AGREEMENT REGARDING CONFIDENTIALITY
OF BUSINESS INFORMATION
TRW Microwave, Inc. (Building 825) Site
Offsite Operable Unit

This Agreement Regarding Confidentiality of Business Information ("Agreement") is entered into as of _____ ____, 2018 between the United States Environmental Protection Agency (EPA) and Northrop Grumman Corporation ("Northrop"). EPA and Northrop are referred to as "the Parties."

RECITALS

WHEREAS:

A. EPA is incurring oversight costs at the TRW Microwave Superfund Site and the Offsite Operable Unit (collectively referred to as "Sites"), both located in Sunnyvale, California, and will be submitting periodic claims for cost recovery, known as Requests for Payment, to Northrop.

B. The Parties agree that settlement of EPA's Requests for Payment may involve the production of documents which have been submitted to EPA by EPA's contractors at the Sites, which are currently Aptim Federal Services, Inc. (f/k/a CB&I Federal Services, Inc. and Shaw Environmental & Infrastructure, Inc.) and Herndon Solutions Group (collectively, the "Contractors"). In future oversight work at the Sites, EPA may utilize the services of Contractors not specified in this Agreement.

C. Documents submitted from the Contractors to EPA may contain information entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B—a set of regulations covering confidentiality of business information.

D. The Parties wish to work together so that EPA can provide appropriate documents containing confidential information to Northrop, and Northrop will handle those documents according to the terms of this Agreement.

Therefore, the Parties agree as follows:

TERMS AND CONDITIONS

1. To support a relevant Request for Payment, EPA will provide to Northrop relevant documents containing information which may be entitled to confidential treatment. Northrop will handle those documents according to the terms of this Agreement.

2. As used in this Agreement, the term "confidential information" means trade secrets or commercial or financial information submitted by a person to EPA and which may be entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. As of the date of this

Agreement, EPA has not made a confidentiality determination pursuant to 40 C.F.R. Part 2, Subpart B regarding the documents and information subject to this Agreement.

3. All information to be produced by EPA subject to this Agreement will be presumed to be, and treated as, confidential information, as defined in paragraph 2. EPA will indicate, both in a letter transmitting the documents and in a cover sheet for the documents, that all documents in the group contain confidential information.

4. Information designated as confidential under this Agreement shall not be used or disclosed by Northrop or any other person subject to paragraph 5 below for any purpose other than Northrop's review and evaluation of EPA's Requests for Payment. Northrop may request in writing that EPA make a confidentiality determination under 40 C.F.R. Part 2, Subpart B as to documents or information produced by EPA according to this Agreement. Any such request must include a detailed description of the necessity and appropriateness of disclosure by Northrop of the documents or information to parties or under circumstances other than as provided in this Agreement.

5. Northrop's employees and counsel who obtain information designated as confidential pursuant to this Agreement, and any nonparty subject to this Agreement, shall not disclose or permit disclosure of this information to any other person, including any officer, director, employee, agent, consultant, or representative of Northrop, Northrop's counsel, or any nonparty, except in the following circumstances:

    a. Disclosure may be made to employees of Northrop or of Northrop's counsel who have responsibility for review and evaluation of EPA's Requests for Payment. Any employee to whom disclosure is made shall be advised of, and become subject to, the provisions of this Agreement prior to disclosure by executing the Confidentiality Agreement (Annex 1). Employees do not include persons, firms, or corporations engaged by Northrop or Northrop's counsel on a contract basis, who shall be subject to the requirements of subparagraph b. of this paragraph.

    b. Disclosure may be made to consultants, witnesses, experts, or employees of experts ("Experts") employed or otherwise engaged by Northrop or Northrop's counsel to assist in the review and evaluation of EPA's Requests for Payment. Prior to disclosure to an Expert, the Expert must agree to be bound by the terms of this Agreement by executing the Confidentiality Agreement (Annex 1). A copy of each executed Confidentiality Agreement shall be submitted to EPA not less than five business days prior to disclosure of the business information to the Expert.

6. Northrop, Northrop's counsel, Northrop's Experts, and any other person that obtains information designated as confidential subject to this Agreement shall take all necessary and appropriate measures to maintain the confidential nature of the information, shall share such information only with persons authorized to receive it pursuant to this Agreement, and shall retain the information in a secure manner. Except as provided in paragraph 5, no other person shall be permitted to access the information.

7. Any person who obtains access to information designated as confidential under this Agreement may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof only for the purpose of review and evaluation of the relevant EPA Request for Payment relating to the Site. All copies, duplicates, extracts, and other reproductions shall be subject to the terms of this Agreement to the same extent as original documents.

8. Any unauthorized disclosure of information designated as confidential under this Agreement shall not result in a waiver of the Contractors' claim of confidentiality.

9. Within sixty (60) days of the later of (a) the date Northrop pays a relevant Request for Payment in full or (b) the date of any appeal or challenge to the relevant Request for Payment has been resolved and no further appeals or challenges can be brought by Northrop, any person who obtained information designated as confidential under this Agreement and responsive to a relevant Request for Payment shall assemble and return such information to EPA, including all copies, extracts, summaries, or descriptions of the information or portions thereof, except for such information that constitutes the work product of Northrop or its counsel, which shall be destroyed. This return and destruction will be certified in writing by the person who obtained the information from EPA. Notwithstanding the foregoing, EPA will retain the returned information for a period of two years after expiration of the due date of the relevant Request for Payment, and will make the information available again to Northrop during that two-year period for a valid business reason (e.g., an internal audit), upon good cause shown to EPA in writing. The destruction of work product incorporating confidential information may be postponed during this same two-year period for a valid business reason, but must in any case be accomplished within two years of expiration of the due date of the relevant Request for Payment.

Dated: _____ Covington & Burling LLP

By: _____
Wendy Feng
Counsel for Northrop Grumman Corporation

Dated: _____ U.S. Environmental Protection Agency, Region 9

By: _____
Rebekah Reynolds
Assistant Regional Counsel

Attachment: Annex 1—Business Information Confidentiality Agreement

Annex 1

Business Information Confidentiality Agreement
TRW Microwave, Inc. (Building 825) Site
Offsite Operable Unit

The undersigned is currently an affiliate of _____, which is located at _____. The undersigned is employed by Northrop Grumman Corporation ("Northrop") or Northrop's counsel in this matter or has been engaged as a consultant or contractor by Northrop or Northrop's counsel in this matter.

The undersigned hereby acknowledges that he or she has read the foregoing Agreement regarding Confidentiality of Business Information ("Agreement") executed by the attorneys for the parties involved in resolution of issues relating to the U.S. Environmental Protection Agency's (EPA) Request for Payment of EPA Costs, dated _____, concerning the TRW Microwave, Inc. (Building 825) Site and Offsite Operable Unit. The undersigned understands the terms of the Agreement and agrees to be bound by them, and understands that disclosure of information that has been designated as confidential by the submitter of that information may cause substantial harm to the affected business's competitive position. Among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Agreement, shall retain the information in a secure manner, and shall use the information only for the purposes authorized by the Agreement. The undersigned understands that the pledge of confidentiality under this Agreement continues after any resolution by the parties of any dispute associated with EPA's Request for Payment of EPA Costs has become final. The undersigned understands that a breach of the Agreement may subject him or her to civil claims for damages and to criminal prosecution under 42 U.S.C. § 9604(e)(7)(B).

Dated: _____ By: _____

_____
[NAME AND TITLE]