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**STATE OF WASHINGTON
CLARK COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CLARK COUNTY, WASHINGTON

Defendant.

NO. 06-2-05340-4

**AMENDED PROSPECTIVE
PURCHASER CONSENT DECREE**

RE: CAMP BONNEVILLE
MILITARY RESERVATION

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- Exhibit A: Regional Map
- Exhibit B: Map of RAU 1
- Exhibit C: Map of RAU 2A
- Exhibit D: Map of RAU 2B
- Exhibit E: Map of RAU 2C
- Exhibit F: Map of RAU 3
- Exhibit G: Legal Descriptions of Property
- Exhibit H: RAU 2A Cleanup Action Plan
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- Exhibit J: Project Schedule

I. INTRODUCTION

1
2 1. In 2006, this prospective purchaser consent decree (Decree) was made and
3 entered into by and between the State of Washington, Department of Ecology (Ecology), Clark
4 County, Washington (Clark County), and the Bonneville Conservation, Restoration, and
5 Renewal Team LLC (BCRRT LLC). The mutual objectives of Ecology, Clark County, and the
6 BCRRT LLC were to provide for remedial actions at a facility where there have been releases
7 or threatened releases of hazardous substances and to resolve the potential liability of Clark
8 County and the BCRRT LLC for remedial actions within the facility. This Decree required
9 Clark County and the BCRRT LLC to remediate the Camp Bonneville Military Reservation as
10 defined in this Decree. The remedial actions were described in Section X of this Decree and in
11 the attached exhibits.

12 2. Ecology, Clark County and BCRRT LLC now seek to amend this Decree. In
13 amending the Decree with respect to BCRRT LLC, the mutual objectives of Ecology, Clark
14 County, and BCRRT LLC are to dismiss BCRRT LLC from this Decree. The mutual
15 objectives of Ecology and Clark County in amending this Decree are to update the terms and
16 conditions of this Decree and to continue to provide for remedial actions at this facility where
17 there have been releases or threatened releases of hazardous substances and to resolve the
18 potential liability of Clark County for remedial actions within the facility. The amended
19 Decree requires Clark County to remediate the Camp Bonneville Military Reservation as
20 defined in this amended Decree and exhibits hereto.

21 3. A Joint Motion to Amend the Decree entered in this action is being filed
22 simultaneously with this Decree, as amended. An answer has not been filed, and there has not
23 been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the
24 issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these
25 matters without litigation is reasonable and in the public interest and that entry of this Decree is
26 the most appropriate means of resolving these matters.

1 4. In signing this amended Decree, Ecology and Clark County agree to its entry
2 and agree to be bound by its terms as provided herein.

3 5. By entering into this Decree, Ecology and Clark County do not intend to
4 discharge non-settling Parties from any liability they have with respect to the matters alleged in
5 the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from
6 any liable persons for sums expended under this Decree, and Ecology retains the right to
7 initiate enforcement action against any liable person not a Party to this Decree.

8 6. This Decree shall not be construed as proof of liability or responsibility for any
9 releases of hazardous substances or cost for remedial action nor an admission of any facts;
10 provided, however, that Clark County shall not challenge the jurisdiction of Ecology in any
11 proceeding to enforce this Decree.

12 7. The Court is fully advised of the reasons for entry of this Decree, and good
13 cause having been shown, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

14 **II. AUTHORITY, JURISDICTION, AND VENUE**

15 8. This Court has jurisdiction over the subject matter and over the Parties pursuant
16 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), and pursuant to Chapter
17 70.105 RCW, the Hazardous Waste Management Act (HWMA). Venue is proper in Clark
18 County pursuant to RCW 70.105D.050(5)(b) and RCW 4.12.025.

19 9. Pursuant to RCW 70.105.120, the Washington State Attorney General, at the
20 request of Ecology, has authority to bring actions to enforce any requirement in the HWMA.

21 10. Pursuant to RCW 70.105D.040(5), the Washington State Attorney General has
22 the authority to agree to a settlement with a person not currently liable for remedial action at a
23 facility who proposes to purchase, redevelop, or reuse the facility, provided Ecology
24 determines, after public notice and comment, that:

25 (A) The settlement will yield substantial new resources to facilitate cleanup;
26

1 (B) The settlement will expedite remedial action consistent with the rules adopted
2 under MTCA; and

3 (C) Based on available information, the redevelopment or reuse of the facility is not
4 likely to contribute to any existing release or threatened release at the Site, interfere with any
5 remedial actions that may be needed at the Site, or increase health risks to persons at or in the
6 vicinity of the Site.

7 11. Pursuant to RCW 70.105D.040(4)(b), such a settlement shall be entered as a
8 consent decree issued by a court of competent jurisdiction.

9 III. PARTIES BOUND

10 12. This Decree shall apply to and be binding upon the signatories to this Decree
11 (Parties). The undersigned representative of each Party hereby certifies that he or she is fully
12 authorized to enter into this Decree and to execute and legally bind such party to comply with
13 the Decree. Clark County agrees to undertake the actions required of it by the terms and
14 conditions of this Decree and not to contest state jurisdiction regarding this Decree. Clark
15 County shall provide a copy of this Decree to all agents, contractors, and subcontractors
16 retained to perform work required by this Decree and shall ensure that all work undertaken by
17 such contractors and subcontractors will be in compliance with the Decree.

18 IV. DEFINITIONS

19 13. Unless otherwise expressly provided herein, the definitions set forth in Chapter
20 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this
21 Decree. Whenever the terms listed below are used in this Decree or in the attachments hereto,
22 the following definitions shall apply:

23 (A) “Decree” means this Prospective Purchaser Consent Decree, all amendments
24 thereto, and each of the exhibits attached to this Decree. Unless otherwise specified, “Decree”
25 means the most current amended version of the Prospective Purchaser Consent Decree. All
26

1 exhibits are integral and enforceable parts of this Decree. In the event of conflict between this
2 Decree and any exhibit attached to this Decree, this Decree shall control.

3 (B) “Section” means a portion of this Decree identified by a Roman numeral and
4 including one or more Paragraphs.

5 (C) “Paragraph” means a portion of this Decree identified by an Arabic Numeral.

6 (D) “Parties” means the Washington State Department of Ecology (Ecology) and
7 Clark County, Washington (Clark County).

8 (E) “Bonneville Conservation, Restoration, and Renewal Team LLC” or “BCRRT
9 LLC” means the conservation non-profit that acquired the Property through the early transfer
10 process described in Section VI.A and undertook certain remedial actions required of it under
11 this Decree.

12 (F) “Site” means all potentially contaminated areas where hazardous substances
13 originating from within the Property boundary may have come to be located. The Site is a
14 “facility” as defined at RCW 70.105D.020(4). The Site is herein referred to as the Camp
15 Bonneville Site.

16 (G) “Property” means the Camp Bonneville Military Reservation (CBMR), which is
17 located in Clark County, Washington, approximately twelve (12) miles northeast of the center
18 of the City of Vancouver. The terms “Property,” “Camp Bonneville Military Reservation,”
19 and “CBMR” all refer to the property that is the subject of this Decree. The Property lies along
20 both banks of Lacamas Creek, a tributary of the Columbia River, and occupies approximately
21 3,840 acres. The Property is further described in Exhibit G, attached hereto, and incorporated
22 by reference. The location of the Property is also illustrated in Exhibit A, attached hereto.
23 Prior to the entry of this Decree and completion of the early transfer process described in
24 Section VI.A of this Decree, the Army owned 3,020 acres of the Property and leased the
25 remaining 820 acres of the Property from the Washington State Department of Natural
26

1 Resources (DNR). The Property includes the entire 3,840 acres. The Property consists of the
2 “Early Transfer Parcel” and the “DNR Parcels,” as defined in this Section of the Decree.

3 (H) “Early Transfer Parcel” means the approximately 3,020-acre parcel of the
4 Property being transferred to Clark County by the Army under the process described in Section
5 VI.A of this Decree. A legal description and an illustration of the parcel are provided
6 respectively in Exhibits G and A, attached hereto.

7 (I) “DNR Parcels” means the two parcels of the Property, totaling approximately
8 820 acres, that were owned by DNR and leased to the Army at the time of entry of this Decree.
9 The two parcels are adjacent to the Early Transfer Parcel and respectively located northeast
10 and south of the Early Transfer Parcel. These parcels were transferred to Clark County and
11 then immediately to BCRRT on June 2, 2009. A legal description and an illustration of the
12 two parcels are provided respectively in Exhibits G and A, attached hereto.

13 (J) “Central Impact Target Area” or “CITA” means the approximately 465-acre
14 fenced portion of the Property identified and illustrated in Exhibit A. The CITA served as the
15 target area for several of the firing ranges at the CBMR, including the 105 and 155 millimeter
16 artillery ranges.

17 (K) “Dangerous wastes” means any dangerous waste as defined in RCW
18 70.105.010(5) and any dangerous waste designated by rule pursuant to Chapter 70.105 RCW,
19 including, as defined in WAC 173-303-040, any solid waste designated in WAC 173-303-070
20 through 173-303-100 as dangerous waste, extremely hazardous waste, or mixed waste.
21 Dangerous wastes are “hazardous substances” under RCW 70.105D.020(7)(a).

22 (L) “Dangerous constituents” means, as defined in WAC 173-303-040 and
23 173-303-646(1)(d), any constituent identified in WAC 173-303-9905 or 40 C.F.R. Part 264
24 Appendix IX; any constituent that caused a solid waste to be listed as a dangerous waste or to
25 exhibit a dangerous characteristic under Chapter 173-303 WAC or to meet a dangerous waste
26

1 criteria under Chapter 173-303 WAC; and any constituent defined as a hazardous substance
2 under RCW 70.105D.020(7).

3 (M) “Solid waste” means, as defined in WAC 173-303-016(3), any discarded
4 material that is not excluded by WAC 173-303-017(2) or that is not excluded by variance
5 granted under WAC 173-303-017(5), and includes military munitions identified as a solid
6 waste in WAC 173-303-578(2).

7 (N) “Military munitions” means, as defined in WAC 173-303-040, all ammunition
8 products and components produced or used by or for the U.S. Department of Defense or the
9 U.S. Armed Services for national defense or security, including military munitions under the
10 control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy,
11 and National Guard personnel. As further defined in WAC 173-303-040, the term “military
12 munitions” includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics,
13 chemical and riot control agents, smokes and incendiaries used by Department of Defense
14 components, including bulk explosives and chemical warfare agents, chemical munitions,
15 rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition,
16 small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and
17 dispensers, demolition charges, and devices and components thereof. For the purposes of this
18 Decree, the term “military munitions” also means all ammunition products and components
19 produced or used with the permission of the U.S. Department of Defense or the U.S. Armed
20 Services for national defense or security.

21 (O) “Munitions and Explosives of Concern” or “MEC” distinguishes specific
22 categories of military munitions that may pose unique explosives safety risks and means
23 (1) Unexploded ordnance (UXO), as defined in 10 U.S.C. § 101(e)(5)(A) through (C),
24 WAC 173-303-040, and this Decree; (2) Discarded military munitions (DMM), as defined in
25 10 U.S.C. § 2710(e)(2); or (3) Munitions constituents (MC) (e.g., TNT, RDX), as defined in
26 10 U.S.C. § 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

1 (P) “Unexploded ordnance” or “UXO” means, as defined in WAC 173-303-040,
2 military munitions that have been primed, fused, armed, or otherwise prepared for action; have
3 been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard
4 to operations, installations, personnel, or material; and remain unexploded either by
5 malfunction, design, or any other cause.

6 (Q) “Anomalies Selection Board” or “ASB” means the Board that reviews data
7 regarding surface and subsurface anomalies and makes decisions regarding the further
8 investigation and remediation of those anomalies based on that data. The members of the ASB
9 shall be selected by the mutual agreement of the project coordinators and include at least one
10 representative from the U.S. Army. If the project coordinators are unable to agree on the
11 membership of the ASB or if the ASB is unable to reach mutual agreement on the further
12 investigation or remediation of anomalies, then Ecology’s project coordinator will issue a
13 written decision. Clark County may request review of any decision by Ecology’s project
14 coordinator in accordance with the dispute resolution process set forth in Section XVI of
15 this Decree.

16 (R) “Step-out clearance” means that if an item of MEC or a pattern of similar
17 forensic evidence of a particular type of military munitions is found within a boundary grid of
18 a designated clearance area, then the clearance area shall be expanded (stepped-out) by adding
19 new grid(s) adjacent to the grid of concern and the new grid(s) shall be cleared. If a new grid
20 extends beyond the Property perimeter fence line, then that grid shall only be cleared up to, but
21 not beyond, that fence line and Ecology and the Army shall be notified. This adaptive
22 management process shall continue as long as MEC or forensic evidence of a particular type of
23 military munitions continues to be found in a boundary grid.

