RELATIONS

113. Settling Defendant shall cooperate with the Government Plaintiffs in providing information regarding the progress of the remedial design and remedial action at the Site to the public. As may be requested by the Government Plaintiffs, Settling Defendant agrees to participate in the preparation of appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA or Ecology to explain activities at or concerning the Site. The Government Plaintiffs shall be responsible for community relations.

XXXI. FINANCIAL RESPONSIBILITY

114. The Settling Defendant shall, within ten (10) working days of the date of entry of this Consent Decree, and every ninety (90) calendar days thereafter, submit to the Government Plaintiffs, financial reports that include cash flow projections that project the amount of funds that will be necessary to pay for all work related to performing the work

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required by this Decree on a quarterly basis for the following year, as well as a description of the amount and type of funding currently available to pay such costs. If the amount of funding is less than the amount projected to be needed for the following 180 day period, the Settling Defendant shall within thirty (30) calendar days of submittal of the financial report:

A. Obtain or otherwise make available sufficient money to bring the amount of funds available up to the amount projected to be needed for the 180 calendar days following submittal of the financial report; and

B. Submit to the Government Plaintiffs an updated financial report which includes a description of the amount and type of all additional funding made available.

115. The Government Plaintiffs, through their review and/or approval of financial reports, do not guarantee the monetary sufficiency of funding obtained or otherwise made available pursuant to this section, or the legal sufficiency of any arrangements made to fund the work required by this Consent Decree. Notwithstanding the requirements of this section, Settling Defendant remains fully responsible for all its obligations under this Decree.

XXXII. EFFECTIVE AND TERMINATION DATES

116. This Consent Decree shall be effective upon the date of its entry by the Court.

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117. Certification of Completion of Remedial Action:

a. Application

When Settling Defendant determines that it has completed the Work, it shall submit to the Government Plaintiffs a Notice of Completion and a final report as required by the RD/RA Work Plan. The final report must summarize the Work performed, any modification to the RD/RA Work Plan, and the performance standards achieved. The summary shall include or reference any supporting documentation.

b. Certification

Upon receipt of the Notice of Completion of Remedial Action, the Government Plaintiffs shall review the accompanying report and any other supporting documentation and the remedial actions taken. Prior to the issuance of a Certification of Completion, the Government Plaintiffs shall undertake a review of the Remedial Action under Sections VII and VIII of this Consent Decree. The Government Plaintiffs shall issue a Certification of Completion upon its determination that (1) Settling Defendant have satisfactorily completed the Work and has achieved standards of performance required under this Consent Decree; (2) no corrective action under Section VIII is necessary; (3) all Response Costs and stipulated penalties required to be paid under this Consent Decree have been paid in full by Settling

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Defendant; and (4) the terms of this Consent Decree have been complied with.

118. Termination

Upon the filing of the Certification of Completion, pursuant to Paragraph 117, and a showing that the other terms of this Consent Decree (other than the post-termination obligations referred to below) including payment of all costs and stipulated penalties due hereunder, have been complied with, this Consent Decree shall be terminated upon motion of any Settling Party and order of this Court. However, Settling Defendant's obligation to finance and perform required maintenance and other routine maintenance that would normally be performed by a property owner (such as patching of pavement, and caring for vegetation) and the obligation to continually monitor groundwaters and surface waters at the Site as set forth in the SOW and RD/RA Work Plan, and the conveyance of site requirements and institutional controls imposed by paragraph 21, shall survive the termination of this Consent Decree and shall be enforceable by the United States and the State of Washington by re-institution of this action or by institution of a new action.

XXXIII. RETENTION OF JURISDICTION

119. This Court shall retain jurisdiction over this matter for the purposes of interpreting, implementing, modifying,

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enforcing or terminating the terms of this Consent Decree, and of adjudicating disputes between the parties under this Consent Decree.

ENTERED this _____day of _____, 1991.

_____
UNITED STATES DISTRICT JUDGE

The parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7 and 42 U.S.C. § 9622. The consent of the State of Washington is subject to the public notice and hearing requirements of Section 4(4) of the Model Toxics Control Act and is expressly conditioned upon the entry of findings by the Department of Ecology required therein.

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CITY CLERK CONTRACT/AGREEMENT NO. 4307

FOR THE CITY OF TACOMA, WASHINGTON

By: _____ Dated: 3/20/91
Ray E. Corpuz, Jr.
City Manager

By: _____ Dated: 3/20/91
for FRED A THOMPSON
Director of Public Works

By: _____ Dated: 3/21/91
Peter Luttropp
Director of Finance
3/21/91

Attest: _____ Dated: 3-20-91
Genelle Birk
City Clerk

Approved as to form:

By: _____ Dated: 3/20/91
City Attorney

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FOR THE UNITED STATES OF AMERICA

By: _____ Dated: 3/22/91

GEORGE W. VAN CLEVE
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

By: _____ Dated: 3/22/91

STEVEN NOVICK
Attorney
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20536

MIKE McKAY
UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104

By: _____ Dated: March 20, 1991

DANA A. RASMUSSEN
Regional Administrator
United States Environmental Protection Agency
Region 10
Seattle, Washington 98101

By: _____ Dated: March 20, 1991

ANDREW J. BOYD
Assistant Regional Counsel
United States Environmental Protection Agency
Region 10
Seattle, Washington 98101

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FOR THE STATE OF WASHINGTON

By: Carol L. Fleskes Dated: 3/20/91

CAROL L. FLESKES
Hazardous Waste Investigations
and Cleanup Program Manager
Department of Ecology
Olympia, Washington 98504

By: Dated: 3/20/91

JEFFREY S. MYERS
Assistant Attorney General
State of Washington
Olympia, Washington 98504

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