24 V. STATEMENT OF FACTS

25 14. Ecology makes the following factual findings without any express or implied
26 admission by Clark County.

1 15. The Camp Bonneville Military Reservation (CBMR or the Property), is located
2 in Clark County, Washington, approximately twelve (12) miles northeast of the center of the
3 City of Vancouver. The Property lies along both banks of Lacamas Creek, a tributary of the
4 Columbia River, and occupies approximately 3,840 acres.

5 16. Prior to the entry of this Decree and the completion of the early transfer process
6 described in Section VI.A of this Decree, the Army owned 3,020 acres of the Property and
7 leased the remaining 820 acres from the DNR. Through the early transfer process described in
8 Section VI.A of this Decree, Clark County acquired the Early Transfer Parcel from the Army.
9 Upon acquisition of that parcel, Clark County immediately conveyed ownership of it by
10 quitclaim deed to the BCRRT LLC. The DNR Parcels were transferred to Clark County and
11 then immediately to BCRRT on June 2, 2009.

12 17. The United States War Department and its successor agency, the Department of
13 Defense, owned and operated the Camp Bonneville Military Reservation for military training
14 since 1909. Units of the Army, Army Reserve, Marine Corps Reserve, Navy Reserve, Coast
15 Guard Reserve, and National Guard have trained on the CBMR. The CBMR has also been
16 used by Federal, State, and local law enforcement agencies for small arms training. A small
17 arms range on the CBMR is currently operated by the Federal Bureau of Investigation. The
18 CBMR was placed on the Base Realignment and Closure (BRAC) list and closed in 1995.
19 Prior to the entry of this Decree and the completion of the early transfer process described in
20 Section VI.A of this Decree, the CBMR was under the control and authority of the garrison
21 commander of Fort Lewis.

22 18. Between 1909 and 1995, unused military munitions, both live and practice,
23 were stored at the Camp Bonneville Military Reservation. These unused military munitions
24 included artillery ammunition, mortar ammunition, air-launched rockets, shoulder-fired
25 rockets, guided missiles, bombs, land mines (practice only), grenades, fuses, and small arms
26

1 ammunition. Some of these military munitions were disposed of at the CBMR by open burn /
2 open detonation (OB/OD).

3 19. Between 1909 and 1995, military munitions, both live and practice, were used
4 at the Camp Bonneville Military Reservation. These used military munitions included artillery
5 ammunition, mortar ammunition, shoulder-fired rockets, land mines (practice only), grenades,
6 and small arms ammunition. These military munitions were primed, fused, armed, or
7 otherwise prepared for action, and then fired, launched, or projected from, or placed at or on,
8 the CBMR.

9 (A) Some of the military munitions used at the CBMR exploded, fragmenting the
10 munitions.

11 (B) Some of the military munitions used at the CBMR did not explode, either by
12 malfunction, design, or some other cause. These munitions are referred to as “unexploded
13 ordnance” or “UXO.”

14 20. At least eight firing ranges at the Camp Bonneville Military Reservation had
15 safety fans that extended beyond the boundary of the CBMR. Between 1909 and 1995,
16 military munitions were used at those firing ranges. Some of the military munitions used at
17 those firing ranges, including 105 and 155 millimeter artillery and 4.2 mortar projectiles, had
18 ranges that extended beyond the boundary of the CBMR. Based on these findings of fact, there
19 is a possibility that military munitions may have landed off-range, beyond the boundary of the
20 CBMR. These used military munitions may include both UXO and the fragments and
21 constituents of exploded munitions.

22 21. Between 1909 and 1995, some of the used military munitions at the Camp
23 Bonneville Military Reservation, including both UXO and munitions fragments, were
24 recovered and collected, and then disposed of at the CBMR by OB/OD.

1 22. Several areas throughout the Camp Bonneville Military Reservation were used
2 for the disposal of military munitions. At least three areas of the CBMR were used for the
3 disposal of military munitions by OB/OD.

4 23. At the time the Camp Bonneville Military Reservation was closed in 1995,
5 some of the military munitions used during military activities, including both UXO and the
6 fragments and constituents of exploded munitions, were left in place at the CBMR and may
7 have been left in place or migrated beyond the boundary of the CBMR.

8 24. Between 1909 and 1995, diesel fuel, fuel oil, pesticides, solvents, lead and
9 chromium-containing paint, and other hazardous materials were also used at the Camp
10 Bonneville Military Reservation.

11 25. Investigations since 1995 by the Army and its contractors at the Camp
12 Bonneville Site have shown that these historical military and maintenance operations have
13 resulted in the presence of the following substances at the Site:

14 (A) The presence of diesel fuel, fuel oil, pesticides, and xylenes in the soil;

15 (B) The presence of volatile organic compounds, including 1,1,1-trichloroethane, in
16 the soil and ground water;

17 (C) The presence of military munitions used or disposed of at the Site, including
18 explosives, UXO, munitions, and munitions fragments in the soil;

19 (D) The presence of the constituents of those military munitions, including
20 perchlorate and the explosive compounds RDX and HMX in the soil and ground water.

21 26. Military munitions have been found in several areas throughout the Camp
22 Bonneville Military Reservation. Because of the historical military and maintenance
23 operations described above, including the storage, use, and disposal of military munitions, the
24 presence of additional military munitions is strongly suspected. Because forests were located
25 within several of the firing ranges when they were active, Ecology also has reason to believe
26

1 that some of the military munitions used at those ranges are embedded in the trees located
2 within those firing ranges.

3 27. People live adjacent to the Camp Bonneville Military Reservation and rely on
4 ground water as a source of drinking water. The CBMR is also inhabited by numerous species
5 of wildlife and borders both sides of Lacamas Creek, which is a tributary of the Columbia
6 River.

7 28. Since this Decree was entered in September 2006, significant cleanup has been
8 accomplished at the Site and additional data was obtained regarding the nature and extent of
9 hazardous substances, dangerous and solid waste, and military munitions.

10 29. The foregoing information is contained in the following documents:

11 (A) Hart Crowser, Inc., *Petroleum Contaminated Soil Investigation, Former Tank*
12 *No. 7-CMBPN, Building No. 4475, Camp Bonneville, Vancouver, Washington,*
Contact No. DACA67-93-D-1004, Delivery Order No. 53, September 11, 1996.

13 (B) Woodward-Clyde Federal Services, *Final Environmental Baseline Survey*
14 *Report, Camp Bonneville, Washington,* Contract No. DACA67-95-D-1001,
January 30, 1997.

15 (C) Hart Crowser, Inc., *Final Lead-Based Paints and Soil-Metals Survey Report,*
16 *Camp Bonneville, Washington,* Contract No. DACA67-93-D-1004, Delivery
Order No. 49, February 28, 1997.

17 (D) Hart Crowser, Inc., *Pre-Demolition Survey, CS Gas Chamber Building, Camp*
18 *Bonneville, Vancouver, Washington,* Contract No. DACA67-93-D-1004,
Delivery Order No. 52, February 28, 1997.

19 (E) U.S. Army Corps of Engineers, *U.S. Department of Defense Program Base*
20 *Realignment and Closure Ordnance, Ammunition and Explosives Final*
21 *Archives Search Report – Report Plates, Camp Bonneville, Clark County,*
Washington, July 1997.

22 (F) U.S. Army Corps of Engineers, *U.S. Department of Defense Program Base*
23 *Realignment and Closure Ordnance, Ammunition and Explosives Final*
Archives Search Report – Conclusions and Recommendations, Camp
Bonneville, Clark County, Washington, July 1997.

24 (G) U.S. Army Corps of Engineers, *U.S. Department of Defense Program Base*
25 *Realignment and Closure Ordnance, Ammunition and Explosives Final*
26 *Archives Search Report – References, Camp Bonneville, Clark County,*
Washington, July 1997.

- 1 (H) Prezant Associates, Inc., *Final Asbestos Surveys Report, Camp Bonneville,*
2 *Vancouver, Washington, Volumes I-III,* Contract No. DACA67-95-D-1018,
3 Delivery Order No. 4, November 7, 1997.
- 4 (I) Cecon Corporation, *Drain Line and PCS Removal, Final Report, Camp*
5 *Bonneville, Vancouver, Washington,* Contract No. DACA67-96-M-0890,
6 December 1997.
- 7 (J) UXB International, Inc., *Removal Report Ordnance and Explosive (OE)*
8 *Sampling, Camp Bonneville, Vancouver, Washington,* Contract No.
9 DACA87-97-D-006, Delivery Order No. 10, August 31, 1998.
- 10 (K) Shannon & Wilson, Inc., *Final Multi-Sites Investigation Report, Camp*
11 *Bonneville, Vancouver, Washington, Volumes 1-5,* Contact No.
12 DACA67-94-D-1014, Delivery Order Numbers 10 and 17, July 1999.
- 13 (L) URS Greiner Woodward Clyde, *Final Supplemental Archive Search Report,*
14 *Camp Bonneville, Vancouver, Washington,* Contract No. DACA67-98-D-1005,
15 Delivery Order No. 3, August 15, 1999.
- 16 (M) Shannon & Wilson, Inc., *Final Landfill 4 Investigation Report, Camp*
17 *Bonneville, Washington,* Contract No. DACA67-94-D-1014, August 1999.
- 18 (N) Gary Struthers Associates, Inc., *Final Closure Report, Environmental*
19 *Restoration, Multi-Sites, Camp Bonneville, Washington,* Contract No.
20 DACA67- 95-G-0001, Task Order 58, February 2001.
- 21 (O) Hart Crowser, Inc., *Final Project Completion Report, Surface Water*
22 *Investigation of Lacamas Creek and Tributaries, Camp Bonneville, Vancouver,*
23 *Washington,* Contact No. DACA67-98-D-1008, Delivery Order No. 20,
24 March 10, 2000.
- 25 (P) U.S. Army Corps of Engineers, *Final GIS-Based Historical Time Sequence*
26 *Analysis, Camp Bonneville, Washington,* August 2000.
- (Q) URS Greiner Woodward Clyde, *BRAC HTRW Site Closure Report for Landfills*
1, 2, and 3; Former Burn Area; Buildings 1962 and 1963; Grease Pits at the
Camp Bonneville and Camp Killpack Cantonments; Former Sewage Pond; and
Hazardous Materials Accumulation Point, Camp Bonneville, Washington,
Contract No. DACA67-98-D-1005, Delivery Order No. 43, September 2000.
- (R) UXB International, Inc., *Final Removal Report, Ordnance and Explosive*
Removal Action, Camp Bonneville, Vancouver, Washington, Contract No.
DACA87-97-D-006, Delivery Order No. 13, October 12, 2000.
- (S) Parsons Engineering Science, Inc., *Final Reconnaissance Work Plan,*
Additional Site Characterization, Camp Bonneville, Vancouver, Washington,
October 2001.
- (T) Gary Struthers Associates, Inc., *Final Closure Report, Environmental*
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- (V) Gary Struthers Associates, Inc., *Final Closure Report, Environmental Restoration, Drum Burial Area, Camp Bonneville, Washington*, Contract No. DACA67-95-G-0001 T.O. 58, April 2002.
- (W) Project Performance Corporation, *Final Field Work Report – Investigation and Monitoring of Site-Wide Ground Water and Ground Water Investigations for Remedial Action Unit 2B*, April 2003.
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23 Central Valley Floor and the Environmental Study Area, October 2007.
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- 7 (AU) BCRRT LLC, Final Supplemental RI/FS, May 2009.
- 8 (AV) BCRRT LLC, Draft CAP RAU 3, May 2009.
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- 10 (AX) BCRRT LLC, draft Final Interim Action Work Plan for Excavation and
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- 11 (AY) BCRRT LLC, RAU2A-21 Boundary Delineation Work Plan, January 2010.
- 12 (AZ) Michael Baker Jr., Inc., Draft Interim Action Work Plan, Excavation and
13 Replacement of Lead-Impacted Fill Soils Under and Adjacent to RAU 2A-16,
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- 14 (BA) Washington State Department of Ecology, Final RAU 3 CAP, September 2010.
- 15 (BB) BCRRT LLC, PBS Engineering, Quarterly Groundwater Reports 2006-2009.
- 16 (BC) BCRRT LLC, RAU 3 IAWP Addendum No. 5 Central Impact Target Area
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- 19 30. This and any additional information regarding the Camp Bonneville Site may be

20 found in the Ecology site file.

21 VI. PROPERTY TRANSFERS, MTCA CLEANUP, AND 22 COUNTY REDEVELOPMENT

23 A. CERLCA Early Transfer

24 31. The Comprehensive Environmental Response, Compensation and Liability Act
25 (CERCLA), 42 U.S.C. § 9601-9675, provides that contaminated federal property may, under
26 certain conditions, be transferred to local ownership prior to the completion of remedial

1 activities. This process is known as “early transfer” and is described at 42 U.S.C.
2 § 9620(h)(3)(C). This particular CERCLA early transfer is a conservation conveyance under
3 10 U.S.C. § 2694(a). A conservation conveyance limits the use of the Property to conservation
4 purposes.

5 32. Under the CERCLA early transfer process, the Army conveyed the Early
6 Transfer Parcel to Clark County on September 29, 2006. That conveyance did not involve the
7 DNR Parcels, which were owned by DNR and leased to the Army. On September 29, 2006,
8 the County conveyed the property to the BCRRT. The DNR Parcels were conveyed to Clark
9 County on June 2, 2009. Clark County conveyed the DNR Parcels to BCRRT on June 2, 2009.
10 The terms and conditions of the CERCLA early transfer are set forth in the following
11 documents:

12 (A) Finding of Suitability for Early Transfer (FOSET). The Army determined that
13 the Early Transfer Parcel was suitable for early transfer. The Army’s determination is set forth
14 in the FOSET. At a facility not on the National Priorities List (NPL), the Governor of the state
15 in which the facility is located makes the final determination that the property is suitable for
16 transfer pursuant to 42 U.S.C. § 9620(h)(3)(C)(i). Camp Bonneville is not on the NPL, thus
17 Governor Gregoire reviewed the FOSET and determined that the Early Transfer Parcel was
18 suitable for early transfer.

19 (B) Environmental Services Cooperative Agreement (ESCA). Prior to entry of the
20 original Decree in 2006, the Army and Clark County entered into an ESCA, a cooperative
21 agreement that provided funding for the environmental work necessary to meet the Cleanup
22 and Long-Term Obligations of this Decree for the Property. Clark County has reimbursed
23 BCRRT LLC for the performance of the Cleanup Obligations. On August 12, 2011, the Army
24 and the County entered into an amended ESCA to address non-MEC cleanup at the Site. The
25 amended ESCA provides funding to the County to perform site management, non-MEC
26 remediation and long-term obligations. On August 12, 2011 the Army and the County also

1 entered into a new, separate ESCA with respect to the remediation of MEC in accordance with
2 the Cleanup Action Plan (CAP) for RAU 3. Together, the amended and new ESCAs provide
3 funding from the Army to the County to complete the environmental work and Cleanup
4 Obligations as set forth in this Decree in a phased manner. The first phase of the new ESCA
5 will provide funds to address the cleanup of MEC at the Central Valley Floor and associated
6 Wetlands areas in accordance with the CAP for RAU 3 and the ongoing cleanup of hazardous
7 waste in the Early Transfer Parcel. Later phases will be funded as they are ready for cleanup
8 and as required herein.

9 (C) Deed. Following the original entry of this Decree in 2006, the Army executed a
10 deed (Deed) conveying the Early Transfer Parcel to Clark County, which Clark County
11 subsequently transferred to BCRRT. The Deed sets forth restrictions and interim land
12 use controls.

13 **B. Transfer from BCRRT LLC to Clark County for Undertaking Cleanup**
14 **Obligations and Redevelopment**

15 33. Clark County and BCRRT have reached an agreement regarding the transfer of
16 the Property.

17 34. Prior to the entry of this amended Decree, BCRRT will convey title to the
18 property to Clark County. Upon obtaining title to the property, Clark County's obligations
19 under this Decree are effective. This PPCD and its associated and incorporated exhibits
20 provide for the clean up of Camp Bonneville. Clark County shall undertake the cleanup
21 obligations as set forth in this Decree. Clark County's Cleanup Obligations under this Decree
22 are subject to the County receiving funds from the Army through the ESCA that are sufficient
23 to complete the Cleanup Obligations as set forth in this Decree. As described above in Section
24 VI.A, the Army will provide the County with the necessary funds through the amended and
25 new ESCAs using a phased approach consistent with how the Cleanup Obligations under this
26 Decree are phased. This phased approach to fund the Cleanup Obligations in this Decree is

1 acceptable in this unique early transfer scenario because the parties are not currently able to
2 price later cleanup phases with accuracy, additional data may further inform Cleanup
3 Obligations, and phased funding provides for greater cleanup contract performance
4 management.

5 35. Upon completion of the Cleanup Obligations set forth in this Decree, the
6 County intends to redevelop the Property for use by the citizens of Clark County as a regional
7 park. The County's reuse plan is available at [http://www.clark.wa.gov/publicworks/bonneville](http://www.clark.wa.gov/publicworks/bonneville/index.html)
8 [/index.html](http://www.clark.wa.gov/publicworks/bonneville/index.html).

9 VII. ECOLOGY DETERMINATIONS

10 A. Determinations for MTCA Prospective Purchaser Consent Decree

11 36. When this Decree was originally entered in 2006, Ecology had not identified
12 Clark County or the BCRRT LLC as potentially liable persons under RCW 70.105D.020(16).
13 When BCRRT LLC acquired the Property, it became liable as an "owner or operator" under
14 RCW 70.105D.040(1)(a). This Decree was entered prior to Clark County or the BCRRT LLC
15 acquiring an interest in the Property and resolved their potential liability for known or
16 suspected contamination at the Site.

17 37. Upon entry of this Decree, Clark County obtained the Early Transfer Parcel
18 from the Army pursuant to the CERCLA early transfer process described in Section VI.A of
19 this Decree. Clark County immediately conveyed ownership of it to the BCRRT LLC for the
20 purpose of meeting its Cleanup Obligations under this Decree.

21 38. Prior to the entry of this Decree, as amended, BCRRT LLC will transfer title of
22 the property to Clark County.

23 39. This Decree contains a program of remedial actions designed to protect human
24 health and the environment from the known, suspected, or threatened release of hazardous
25 substances at the Property based upon Clark County's Reuse Plan described in Paragraph 35 of
26 this Decree. The program is described in Section X of this Decree. The program, which

1 includes both Cleanup Obligations and Long-Term Obligations, covers the entire Property,
2 including both the Early Transfer Parcel and the DNR Parcels.

3 40. Under this Decree as amended, Clark County is responsible for undertaking the
4 Cleanup Obligations described in Section VI.B. of this Decree, subject to the conditions
5 described in Section VI.B. Those obligations are more specifically described in Section X.B of
6 this Decree.

7 41. The ESCAs cover and provide funding for the Cleanup Obligations, Long-Term
8 Obligations, and Ecology Oversight Costs as described in Section XIII (Remedial Action
9 Costs). The ESCAs are described in Section VI.A of this Decree.

10 42. The County proposes to redevelop the 3,020-acre portion of the Property
11 currently owned by the Army as a County regional park and wildlife refuge. The proposed
12 redevelopment project is described in Section VI.B of this Decree.

13 43. Pursuant to 42 U.S.C. § 9620(h)(3)(C)(i), the Governor of the State of
14 Washington determined that the Early Transfer Parcel is suitable for early transfer. The
15 Army's determination of suitability and the findings supporting that determination are set forth
16 in the FOSET.

17 44. Based on the foregoing facts and determinations, Ecology has determined that
18 this settlement will yield substantial new resources to facilitate cleanup and expedite remedial
19 action at the Site consistent with the rules adopted under MTCA.

20 45. Based on this settlement and the foregoing facts and determinations, Ecology
21 has determined that the redevelopment of the Site is not likely to contribute to any existing or
22 threatened releases at the Site, interfere with any remedial actions that may be needed at the
23 Site, or increase health risks to persons at or in the vicinity of the Site.

24 46. Based on the foregoing facts and determinations, the Washington State Attorney
25 General has authority under RCW 70.105D.040(5) to agree to a settlement with Clark County
26 and enter into this Decree.

1 **B. Determinations Under the Model Toxics Control Act (MTCA)**

2 47. The Site is a “facility” as defined in RCW 70.105D.020(4).

3 48. The Property is a portion of the facility.

4 49. Certain substances found at the facility are “hazardous substances” as defined in
5 RCW 70.105D.020(7).

6 50. Based on the presence of these hazardous substances at the facility and all
7 factors known to Ecology, there are releases and threatened releases of hazardous substances
8 from the facility, as defined in RCW 70.105D.020(20).

9 51. The releases and threatened releases of hazardous substances from the facility
10 pose a threat to human health and the environment.

11 52. Based on the foregoing facts, Ecology believes the remedial action required by
12 this Decree is in the public interest.

13 **C. Determinations Under the Hazardous Waste Management Act (HWMA)**

14 53. The Site is a “facility” as defined in RCW 70.105.010(11) and in WAC
15 173-303-040.

16 54. The Property is a portion of the facility.

17 55. The military munitions located at the facility are “solid wastes” as defined in
18 WAC 173-303-016(3) and Paragraph 13(N) of this Decree.

19 56. Certain military munitions located at the facility are also “dangerous wastes”
20 and/or “dangerous constituents” as defined in RCW 70.105.010(5) and WAC 173-303-040,
21 and in Paragraph 13(K) and (L) of this Decree.

22 57. Based on the presence of these military munitions at the facility and all factors
23 known to Ecology, there are releases and threatened releases of dangerous wastes and/or
24 dangerous constituents from the facility, as defined in WAC 173-303-040.

1 associated with those areas and any risks to human health and the environment
2 associated with such contamination.

3 (3) Remedial Action Unit 2C (RAU 2C) consists of Landfill Area 4 and
4 Demolition Area 1, identified and illustrated in Exhibit E, and addresses any
5 contamination associated with those areas and any risks to human health and the
6 environment associated with such contamination.

7 (C) Remedial Action Unit 3 (RAU 3) consists of any area at the Property where
8 military munitions have come to be located and addresses any contamination associated with
9 those areas and any risks to human health and the environment associated with such
10 contamination. RAU 3 is identified and illustrated in Exhibit F.

11 62. The remedial action units defined in this Decree may be subdivided or
12 combined by agreement of the Parties. Additional remedial action units may also be created by
13 agreement of the Parties. Any such agreement will become an integral and enforceable part of
14 this Decree upon entry by the Court as an amendment to this Decree.

15 IX. STATUS OF REMEDIAL ACTIONS

16 A. Overview

17 63. After the Base Realignment and Closure (BRAC) Commission identified the
18 Camp Bonneville Military Reservation for closure in 1995, the Army conducted several site
19 investigations and archive searches to identify releases or threatened releases of hazardous
20 substances throughout the Site. Based on those initial investigations, the Army identified
21 releases or threatened releases of hazardous substances in several areas throughout the Site and
22 conducted several remedial actions to address those releases.

23 64. By letter dated July 1, 2002, Ecology notified the Army of its status as a
24 “potentially liable person” under RCW 70.105D.040 after notice and opportunity for comment.

25 65. On February 4, 2003, Ecology issued Enforcement Order No. 03TCPHQ-5286
26 (Order) to the Army pursuant to the authority of RCW 70.105D.050(1) and the authority of

1 Chapter 70.105 RCW and WAC 173-303-646(3)(a). The Order required the Army to conduct
2 additional remedial actions to facilitate the comprehensive investigation and clean up of the
3 Site.

4 66. On June 16, 2004, Ecology issued the First Amendment of Enforcement Order
5 No. 03TCPHQ-5286 to the Army. The amendment divided RAU 3 into two subunits
6 (RAU 3A and RAU 3B), modified the schedule and work to be performed for those two
7 subunits, and updated the status of remedial actions. The Order, as amended, remained in
8 effect until this PPCD was entered into by the State, Clark County, and BCRRT LLC, and the
9 transfer of the Early Transfer Parcel from the Army to Clark County in 2006. After the entry
10 of the PPCD in 2006, Ecology rescinded the Order.

11 67. The remedial actions conducted by the Army prior to the entry of this Decree,
12 including those conducted prior to the issuance of the Order, and by the BCRRT LLC during
13 this Decree, are described below.

14 **B. Remedial Action Unit 1 (18 Areas that the Army independently remediated prior**
15 **to October 2006)**

16 68. In 1997, based on the initial site investigations and archive searches, the Army
17 identified releases and threatened releases of hazardous substances at the 20 areas comprising
18 RAU 1. From August 1996 to July 1999, the Army conducted several remedial investigations
19 of those areas. In 1999 and 2000, the Army conducted several independent cleanup actions to
20 address the contamination identified during those remedial investigations.

21 69. Under the original Order, the Army submitted to Ecology in April 2003 a draft
22 Cleanup Action Plan (CAP) for RAU 1. The draft CAP described the investigations and
23 cleanup actions conducted and the results of those investigations and actions. The draft CAP
24 also described whether further action is required and the nature of any such action. In April
25 2004, after the Army revised the draft CAP based on Ecology's comments, the draft CAP was
26 submitted for public comment. As of the effective date of the amended Order, the draft CAP

1 had not been finalized. Under the amended Order, the Army submitted and Ecology approved
2 the final CAP in July 2004. As of the effective date of this Decree in 2006, the restrictive
3 covenants required under the CAP had not been recorded.

4 70. After this Decree was entered, BCRRT LLC recorded the restrictive covenant
5 required by the CAP in October 2006. In January 2008, Ecology issued a “No Further Action”
6 determination for RAU 1. As of the effective date of this amended Decree, remedial action at
7 RAU 1 is completed.

8 **C. Remedial Action Unit 2A (21 Small Arms Ranges)**

9 71. In 1997, based on the initial site investigations and archive searches, the Army
10 identified releases and threatened releases of hazardous substances at the 21 small arms ranges
11 comprising RAU 2A. In November 2001, the Army conducted additional investigations to
12 better define the location and geographic characteristics of the small arms ranges. Each range
13 has a separate RAU designation (e.g., RAU 2A-1 is the designation for small arms range 1).

14 72. Under the original Order, the Army submitted to Ecology in April 2003 a draft
15 Interim Action Work Plan for RAU 2A. In May 2003, Ecology submitted comments on that
16 draft Work Plan. In September 2003, the Army submitted to Ecology a draft final Work Plan.
17 Ecology approved that draft final Work Plan. As of the effective date of the amended Order,
18 the draft final Work Plan had not been submitted for public comment and finalized. As of the
19 effective date of this Decree, the draft final Interim Action Work Plan for RAU 2A had still not
20 been submitted for public comment and finalized.

21 73. Under the original Order, the Army also completed in April 2003 the remedial
22 investigation of RAU 2A. The findings of that investigation are presented in the Field Work
23 Report, which was finalized in September 2003. Based on the results of that investigation, the
24 Army submitted to Ecology a draft Remedial Investigation/Feasibility Study (RI/FS) Report in
25 October 2003. Ecology submitted comments on that draft report in December 2003. As of the
26 effective date of the amended Order, the draft final RI/FS Report had not been submitted to

1 Ecology. Under the amended Order, the Army completed and submitted to Ecology the draft
2 final RI/FS Report in March 2005. Ecology approved that draft report. As of the effective
3 date of this Decree in 2006, the draft final RI/FS Report for RAU 2A had not been submitted
4 for public comment and finalized.

5 74. After this Decree was entered in 2006, Ecology submitted the draft final RI/FS
6 Report for public comment in January 2007. The BCRRT LLC completed and issued the final
7 RI/FS Report in August 2007 which Ecology approved.

8 75. Pursuant to this Decree, the BCRRT LLC prepared and submitted a draft
9 Cleanup Action Plan (CAP) Report to Ecology in September 2007. Ecology submitted the
10 draft CAP for public comment in October 2007. The final CAP report was submitted by
11 BCRRT LLC and approved by Ecology in December 2007. Based on the final CAP, the
12 BCRRT LLC prepared and submitted a draft Operation Plan (Work Plan) to Ecology in May
13 2008. In August 2008, Ecology approved the final Operations Plan.

14 76. Under the original Decree, the BCRRT LLC implemented the operations plan at
15 all twenty-one small arms ranges (RAU 2A-1 through 21) in September 2008. As of the
16 effective date of this amended Decree, analytical results of confirmatory soil sampling indicate
17 that remediation work at nineteen of the twenty-one ranges has been completed.

18 77. In October 2008, BCRRT LLC received analytical results from confirmational
19 soil samples taken from the range floor showing that the 1000-inch rifle and machine gun
20 range, RAU 2A-16, was constructed on lead-impacted fill soils. In September 2009,
21 BCRRT LLC submitted a draft Interim Action Work Plan for Excavation and Replacement of
22 Fill Soils Under and Adjacent to RAU 2A-16. In January 2010, BCRRT LLC submitted a
23 draft final work plan to Ecology. As of the effective date of this amended Decree, the draft
24 work plan, which is an addendum to the final RAU 2A CAP, has not been finalized.

25 78. A common feature of cleanup actions for the MEC-impacted areas of the Site is
26 to conduct “step out” activities. Step out, in this case, is an additional sampling that is

1 conducted at a location one-half the grid size outward from a confirmational sample location, if
2 that confirmational sample result is above the applicable cleanup level and the sample location
3 is at a defined contamination zone boundary. If results of the additional step-out sample is still
4 above cleanup level then another, further step-out sample will be taken at the same one-half
5 grid size distance outward from the previous step-out sampling location. This process will
6 continue until a sample meets the cleanup level. Location of the sample that meets cleanup
7 level indicates the actual extent of the contamination zone. In September 2009, BCRRT LLC
8 was conducting step-out activities at rifle range RAU 2A-21 when it discovered additional
9 contamination. This additional contamination was outside the scope of the known RAU 2A-21
10 contaminated area. This discovery required BCRRT LLC to submit a RAU 2A-21 Boundary
11 Delineation Work Plan. The work plan was approved by Ecology and implemented by
12 BCCRT LLC in January 2010. Findings of this investigation are presented in a draft RAU 2A-
13 21 Boundary Delineation Action Report, submitted to Ecology in February 2010. As of the
14 effective date of this amended Decree, the draft report has not been finalized.

15 79. As of the effective date of this amended Decree, lead contamination remains at
16 two small arms ranges (RAU 2A-16 and RAU 2A-21) and stockpiles of excavated but
17 untreated lead-contaminated soil remain on RAU 2A. The CAP for RAU 2A may be amended
18 after the effective date of this Decree and after any required public comment, to reflect new
19 information and any decision by Ecology to alter RAU 2A cleanup requirements based on such
20 information.

21 **D. Remedial Action Unit 2B (Open Burning/Demolition Areas 2 and 3)**

22 80. In 1997, based on the initial site investigations and archive searches, the Army
23 identified releases and threatened releases of hazardous substances at Demolition Area 2 and
24 Demolition Area 3, the two OB/OD areas comprising RAU 2B.

25 81. Under the original Order, the Army completed in April 2003 the remedial
26 investigation of RAU 2B. The findings of that investigation are presented in the Field Work

1 Report, which was finalized in September 2003. Based on the results of that investigation, the
2 Army also submitted to Ecology a draft Remedial Investigation (RI) Report in September
3 2003. Ecology submitted comments on that draft RI Report in November 2003. As of the
4 effective date of the amended Order, the draft final RI Report for RAU 2B had not been
5 submitted to Ecology.

6 82. Under the amended Order, the Army submitted the draft final RI Report
7 (Site Investigation Report) in March 2005. The RI report concluded that no active remediation
8 was required at RAU 2B. Ecology approved that draft report. As of the effective date of
9 this Decree in 2006, the draft final RI Report had not been submitted for public comment
10 and finalized.

11 83. After the entry of this Decree, Ecology submitted the draft final RI Report for
12 public comment in January 2007. Ecology approved the final RI Report in June 2007. In
13 March 2009, Ecology issued a “No Further Action” determination for RAU 2B. As of the
14 entry of this amended Decree remedial action at RAU 2B is completed.

15 **E. Remedial Action Unit 2C (Landfill 4/Demolition Area 1)**

16 84. In 1997, based on the initial site investigations and archive searches, the Army
17 identified releases and threatened releases of hazardous substances at Landfill Area 4 /
18 Demolition Area 1, the area comprising RAU 2C. In August 1999, the Army conducted
19 several additional investigations.

20 85. Under the original Order, the Army submitted to Ecology in December 2003 a
21 draft Interim Action Work Plan for RAU 2C. In April 2004, after the Army revised the draft
22 Work Plan based on Ecology’s comments, it was submitted for public comment. In May 2004,
23 the Army submitted the final Interim Action Work Plan for RAU 2C. The Army began
24 mobilization and site preparation work required under that plan in May 2004. As of the
25 effective date of the amended Order, the Army had not completed the work required under that
26 Work Plan. Under the amended Order, the Army completed implementation of the Work Plan

1 in January 2005. Activities and findings of the interim action are presented in the Interim
2 Removal Action Report, which was finalized in November 2005.

3 86. Under the original Order, the Army also completed in February 2003 a remedial
4 investigation of ground water for RAU 2C. The findings of that investigation are presented in
5 the Field Work Report, which was finalized in May 2003. Based on the results of that
6 investigation and the impact of the forthcoming interim actions to address soil contamination,
7 Ecology determined that further investigation of the ground water was required. As of the
8 effective date of the amended Order, the draft RI/FS Report for RAU 2C had not been
9 submitted to Ecology. Under the amended Order, the Army continued to monitor
10 contamination levels in ground water at RAU 2C on quarterly basis pursuant to the Site-Wide
11 Ground Water Investigation Work Plan. Findings of this investigation are presented in Ground
12 Water Sampling and Analysis Reports. However, as of the effective date of this Decree in
13 2006, the draft RI/FS Report for RAU 2C had still not been submitted to Ecology.

14 87. After the entry of this Decree in 2006, the BCRRT LLC submitted the draft
15 RI/FS in August 2009 and submitted a Perchlorate Evaluation Report to Ecology in February
16 2008. Based on Ecology comments, the BCRRT LLC submitted a Revised Perchlorate
17 Evaluation Report on January 2009. This report covers exposure analysis from historical soil
18 and groundwater data, data trend analysis, and recommendations for additional data
19 requirements to address perchlorate in groundwater at Landfill 4.

20 88. Pursuant to this Decree, BCRRT LLC continued to monitor contamination
21 levels in ground water at RAU 2C on a quarterly basis pursuant to the Final Supplemental
22 Groundwater Remedial Investigation Work Plan. Findings of this investigation are presented
23 in Ground Water Sampling and Analysis Reports. As of the entry of this amended Decree, the
24 draft RI/FS has not been submitted for public comment.

1 **F. Remedial Action Unit 3 (Site-Wide Munitions Contamination)**

2 89. In 1997, based on the initial site investigations and archive searches, the Army
3 determined that military munitions, including UXO, are present in several areas throughout the
4 Site. In 1998, to determine the nature and extent of UXO throughout the Site, the Army
5 conducted an investigation of the Site using a statistically-based sampling methodology. As a
6 result of this investigation, the Army conducted a time-critical removal action on two former
7 ordnance ranges and a surface clearance of Demolition Area 1.

8 90. In November 1998, the Army submitted to Ecology and the U.S. Environmental
9 Protection Agency (EPA) a draft Engineering Evaluation and Cost Analysis (EE/CA) report
10 based on the findings of the statistically-based investigation. This report identified locations of
11 UXO, the hazards associated with UXO, the risks posed by UXO to future users of the land,
12 and risk management alternatives, including a description of the effectiveness and cost of those
13 alternatives. The Army submitted a second draft to Ecology and EPA in April 1999. Based on
14 the inadequacy of the statistically-based sampling approach, Ecology and EPA determined that
15 there was insufficient data to support the findings of the draft EE/CA.

16 91. In 2001, the Army evaluated the available photographic evidence to help
17 identify areas of concern (AOCs) and areas of potential concern (AOPCs) throughout the Site.
18 The Army subsequently conducted an instrument-aided reconnaissance effort to identify
19 ordnance-related activities, as well as terrain and vegetation characteristics, associated with
20 each of the previously identified AOCs and AOPCs. In 2002, the Army used this information,
21 along with previously collected information, to conduct a screening analysis and develop a
22 Conceptual Site Model (CSM). To test the CSM within designated reuse areas, the Army
23 initiated a second phase of instrument-aided reconnaissance within the designated reuse areas.

24 92. Under the original Order, the Army completed the second phase of the
25 instrument aided reconnaissance in February 2003. The findings of that reconnaissance effort
26 are presented in the Field Work Report, which was finalized in May 2003. As of the effective

1 date of the amended Order, the draft RI/FS Report for RAU 3 had not been submitted to
2 Ecology.

3 93. Under the amended Order, RAU 3 was administratively divided into two
4 subunits, RAU 3A and RAU 3B, which were defined in Part IV of that Order.

5 94. Under the amended Order, the Army submitted to Ecology a draft RI/FS Report
6 for RAU 3 in November 2004. Ecology submitted its comments on that draft report in
7 February 2005. In August 2005, Ecology submitted the draft RI/FS Report for public
8 comment. In response to the comments received, Ecology completed a Responsiveness
9 Summary. As of the effective date of this Decree in 2006, the RI/FS Report had not been
10 finalized based on the comments received.

11 95. After the entry of this Decree in 2006, BCRRT LLC submitted a draft final
12 RI/FS to Ecology in April 2007. After responding to Ecology's comments, the final RI/FS was
13 submitted to Ecology in February 2008. However, Ecology required a supplemental
14 investigation of RAU 3. The BCRRT LLC then conducted a supplemental investigation of
15 RAU 3 and presented the findings of this investigation in a draft Supplemental RI/FS Report to
16 Ecology in October 2008. After responding to Ecology comments, BCRRT submitted a final
17 Supplemental RI/FS to Ecology in May 2009.

18 96. In October 2008, BCRRT LLC submitted a draft Cleanup Action Plan (CAP) to
19 Ecology. In May 2009, after responding to Ecology comments, BCRRT LLC submitted a
20 revised draft CAP to Ecology in May 2009. In June 2009, Ecology issued the draft CAP for
21 public comment. After reviewing comments from the public, Ecology finalized the CAP in
22 September 2010. As of the effective date of this amended Decree, implementation of the final
23 CAP has not yet begun.

24 97. Pursuant to the Decree, in October 2006 BCRRT LLC submitted an Emergency
25 Action Work Plan (EAWP) which Ecology approved. The EAWP addressed MEC surface
26 clearance and avoidance activities needed to support fence replacement/repair and signage

1 replacement along property and Central Impact Target Area (CITA) perimeter fences. These
2 actions were done nearly immediately after the entry of the Decree and were necessary to
3 protect the public and provide site security. Field activities performed by BCRRT LLC under
4 the EAWP are presented in the February 2007 Emergency Action Report for the Perimeter and
5 CITA Fence Lines which was approved by Ecology in March 2009. As of the effective date of
6 this amended Decree, implementation of the final EAWP has been completed.

7 98. BCRRT LLC submitted a draft Interim Action Work Plan (IAWP) to Ecology
8 in December 2006. The IAWP addresses MEC surface clearance along roads and trails and at
9 small arms ranges that have been designated for cleanup under RAU 2A. Ecology approved
10 the final IAWP in April 2007 after public comment. BCRRT LLC began implementation of
11 the IAWP in April 2007; however, as of the effective date of this amended Decree all remedial
12 actions specified in the IAWP have not been completed.

13 99. In September 2007, Ecology approved Addendum No. 1 to the IAWP.
14 Addendum No. 1 expands the scope of the IAWP to include MEC cleanup of a 2.36-inch
15 Rocket Range Target Area discovered during the implementation of the IAWP. Remedial
16 actions required by Addendum No. 1 of the IAWP have been completed.

17 100. In October 2007, Ecology approved Addendum No. 2 to the IAWP, which
18 expanded the scope of the IAWP to cover MEC surface clearance of the Central Valley Floor
19 (CVF) and the Environmental Study Area (ESA). As of the effective date of this amended
20 Decree, the remedial actions required in Addendum No. 2 of the IAWP have not been
21 completed.

22 101. In March 2008, BCRRT LLC submitted a draft Addendum No. 3 to the IAWP,
23 to Ecology. Addendum No. 3 allowed the use of geo-physical mapping of the Central Valley
24 Floor using EM-61 Technology for detecting munitions. Ecology approved the draft
25 Addendum in April 2008.

1 102. In June 2008, Ecology approved Addendum No. 4 to the IAWP, which expands
2 the scope of the IAWP to cover MEC Surface Clearance Actions along 10-foot transects in the
3 Western Slopes Area.

4 103. In March 2009, BCRRT LLC submitted a draft Addendum No. 5 to the IAWP
5 to Ecology. Addendum No. 5 further expands the scope of IAWP to include MEC surface and
6 subsurface clearances at fifteen (15) hard target areas in the Central Impact Target Area
7 (CITA). Ecology submitted comments on the draft addendum in April 2009. In May 2009,
8 Ecology submitted the draft final Addendum No. 5 for public comment. BCRRT LLC
9 submitted the final Addendum No. 5 to Ecology in June 2009. Ecology approved the final
10 Addendum No. 5 in June 2009. As of the effective date of this amended Decree, remedial
11 actions, as specified in Addendum No. 5 of the IAWP, have not been completed.

12 **G. Investigation and Monitoring of Site-Wide Ground Water**

13 104. In February 2002, the Army developed a Site-Wide Ground Water Investigation
14 Work Plan to analyze ground water at the property boundary of the Camp Bonneville Military
15 Reservation using sentinel wells. The work plan was designed to help determine whether
16 on-site ground water contamination has migrated beyond the property boundary of the CBMR.
17 In December 2002, the Army installed four monitoring well pairs at the western property
18 boundary near Lacamas Creek. The findings of that investigation are presented in the Field
19 Work Report, which was finalized in April 2003 under the original Order. As of the effective
20 date of the amended Order, the draft Long-Term Ground Water Monitoring and Contingency
21 Plan had not been submitted to Ecology.

22 105. Under the amended Order, the Army continued to monitor ground water in
23 site-wide monitoring wells. Findings of this investigation are presented in Ground Water
24 Sampling and Analysis Reports. As of the effective date of this Decree in 2006, the draft
25 Long-Term Ground Water Monitoring and Contingency Plan had not been submitted to
26 Ecology.

1 106. After the entry of this Decree in 2006, BCRRT LLC submitted a draft
2 Supplemental Groundwater Remedial Investigation Report that Ecology approved in
3 December 2006. Since December 2006, groundwater monitoring at the Site has been
4 conducted according to this work plan. Monitoring is ongoing.

5 107. In January 2007, BCRRT LLC submitted a draft Supplemental Soil Remedial
6 Investigation Work Plan for Central Impact Target Area and Firing Points in January 2007.
7 This work plan addresses potential sources for ground water contamination by investigating
8 residual explosive compounds in soils at artillery and mortar firing points and impact areas.
9 Ecology approved the work plan in August 2007 and the findings of the work performed under
10 the work plan are presented in the Report on Soil and Sediment Investigations at
11 Artillery/Mortar Firing Points, Artillery/Mortar Impact Areas and "Pop-Up" Pond Sediments.
12 That report was approved by Ecology in April 2007. Pursuant to this Decree, BCRRT LLC
13 continued to monitor contamination levels in ground water at RAU 2C and at the sentinel wells
14 on quarterly basis pursuant to the Final Supplemental Groundwater Remedial Investigation
15 Work Plan. Findings of this investigation are presented in Ground Water Sampling and
16 Analysis Reports. As of the effective date of this amended Decree, quarterly ground water
17 monitoring continues to be conducted by Clark County.

18 X. WORK TO BE PERFORMED

19 A. Overview

20 108. This Decree contains a program designed to protect human health and the
21 environment from the known, suspected, or threatened release of hazardous substances at the
22 Property based upon Clark County's Reuse Plan described in Paragraph 35 of this Decree.
23 This Section of the Decree sets forth the remedial actions that are required to implement that
24 program, the schedule for completing those remedial actions, and which Party is responsible
25 for developing or completing those remedial actions.
26

1 109. Clark County is responsible for undertaking the Cleanup Obligations defined in
2 Section VI of this Decree. Those obligations are more specifically described in Section X.C of
3 this Decree. Clark County shall make all reasonable efforts to secure access rights for those
4 portions of the Property not owned or controlled by it where Cleanup Obligations will be
5 undertaken pursuant to this Decree. Clark County is also responsible for undertaking the
6 Long-Term Obligations described in Section X.C. of this Decree. Clark County is not required
7 under this Decree to undertake any Long-Term Obligations on any portion of the Property that
8 it does not own or lease.

9 110. Clark County agrees to undertake remedial actions and to conduct such actions
10 in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.
11 Clark County agrees not to perform any remedial actions outside the scope of this Decree
12 unless the Parties agree to amend the Decree to cover those actions.

13 111. The Parties acknowledge that while the Site may encompass areas beyond the
14 boundaries of the Property, this Decree does not require Clark County to develop or conduct
15 any remedial actions in any area beyond the boundaries of the Property. The Parties agree that
16 the remedial actions required under this Decree shall be limited to the areas within the
17 boundaries of the Property.

18 **B. Work to be Performed**

19 The work to be performed is generally described below. The Project Schedule
20 document which is Exhibit J to this Decree provides the schedules for the work.

21 **1. RAU 2A**

22 112. Cleanup work remains to be completed at two small arms ranges, RAU 2A-16
23 and RAU 2A-21. After the entry of this Decree, Clark County shall submit a draft amendment
24 to the RAU 2A CAP to complete lead remediation at the remaining two small arms ranges.
25 The draft amendment shall describe proposed changes to the remedy from excavation of
26 lead-contaminated soil to the potential new remedial alternatives, (1) partial excavation and

1 capping of the lead-contaminated soil with a clean soil cap, or (2) capping of the
2 lead-contaminated soil with a clean soil cap. The draft amendment shall include a full
3 description of each alternative and technical rationale for the draft amendment. Any change to
4 the RAU 2A CAP shall be subject to public comment pursuant to WAC 173-340-600 and the
5 requirements of the Public Participation Plan. Ecology will review and consider any public
6 comments before approving any amendment to the RAU 2A CAP. Any workplans or other
7 documents needed to implement any amendment to the RAU 2A CAP shall be subject to
8 Ecology review and approval. Clark County shall submit deliverables for Ecology review and
9 approval, in accordance with the project schedule shown, Exhibit J.

10 **2. RAU 2C**

11 113. Clark County shall continue to monitor the general ground water quality at the
12 Site. Clark County shall continue to monitor trends of contaminants in ground water at
13 Landfill 4 and include any new findings in the development of a draft final RI/FS for RAU 2C.
14 Clark County shall submit deliverables for Ecology review and approval, in accordance with
15 the schedule shown in the project schedule, Exhibit J.

16 **3. RAU 3 – Phase I**

17 114. The work required in the Final RAU 3 CAP will be implemented by Clark
18 County in phases. Phase I will commence after the entry of this amended Decree and is funded
19 as described in Section VI.A. Phases II-IV are as currently envisioned by the Parties. The
20 parties recognize that order of future phases may change.

21 115. For Phase I (Central Valley Floor), Clark County shall conduct subsurface MEC
22 clearance of the Central Valley Floor and associated Wetlands as required in the final CAP for
23 RAU 3. Clark County shall submit deliverables for Ecology review and approval, in
24 accordance with the schedule shown in the project schedule, Exhibit J.

1 **4. RAU 3—Phase II**

2 116. For Phase II (CITA and Firing Points), Clark County shall conduct MEC
3 surface and subsurface clearance of the CITA and Firing Points as required in the final CAP
4 for RAU 3. Clark County shall submit deliverables for Ecology review and approval, in
5 accordance with the schedule shown in the project schedule, Exhibit J.

6 **5. RAU 3—Phase III**

7 117. For Phase III (Demolition Areas 1 & 2), Clark County shall conduct MEC
8 surface clearance of Demolition Areas 1 and 2 as required in the final CAP for RAU 3. Clark
9 County shall submit deliverables for Ecology review and approval, in accordance with the
10 schedule shown in the project schedule, Exhibit J.

11 **6. RAU 3—Phase IV**

12 118. For Phase IV (Western Slopes), Clark County shall conduct surface clearance of
13 the Western Slopes as required in the final CAP for RAU 3. Clark County shall submit
14 deliverables for Ecology review and approval, in accordance with the schedule shown in the
15 project schedule, Exhibit J.

16 **C. Long-Term Obligations**

17 119. Clark County shall be responsible for undertaking Long-Term Obligations.
18 Clark County is not required under this Decree to undertake any Long-Term Obligations on
19 any portion of the Property that it does not own or lease.

20 120. If Clark County does not acquire ownership of the DNR Parcels prior to
21 issuance of the Notice of Completion for RAU 3 under Section XII of this Decree, then Clark
22 County shall not be responsible for any Long-Term Obligations on the DNR Parcels unless and
23 until Clark County acquires ownership of or ownership interest in the DNR Parcels.

24 121. The Long-Term Obligations for each RAU will be specified in the final
25 Long-Term Operation and Maintenance Plan for that RAU. Upon issuance of the Notice of
26 Completion for the Property under Section XII of this Decree, all of the Long-Term

1 Obligations for the Property will be specified in the final Long-Term Operation and
2 Maintenance Plan for the Property. Additional Long-Term Obligations are specified in this
3 Decree.

4 **D. Description of Deliverables**

5 122. The Remedial Investigation Work Plan prepared for a RAU shall conform to the
6 requirements in Chapter 173-340 WAC and shall include, but shall not be limited to, the
7 following plans:

- 8 (A) Work Plan;
- 9 (B) Health and Safety Plan;
- 10 (C) Sampling and Analysis Plan;
- 11 (D) Quality Assurance Plan;
- 12 (E) Data Management Plan; and
- 13 (F) Cultural and Historical Resources Protection Plan.

14 123. The Emergency Action Report shall include, but shall not be limited to, the
15 following information:

- 16 (A) Summary of any emergency actions conducted;
- 17 (B) Results of any emergency actions conducted; and
- 18 (C) Description of each item of MEC found during the emergency action, including,

19 but not limited to, the following information:

- 20 (1) Identification of the MEC item;
- 21 (2) Description of the fusing condition of the MEC item; and
- 22 (3) Description of the location and depth of the MEC item.

23 124. The Interim Action Report prepared for a RAU shall include, but shall not be
24 limited to, the following information:

- 25 (A) Summary of any interim actions conducted;
- 26 (B) Results of any interim actions conducted; and

1 (C) Description of each item of MEC found during the interim action, including, but
2 not limited to, the following information:

- 3 (1) Identification of the MEC item;
- 4 (2) Description of the fusing condition of the MEC item; and
- 5 (3) Description of the location and depth of the MEC item.

6 125. The Cleanup Action Report prepared for a RAU shall include, but shall not be
7 limited to, the following information:

- 8 (A) Summary of any remedial investigations conducted;
- 9 (B) Summary of any interim or cleanup actions conducted;
- 10 (C) Results of any interim or cleanup actions conducted;
- 11 (D) Results of any compliance monitoring conducted; and
- 12 (E) Description of each item of MEC found during the investigation and cleanup of

13 the RAU, including, but not limited to, the following information:

- 14 (1) Identification of the MEC item;
- 15 (2) Description of the fusing condition of the MEC item; and
- 16 (3) Description of the location and depth of the MEC item.

17 126. The MEC Findings Report prepared for RAU 3 shall include a description of
18 each item of MEC found at the Property during the investigation and cleanup of the Property,
19 including items of MEC found during an investigation or cleanup conducted under a
20 RAU other than RAU 3. The description of each item of MEC shall include, but shall not be
21 limited to, the following information:

- 22 (A) Identification of the MEC item;
- 23 (B) Description of the fusing condition of the MEC item; and
- 24 (C) Description of the location and depth of the MEC item.

25 127. The Long-Term Operation and Maintenance Plan prepared for a RAU shall
26 include all actions at the RAU that are necessary to ensure the long-term effectiveness of the

1 cleanup completed at the RAU by Clark County under Section X.B of this Decree. The
2 Long-Term Operation and Maintenance Plan prepared for the Property shall combine together
3 the final Long-Term Operation and Maintenance Plan for each RAU and include all actions on
4 the Property that are necessary to ensure the long-term effectiveness of the cleanup completed
5 by Clark County under Section X.B of this Decree.

6 128. Clark County shall include a Cultural and Historical Resources Protection Plan
7 as part of any remedial investigation work plan, emergency action work plan, interim action
8 work plan, cleanup action plan, or long-term operation and maintenance plan. The plan shall
9 include, but shall not be limited to, the following information:

- 10 (A) Plan for identifying cultural and historical resources; and
- 11 (B) Plan for protecting identified cultural and historical resources.

12 129. Clark County shall include a Cultural and Historical Resources Protection
13 Report as part of any emergency action report, interim action report, cleanup action report, or
14 UXO findings report. The report shall include a description of each cultural resource found
15 during the implementation of the plan. The description of each cultural resource shall include,
16 but shall not be limited to, the following information:

- 17 (A) Identification of the cultural resource; and
- 18 (B) Description of the disposition of the cultural resource.

19 **E. Due Dates for Deliverables**

20 130. If the final day of any time period falls on a Saturday, Sunday, or a state or
21 federal legal holiday, the time period shall be extended to the next working day. Any time
22 period scheduled to begin on the occurrence of an act or event shall begin on the day after the
23 act or event. The deliverable due date shall be considered satisfied if the deliverable is
24 received electronically on the date due, and the “original” hard copy is received within two (2)
25 working days.
26

1 **F. Submittal of Deliverables**

2 131. In accordance with WAC 173-340-840(2), Clark County shall submit to
3 Ecology an electronic copy and three (3) hard copies of each deliverable identified in this
4 Order (including both draft and draft final documents). The electronic copy must be submitted
5 in a format compatible with, and approved by, Ecology. Ecology may require additional
6 copies to meet public participation and interagency coordination needs.

7 **G. Review, Comment, and Approval Process for Deliverables**

8 132. Clark County shall submit deliverables to Ecology in accordance with the
9 schedule set forth in Exhibit J. From the date Ecology receives the draft document, the
10 following process will ensue:

11 (A) Within thirty (30) calendar days of receiving Clark County’s draft document,
12 Ecology will notify Clark County in writing of whether the draft document is adequate.

13 (1) If Ecology identifies inadequacies in the draft document, then Ecology
14 will provide Clark County with comments. Any such inadequacies may be discussed
15 during the monthly Project Coordinator Meetings.

16 (2) If Ecology does not identify inadequacies in the draft document, then
17 Ecology will, at its discretion, approve the draft document. A draft document only
18 becomes “final” upon Ecology approval.

19 (B) Within thirty (30) calendar days of receiving Ecology’s comments on a draft
20 document, Clark County will submit to Ecology a “draft final” document along with a response
21 to comments identifying how comments were addressed.

22 (C) Within thirty (30) calendar days of receiving Clark County’s draft final
23 document and response to comments on the draft document, Ecology will notify Clark County
24 in writing of whether the draft final document adequately addresses Ecology’s comments on
25 the draft document.

1 (1) If Ecology identifies inadequacies in the draft final document and/or the
2 response to comments, then Ecology will, at its discretion, either revise and approve the
3 document or require Clark County to revise and resubmit the document within thirty
4 (30) calendar days for approval.

5 (2) If Ecology does not identify inadequacies in the draft final document or
6 the response to comments, then, within thirty (30) calendar days, Ecology will, at its
7 discretion, approve the draft final document. A draft final document only becomes
8 “final” upon Ecology approval.

9 (D) In accordance with WAC 173-340-430(6), prior to the approval of a draft final
10 interim action work plan, Ecology will provide or require public notice and opportunity for
11 comment on the document and proposed interim action as required under WAC
12 173-340-600(16). After review and consideration of the comments received during the public
13 comment period, Ecology will, at its discretion, either approve the document or require Clark
14 County to revise and resubmit the document within thirty (30) calendar days for approval.

15 (E) In accordance with WAC 173-340-350(5), prior to approval of a draft final
16 remedial investigation or feasibility study report, Ecology will provide or require public notice
17 and opportunity to comment on the document, as required under WAC 173-340-600(13).
18 After review and consideration of the comments received during the public comment period,
19 Ecology will, at its discretion, either approve the document or require Clark County to revise
20 and resubmit the document within thirty (30) calendar days for approval.

21 (F) In accordance with WAC 173-340-380(2), prior to approval of a draft final
22 CAP, Ecology will provide or require public notice and opportunity for comment on the
23 document, as required under WAC 173-340-600(14). After review and consideration of the
24 comments received during the public comment period, Ecology will, at its discretion, either
25 approve the document or require Clark County to revise and resubmit the document within
26 thirty (30) calendar days for approval.

1 133. Ecology may extend the thirty (30) calendar day period for reviewing and
2 commenting on a document by providing oral or written notification to Clark County, prior to
3 expiration of the thirty (30) calendar day period. Ecology will provide an estimate of the time
4 required for completion of its review.

5 134. Clark County may request an extension of the thirty (30) calendar day period
6 for submitting a document and responses to comments by providing written notification to
7 Ecology prior to expiration of the thirty (30) calendar day period. Any such request must be
8 made in accordance with Section XI of this Decree.

9 **H. Enforceability and Implementation of Deliverables**

10 135. Upon approval by Ecology, each of the deliverables identified in this Decree
11 shall be incorporated by reference and become an integral and enforceable part of this Decree,
12 and shall be implemented by Clark County in accordance with its terms and schedules, and in
13 accordance with the applicable laws and the applicable CAPs.

14 **XI. EXTENSION OF SCHEDULE**

15 136. Clark County may request an extension of schedule. An extension of schedule
16 shall be granted only when a request for an extension is submitted in a timely fashion,
17 generally at least fourteen (14) calendar days prior to expiration of the deadline for which the
18 extension is requested, and good cause exists for granting the extension. All extensions shall
19 be requested in writing. The request shall specify:

- 20 (A) The deadline that is sought to be extended;
- 21 (B) The length of the extension sought;
- 22 (C) The reason(s) for the extension; and
- 23 (D) Any related deadline or schedule that would be affected if the extension were
24 granted.

1 137. The burden shall be on Clark County to demonstrate to the satisfaction of
2 Ecology that the request for such extension has been submitted in a timely fashion and that
3 good cause exists for granting the extension. Good cause includes, but is not limited to:

4 (A) Circumstances beyond the reasonable control and despite the due diligence of
5 Clark County including delays caused by unrelated third parties or Ecology, such as (but not
6 limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by
7 Clark County;

8 (B) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
9 other unavoidable casualty; or

10 (C) Endangerment as described in Section XXV of this Decree.

11 However, neither increased costs of performance of the terms of the Decree nor changed
12 economic circumstances shall be considered circumstances beyond the reasonable control of
13 Clark County.

14 138. Ecology shall act upon any written request for extension in a timely fashion.
15 Ecology shall give Clark County written notification in a timely fashion of any extensions
16 granted pursuant to this Decree. A requested extension shall not be effective until approved by
17 Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not
18 be necessary to amend this Decree pursuant to Section XXXIV of this Decree when a schedule
19 extension is granted.

20 139. An extension shall only be granted for such period of time as Ecology
21 determines is reasonable under the circumstances. Ecology may grant schedule extensions
22 exceeding ninety (90) calendar days only as a result of:

23 (A) Delays in the issuance of a necessary permit which was applied for in a timely
24 manner;

25 (B) Other circumstances deemed exceptional or extraordinary by Ecology; or

26 (C) Endangerment as described in Section XXV of this Decree.

1 **XII. COMPLETION OF REMEDIAL ACTIONS**

2 140. Upon written request by the County and Ecology’s determination that the work
3 required pursuant to Section X.B of this amended Decree at a RAU has been completed by the
4 County, Ecology shall issue the County a written Notice of Completion within sixty (60)
5 calendar days of the request stating that the work required by this amended Decree at that RAU
6 has been satisfactorily completed. If Ecology instead determines that all of the work required
7 at a RAU has not been completed, then Ecology will notify the County what work must still be
8 completed at that RAU.

9 141. Following the completion of any phase of work for RAU 3, the County may
10 request that Ecology review an After Action Report prepared by the County describing any
11 such phase of work to be performed by the County as required by the RAU 3 CAP. Upon such
12 a request by the County, Ecology will review the After Action Report and determine whether
13 or not, or to what extent, work done by the County for such a phase pursuant to the RAU 3
14 CAP was performed in accordance with the CAP, the work plan and any other relevant
15 document; fulfills the cleanup actions required by this Decree for the phase of the cleanup
16 described in the After Action Report; and successfully completes the implementation of the
17 CAP for that phase of work. After completion of its review, Ecology will prepare a written
18 document containing its determinations and provide that to the County.

19 **XIII. REMEDIAL ACTION COSTS**

20 142. The County agrees to pay costs incurred by Ecology pursuant to this Decree and
21 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
22 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
23 and Decree preparation, negotiations, oversight, and administration. Ecology costs shall
24 include costs of direct activities and support costs of direct activities as defined in
25 WAC 173-340-550(2). Because Camp Bonneville has now gone through the Early Transfer
26 process under CERCLA, the Army is providing funding to the County to pay Ecology’s

1 oversight costs under the amended ESCA described in Paragraph 32(B). The ESCA is
2 described in Section VI.A. of this Decree. The County shall use the funding provided in the
3 amended ESCA to pay Ecology's costs. The amended ESCA further provides that the Army
4 will pay Ecology's fair and reasonable oversight costs above the fixed amount in the amended
5 ESCA with the prior approval of the Army's Grants Officer. Ecology will endeavor to contact
6 the Army's Grants Officer as soon as it reasonably anticipates its oversight costs may exceed
7 the amount in the amended ESCA . The County agrees to pay the required amount within
8 ninety (90) days of receiving from Ecology an itemized statement of costs that includes a
9 summary of costs incurred, an identification of involved staff, and the amount of time spent by
10 involved staff members on the project. A general statement of work performed will be
11 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC
12 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the
13 itemized statement will result in interest charges at the rate of twelve percent (12%) per annum,
14 compounded monthly, provided, that in the event the Army delays payment or contests the
15 amount of the Payment request, Clark County shall not be responsible for any delay due to the
16 Army's action or inaction. Any such delay shall not affect or delay the work to be performed
17 by the County under this Decree. Ecology reserves all its rights to seek to recover its costs
18 under RCW 70.105D.050(3).

19 Pursuant to Chapter 70.105D.055 RCW, Ecology also has authority to recover
20 unreimbursed remedial action costs by filing a lien against real property subject to the
21 remedial actions.
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1 **XIV. PROJECT COORDINATION**

2 **A. Designated Project Coordinators**

3 143. The project coordinator for Ecology is:

4 Name: Ben Forson
5 Address: Toxics Cleanup Program
6 P.O. Box 47600
7 Olympia, WA 98504-7600
8 Telephone: (360) 407-7227
9 Fax: (360) 407-7154
10 E-mail: bfor461@ecy.wa.gov

11 144. The project coordinator for Clark County is:

12 Name: Jerry Barnett
13 Address: Clark County Department of Public Works
14 P.O. Box 5000
15 Vancouver, WA 98666-5000
16 Telephone: (360) 397-2446
17 Fax: (360) 759-6212
18 E-mail:

19 145. Each project coordinator shall be responsible for overseeing the implementation
20 of this Decree. The Ecology project coordinator will be Ecology's designated representative at
21 the Property. To the maximum extent possible, communications among Ecology and Clark
22 County and all documents, including reports, approvals, and other correspondence concerning
23 the activities performed pursuant to the terms and conditions of this Decree, shall be directed
24 through the project coordinators. The project coordinators may designate, in writing, working
25 level staff contacts for all or portions of the implementation of the remedial work required by
26 this Decree. The project coordinators may agree to minor changes to the work to be performed
without formal amendments to this Decree. Minor changes will be documented in writing by
Ecology. Substantial changes shall require amendment of this Decree.

146. Any Party may change its respective project coordinator. Written notification
shall be given to the other Parties at least ten (10) calendar days prior to the change.

1 **B. Project Coordinator Meetings (Monthly)**

2 147. Project coordinator meetings shall be held on a monthly basis. Upon the
3 agreement of the Parties, telephone conference calls may be held in lieu of face-to-face
4 meetings. Additional project coordinator meetings may be held by agreement of the Parties.
5 Project Coordinator meetings shall include a discussion of the topics required to be addressed
6 as part of the Quarterly Progress Reports (see Paragraph 148 of this Decree).

7 **C. Progress Reports (Quarterly)**

8 148. Clark County shall submit to Ecology written quarterly progress reports which
9 describe the actions taken during the previous quarter to implement the requirements of this
10 Decree. The progress report shall include the following:

11 (A) Description of on-Property actions taken during the previous quarter;

12 (B) Description of on-Property actions scheduled to be taken during the next
13 quarter;

14 (C) Identification of deliverables submitted during the previous quarter and the
15 dates of submittal;

16 (D) Identification of deliverables anticipated for submittal during the next quarter
17 and the anticipated dates of submittal;

18 (E) Description of any deviation from the required actions not otherwise
19 documented in project plans or amendment requests;

20 (F) Description of any deviation from the schedule during the previous quarter and
21 any planned deviation in the next quarter;

22 (G) For any deviation in schedule, a plan for attempting to recover lost time and
23 maintain compliance with the schedule;

24 (H) All field and laboratory data, including all validated and non-validated data,
25 received or generated by Clark County during the previous quarter and an identification of the
26 source of the sample; and

1 (I) Description of any key staffing changes.

2 149. All progress reports shall be submitted by the tenth (10th) calendar day of each
3 quarter. Unless otherwise specified, progress reports and any other documents submitted
4 pursuant to this Decree shall be sent by certified mail, return receipt requested, to Ecology's
5 project coordinator.

6 **XV. PERIODIC REVIEW**

7 150. As remedial action, including ground water monitoring, continues at the
8 Property, the Parties agree to review the progress of remedial action at the Property, and to
9 review the data accumulated as a result of Property monitoring as often as is necessary and
10 appropriate under the circumstances. At least every five years after the initiation of cleanup
11 action at the Property (mobilization), the Parties shall meet to discuss the status of the Property
12 and the need, if any, of further remedial action at the Property. Clark County shall submit a
13 report to Ecology ninety (90) calendar days before every 5-year anniversary of the date of
14 dismissal that addresses the review criteria in WAC 173-340-420. This provision shall remain
15 in effect for the duration of the Decree.

16 **XVI. RESOLUTION OF DISPUTES**

17 151. In the event a dispute arises as to an approval, disapproval, proposed change, or
18 other decision or action by Ecology's project coordinator, or an itemized billing statement
19 under Section XIII of this Decree (Remedial Action Costs), the Parties shall utilize the dispute
20 resolution procedure set forth below.

21 (A) Upon receipt of the Ecology project coordinator's written decision or the
22 itemized billing statement, Clark County has fourteen (14) calendar days within which to
23 notify Ecology's project coordinator, and the other Party's project coordinator, in writing of its
24 objection to the decision.

1 (B) The Parties' project coordinators shall then confer in an effort to resolve the
2 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) calendar
3 days, Ecology's project coordinator shall issue a written decision.

4 (C) The objecting Party may then request section management review of the
5 decision. This request shall be submitted in writing to the Land and Aquatic Cleanup
6 Headquarters Section Manager (Section Manager) of the Toxics Cleanup Program within
7 seven (7) calendar days of receipt of Ecology's project coordinator's decision.

8 (D) Ecology's Section Manager shall conduct a review of the dispute and shall
9 endeavor to issue a written decision regarding the dispute within thirty (30) calendar days of
10 the request for review.

11 (E) If the objecting Party finds Ecology's Section Manager's decision unacceptable,
12 the objecting Party may then request final management review of the decision. This request
13 shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)
14 calendar days of receipt of the Section Manager's decision.

15 (F) Ecology's Program Manager shall conduct a review of the dispute and shall
16 endeavor to issue a written decision regarding the dispute within thirty (30) calendar days of
17 the request for review of the Section Manager's decision. The Program Manager's decision
18 shall be Ecology's final decision on the disputed matter.

19 152. If Ecology's final written decision is unacceptable to Clark County, the County
20 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge
21 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
22 under this Decree. In the event Clark County presents an issue to the Court for review, the
23 Court shall review the action or decision of Ecology on the basis of whether such action or
24 decision was arbitrary and capricious and render a decision based on such standard of review.

25 153. The Parties agree to only utilize the dispute resolution process in good faith and
26 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

1 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
2 the other Party may seek sanctions.

3 154. Implementation of these dispute resolution procedures shall not provide a basis
4 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
5 schedule extension or the Court so orders.

6 **XVII. PERFORMANCE**

7 155. All work performed pursuant to this Decree shall be under the direction and
8 supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or
9 equivalent, with expertise and experience in hazardous waste site investigation and cleanup.
10 Clark County shall notify Ecology in writing of the identity of such engineer(s) or
11 hydrogeologist(s), or their equivalents, and of any contractors and subcontractors to be used in
12 carrying out the terms of this Decree, in advance of their involvement at the Property.

13 156. Any construction work performed pursuant to this Decree shall be under the
14 supervision of a professional engineer or a qualified technician under the direct supervision of
15 a professional engineer. The professional engineer must be registered in the State of
16 Washington, except as provided in RCW 18.43.130.

17 157. Any removal and/or disposal of MEC performed pursuant to this Decree shall
18 be under the supervision of a Senior UXO supervisor (SUXOS) identified by Clark County and
19 approved by Ecology. The SUXOS must be an “explosives or munitions emergency response
20 specialist” as defined in WAC 173-303-040. Clark County shall notify Ecology as to the
21 identity and qualifications of the SUXOS it has selected. The selection of the SUXOS is
22 subject to Ecology approval, which shall not be unreasonably withheld. Clark County shall
23 provide a copy of this Decree to the SUXOS and shall require that all work undertaken by the
24 SUXOS to remove and/or dispose of MEC will be in compliance with this Decree.

1 **XVIII. COMPLIANCE WITH APPLICABLE LAWS**

2 158. All actions carried out by Clark County pursuant to this Decree shall be done in
3 accordance with all applicable federal, state, and local requirements, including requirements to
4 obtain necessary permits and approvals, except as provided in RCW 70.105D.090.

5 159. Pursuant to RCW 70.105D.090(1), Clark County are exempt from the
6 procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and
7 of any laws requiring or authorizing local government permits or approvals. However, Clark
8 County shall comply with the substantive requirements of such permits or approvals. A list of
9 such permits and approvals and/or the substantive requirements of those permits and approvals
10 as they are known to be applicable at the time of issuance of any RI/FS Report or CAP for any
11 RAU shall be included in the respective RI/FS Report or CAP for that RAU and shall be
12 binding and enforceable requirements of this Decree.

13 160. Clark County has a continuing obligation to determine whether additional
14 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
15 remedial action under this Decree. In the event Clark County or Ecology determines that
16 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
17 required for the remedial action under this Decree, it shall promptly notify the other Parties of
18 this determination. Ecology shall determine whether Ecology or Clark County shall be
19 responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Clark
20 County shall promptly consult with the appropriate state and/or local agencies and provide
21 Ecology with written documentation from those agencies of the substantive requirements those
22 agencies believe are applicable to the remedial action. Ecology shall make the final
23 determination on the additional substantive requirements that must be met by Clark County
24 and on how Clark County must meet those requirements. Ecology shall inform Clark County
25 in writing of these requirements. Once established by Ecology, the additional requirements
26 shall be enforceable requirements of this Decree. Clark County shall not begin or continue the

1 remedial action potentially subject to the additional requirements until Ecology makes its final
2 determination.

3 161. Ecology shall ensure that notice and opportunity for comment is provided to the
4 public and appropriate agencies prior to establishing the substantive requirements under this
5 Section.

6 162. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
7 exemption from complying with the procedural requirements of the laws referenced in
8 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
9 necessary for the State to administer any federal law, the exemption shall not apply and Clark
10 County shall comply with both the procedural and substantive requirements of the laws
11 referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

12 **XIX. RESTRICTIVE COVENANTS**

13 163. Pursuant to Section X. of this Decree, institutional controls are required at the
14 Property under WAC 173-340-440(4) to limit access to the Property and ensure the continued
15 protection of human health and safety during the remediation of the Property. Clark County
16 shall record the Restrictive Covenant that describes those controls with the office of the Clark
17 County Auditor within thirty (30) calendar days of the transfer of the Early Transfer Parcel
18 from the Army to Clark County. Clark County shall provide Ecology with a copy of the
19 recorded Restrictive Covenant within thirty (30) calendar days of the recording date.

20 164. If additional institutional controls are required at the Property and a Restrictive
21 Covenant is established under this Decree that describes those controls, then Clark County
22 shall record the Restrictive Covenant with the office of the Clark County Auditor in a timely
23 manner. Clark County shall provide Ecology with a copy of the recorded Restrictive Covenant
24 within thirty (30) calendar days of the recording date.
25
26

1 **XX. PUBLIC PARTICIPATION**

2 165. A public participation plan is required for this Property. Clark County shall
3 update the Public Participation Plan for the Property and submit a draft plan for Ecology
4 review and approval within sixty (60) calendar days of the effective date of this amended
5 Decree. The draft plan shall be subject to the review, comment, and approval process in
6 Paragraph 132 of this Decree.

7 166. Ecology shall maintain the responsibility for public participation at the
8 Property. However, Clark County shall cooperate with Ecology, and shall:

9 (A) If agreed to by Ecology, prepare drafts of public notices and fact sheets at
10 important stages of the remedial action, such as the submission of work plans, remedial
11 investigation/feasibility study reports, cleanup action plans, and engineering design reports.
12 As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and
13 distribute public notices of Ecology’s presentations and meetings;

14 (B) Notify Ecology’s project coordinator prior to the preparation of all press
15 releases and fact sheets, and before major meetings with the interested public and local
16 governments. Likewise, Ecology shall notify Clark County prior to the issuance of all press
17 releases and fact sheets, and before major meetings with the interested public and local
18 governments. For all press releases, fact sheets, meetings, and other outreach efforts by Clark
19 County that do not receive prior Ecology approval, Clark County shall clearly indicate to its
20 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
21 or endorsed by Ecology;

22 (C) Upon reasonable advance notice, participate in public presentations on the
23 progress of the remedial action at the Property. Participation may be through attendance at
24 public meetings to assist in answering questions, or as a presenter; and

25 (D) In cooperation with Ecology, arrange and/or continue information repositories
26 to be located at the following locations:

- 1
2 (1) Department of Ecology
3 Toxics Cleanup Program
4 300 Desmond Dr.
5 Lacey, Washington
6 By appt: (360) 407-7224
7 www.wa.gov/ecology/tcp/cleanup.html
- 8 (2) Washington State University Vancouver Library
9 14204 NE Salmon Creek Avenue
10 Vancouver, Washington
11 Attn: Collection Development Coordinator
12 Phone: (360) 546-9694

13 At a minimum, copies of all public notices, fact sheets, and press releases; quality assured
14 monitoring data; remedial action plans and reports; supplemental remedial planning
15 documents; and all other similar documents relating to performance of the remedial action
16 required by this Decree shall be promptly placed in these repositories.

17 **XXI. ACCESS**

18 167. Ecology or any Ecology authorized representatives shall have full authority to
19 enter and freely move about the Property at all reasonable times for the purposes of, *inter alia*:
20 inspecting records, operation logs, and contracts related to the work being performed pursuant
21 to this Decree; reviewing Clark County's progress in carrying out the terms of this Decree;
22 conducting such tests or collecting such samples as Ecology may deem necessary; using a
23 camera, sound recording, or other documentary type equipment to record work done pursuant
24 to this Decree; and verifying the data submitted to Ecology by Clark County. Clark County
25 shall make all reasonable efforts to secure access rights for those portions of the Property not
26 owned or controlled by Clark County where remedial activities or investigations will be
performed pursuant to this Decree. Ecology or any Ecology authorized representative shall
give reasonable notice before entering any portion of the Property owned or controlled by
Clark County unless an emergency prevents such notice. Where access to the Property is
restricted due to the presence of military munitions, with reasonable prior notice Clark County
shall supply sufficient personnel trained in ordnance recognition and avoidance to enable

1 Ecology or any Ecology authorized representative to carry out the purposes of this Paragraph.
2 All Parties with access to the Property pursuant to this Paragraph shall comply with approved
3 health and safety and Explosive Safety plans. Ecology employees and their representatives
4 shall not be required to sign any liability release or waiver as a condition of Property access.

5 **XXII. SAMPLING AND DATA SUBMITTAL**

6 168. With respect to the implementation of this Decree, Clark County shall make the
7 results of all reconnaissance, sampling, laboratory reports, and/or test results generated
8 by them, or on their behalf, available to Ecology. Pursuant to WAC 173-340-840(5),
9 Clark County shall submit those results in accordance with Section XIV of this Decree and as
10 follows:

11 (A) Within thirty (30) calendar days of the generation by Clark County or on their
12 behalf, of any field or laboratory data, including any validated and non-validated data, Clark
13 County shall submit such data to Ecology. The data shall include a list of hazardous
14 substances analyzed for, but not detected. In accordance with Ecology's Toxic Cleanup
15 Program Policy 840 (Data Submittal Requirements), the data shall be submitted in both printed
16 and electronic formats and the electronic format shall be compatible with Ecology's data
17 management systems.

18 (B) If preliminary analysis of samples indicates a potential imminent and substantial
19 endangerment to public health, then Clark County shall notify Ecology immediately.

20 169. If requested by Ecology, Clark County shall allow split or duplicate samples to
21 be taken by Ecology and/or its authorized representatives of any samples collected by Clark
22 County pursuant to the implementation of this Decree. Clark County shall notify Ecology
23 seven (7) calendar days in advance of any sample collection or work activity at the Property.
24 Ecology shall, upon request, allow split or duplicate samples to be taken by Clark County or its
25 authorized representatives of any samples collected by Ecology pursuant to the implementation
26 of this Decree provided it does not interfere with Ecology's sampling. Ecology shall provide

1 the quality assured and quality controlled results of any sampling conducted by Ecology to
2 Clark County within fourteen (14) calendar days of receipt of same. Without limitation on
3 Ecology's rights under Section XXI of this Decree, Ecology shall endeavor to notify Clark
4 County prior to any sample collection activity unless an emergency prevents such notice.

5 170. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses
6 shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific
7 analyses to be conducted, unless otherwise approved by Ecology.

8 **XXIII. REPORTING OF ADDITIONAL RELEASES**

9 171. In accordance with WAC 173-340-300, Clark County shall notify Ecology in
10 writing of any discovery of any previously unidentified release, including any previously
11 unidentified area of military munitions, within thirty (30) calendar days of the discovery. Any
12 release discovered after the effective date of this Decree that requires remedial action may be
13 addressed as part of an existing RAU or as a separate RAU by agreement of the Parties. Any
14 such agreement will become an integral and enforceable part of this Decree upon entry by the
15 Court as an amendment to this Decree.

16 **XXIV. RETENTION AND SUBMITTAL OF RECORDS**

17 172. During the pendency of this Decree and for ten (10) years from the date this
18 Decree is no longer in effect as provided in Section XXXIII of this Decree, Clark County shall
19 preserve all records, reports, documents, and underlying data in its possession relevant to
20 the implementation of this Decree and shall insert a similar record retention requirement into
21 all contracts with project contractors and subcontractors. Upon request of Ecology, Clark
22 County shall make all records available to Ecology and allow access for review within a
23 reasonable time.

24 173. In accordance with WAC 173-340-850, Clark County shall submit a copy of
25 any requested records relevant to this Decree within thirty (30) calendar days after receipt of
26 Ecology's written request.

1 **XXV. ENDANGERMENT**

2 174. If, for any reason, Ecology determines that any activity being performed at the
3 Property is creating or has the potential to create a danger to human health or the environment,
4 Ecology may direct Clark County to cease such activities for such period of time as it deems
5 necessary to abate the danger. Clark County shall immediately comply with such direction.

6 175. If, for any reason, Clark County determines that any activity being performed at
7 the Property is creating or has the potential to create a danger to human health or the
8 environment, they may cease such activities. Clark County shall notify Ecology's project
9 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
10 determination or ceasing such activities. Upon Ecology's direction, Clark County shall
11 provide Ecology with documentation of the basis for the determination or cessation of such
12 activities. If Ecology disagrees with Clark County's cessation of activities, it may direct them
13 to resume such activities.

14 176. If Ecology concurs with or orders a work stoppage pursuant to this Section,
15 Clark County's obligations with respect to the ceased activities shall be suspended until
16 Ecology determines the danger is abated, and the time for performance of such activities, as
17 well as the time for any other work dependent upon such activities, shall be extended, in
18 accordance with Section XI of this Decree, for such period of time as Ecology determines is
19 reasonable under the circumstances.

20 177. Nothing in this Decree shall limit the authority of Ecology, its employees,
21 agents, or contractors to take or require appropriate action in the event of an emergency.

22 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

23 178. If Ecology determines that Clark County has failed without good cause to
24 implement the remedial action, in whole or in part, then Ecology may, after providing notice to
25 and an opportunity to respond by Clark County, perform any or all portions of the remedial
26 action that remain incomplete. Ecology will consider Clark County's response prior to

1 performing any or all portions of the remedial action that remain incomplete. Clark County
2 must respond within seven (7) calendar days of receipt of Ecology's notice. If Ecology
3 performs all or portions of the remedial action because of Clark County's failure to comply
4 with its obligations under this Decree, Clark County shall reimburse Ecology for the costs of
5 doing such work, provided that Clark County is not obligated under this Section to reimburse
6 Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

7 **XXVII. TRANSFER OF INTEREST IN PROPERTY**

8 179. No voluntary conveyance or relinquishment of title, easement, leasehold, or
9 other interest in all or any portion of the Property shall be consummated without provision for
10 continued operation and maintenance of any containment system, treatment system, and/or
11 monitoring system installed or implemented pursuant to this Decree.

12 180. Prior to Clark County's transfer of any interest in all or any portion of the
13 Property, and during the effective period of this Decree, Clark County shall provide a copy of
14 this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said
15 interest; and, at least thirty (30) calendar days prior to any transfer, Clark County shall notify
16 Ecology of said transfer. Upon transfer of any interest, Clark County shall restrict uses and
17 activities to those consistent with this Decree and notify all transferees of the restrictions on the
18 use of the Property.

19 **XXVIII. COVENANT NOT TO SUE UNDER MTCA**

20 **A. Covenant Not to Sue**

21 181. In consideration of Clark County's compliance with the terms and conditions of
22 this Decree, Ecology covenants not to institute legal or administrative actions against Clark
23 County regarding the release or threatened release of hazardous substances covered by this
24 Decree.

25 182. This Decree covers only the Site specifically defined in Section IV of this
26 Decree and those hazardous substances that Ecology knows are located at the Site as of the

1 date of entry of this Decree. This Decree does not cover any other hazardous substance or
2 area. Ecology retains all of its authority relative to any substance, area or entity not covered by
3 this Decree.

4 183. This Covenant Not to Sue shall have no applicability whatsoever to:

5 (A) Criminal liability;

6 (B) Liability for damages to natural resources; and

7 (C) Liability of potentially liable persons other than Clark County.

8 184. If factors not known to Ecology at the time of entry of the settlement agreement
9 are discovered and present a previously unknown threat to human health or the environment,
10 the Court shall amend this Covenant Not to Sue.

11 **B. Reopeners**

12 185. Ecology specifically reserves the right to institute legal or administrative action
13 against Clark County to require it to perform additional remedial actions at the Property and to
14 pursue appropriate cost recovery, pursuant to RCW 70.105D.050, under the following
15 circumstances:

16 (A) Upon Clark County's failure to meet the requirements of this Decree, including,
17 but not limited to, failure of the remedial action to meet the cleanup standards established
18 pursuant to this Decree;

19 (B) Upon Ecology's determination that remedial action beyond the terms of this
20 Decree is necessary to abate an imminent and substantial endangerment to human health and
21 the environment;

22 (C) Upon the availability of new information regarding factors previously unknown
23 to Ecology, including the nature or quantity of hazardous substances at the Property, and
24 Ecology's determination, in light of this information, that further remedial action is necessary
25 at the Property to protect human health or the environment; or
26

1 (D) Upon Ecology's determination, based on new information and prior to the
2 issuance of a Notice of Completion for a RAU under Section XII of this Decree, that additional
3 remedial actions are necessary at that RAU to achieve cleanup standards within the reasonable
4 restoration time frame established pursuant to this Decree.

5 186. Ecology's reservations in this subsection and in Paragraph 185 are subject to the
6 County receiving sufficient funds from the Army to perform such additional remedial actions
7 and to pay such appropriate cost recovery.

8 **XXIX. CONTRIBUTION PROTECTION UNDER MTCA**

9 187. With regard to claims for contribution against Clark County the Parties agree
10 that Clark County is entitled to protection against claims for contribution for matters addressed
11 in this Decree as provided by RCW 70.105D.040(4)(d).

12 **XXX. CLAIMS AGAINST THE STATE**

13 188. Clark County hereby agrees that it has no claim of right to recover any costs
14 accrued in implementing the remedial action required by this Decree from the State of
15 Washington or any of its agencies; and further, that they have no claim of right against the
16 State Toxics Control Account or any Local Toxics Control Account for any costs incurred in
17 implementing this Decree. Except as provided above, however, Clark County expressly
18 reserves its right to seek to recover any costs incurred in implementing this Decree from any
19 other potentially liable person.

20 **XXXI. INDEMNIFICATION**

21 189. Clark County agrees to indemnify and save and hold the State of Washington,
22 its employees, and agents harmless from any and all claims or causes of action for death or
23 injuries to persons or for loss or damage to property arising from or on account of acts or
24 omissions of Clark County, its officers, employees, agents, or contractors in entering into and
25 implementing this Decree. However, Clark County shall not indemnify the State of
26 Washington nor save nor hold its employees and agents harmless from any claims or causes of

1 action arising out of the negligent acts or omissions of the State of Washington, or the
2 employees or agents of the State, in implementing the activities pursuant to this Decree.

3 **XXXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

4 190. This Decree has been the subject of public notice and comment under
5 RCW 70.105D.040(4)(a). As a result of this process, Ecology has determined that:

6 (A) This Decree will yield substantial new resources to facilitate cleanup;

7 (B) This Decree will expedite remedial action consistent with the rules adopted
8 under MTCA; and

9 (C) Based on available information, the redevelopment or reuse of the Property is
10 not likely to contribute to any existing or threatened release at the Site, interfere with any
11 remedial action that may be needed at the Site, or increase health risks to persons at or in the
12 vicinity of the Site.

13 191. If the Court withholds or withdraws its consent to this amended Decree, it shall
14 be null and void at the option of any Party and the accompanying Complaint shall be dismissed
15 without costs and without prejudice. In such an event, no Party shall be bound by the
16 requirements of this Decree.

17 **XXXIII. DURATION OF THE DECREE AND RETENTION**
18 **OF JURISDICTION**

19 192. The remedial program required pursuant to this Decree shall be maintained and
20 continued until Clark County has received written notification from Ecology that the
21 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
22 effect until dismissed by this Court. When dismissed, Section XXVIII, Covenant Not to Sue,
23 and Section XXIX, Contribution Protection, shall survive.

24 **XXXIV. AMENDMENT OF THE DECREE**

25 193. This Decree may only be amended by a written stipulation among the Parties to
26 this Decree that is entered by the Court or by order of the Court. Such amendment shall

1 become effective upon entry by the Court. Agreement to amend shall not be unreasonably
2 withheld by any Party to the Decree.

3 194. Clark County shall submit any request for an amendment to Ecology for
4 approval. Ecology shall indicate its approval or disapproval in a timely manner after the
5 request for amendment is received. If the proposed amendment represents a substantial
6 change, Ecology will provide public notice and opportunity for comment. Reasons for
7 disapproval of a proposed amendment shall be stated in writing. If Ecology does not agree to a
8 proposed amendment, the disagreement may be addressed through the dispute resolution
9 procedures described in Section XVI of this Decree.

10 **XXXV. EFFECTIVE DATE OF THE DECREE**

11 195. This amended Decree is effective upon the date it is entered by the Court.

12 STATE OF WASHINGTON
13 DEPARTMENT OF ECOLOGY

ROBERT M. McKENNA
Attorney General

14 _____
15 JIM PENDOWSKI
16 Program Manager
17 Toxics Cleanup Program

MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General

18 Date: _____

Date: _____

19 CLARK COUNTY

20 _____
21 MARC BOLDT, Chair
22 Board of County Commissioners

E. BRONSON POTTER, WSBA #9102
Attorney for Clark County

23 Date: _____

Date: _____

24 ENTERED this ____ day of _____ 2011.

25 _____
26 JUDGE
Clark County Superior Court