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Appendix "A" Revision:

Each of the following key events will trigger a State-USDOE consultation:

1. The State is notified of USDOE's intent to nominate a site for characterization.
2. USDOE issues a Draft Environmental Assessment.
3. The USDOE BWIP hydrology program reaches a key event as identified by footnote 4 of the "Logic Diagram for BWIP Borehole: Hydrologic Test Strategy."
4. USDOE issues a Mission Plan.
5. USDOE issues a Draft Site Recommendation Report.
6. USDOE issues a Draft Environmental Impact Statement which discusses the feasibility of comingling radioactive wastes from the Hanford Reservation with commercial wastes. There is a Presidential decision on comingling atomic energy defense wastes with commercial wastes.
7. USDOE issues a Draft Site Characterization Plan.
8. USDOE issues a six-month update of the Site Characterization Plan.
9. The President approves a site for characterization.
10. Announcement by USDOE of intent to start construction of exploratory shaft.

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Memorandum of Agreement between the State of Washington
and the United States Department of Energy
for Consultation and Cooperation, Pursuant to
Public Law 97-425

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Memorandum of Agreement between the State of Washington
and the United States Department of Energy
for Consultation and Cooperation, Pursuant to
Public Law 97-425

This Memorandum of Agreement is entered into by the State of Washington, hereinafter the State, and the United States Department of Energy, hereinafter USDOE, this ____ day of ____ 198__.

WHEREAS, the Nuclear Waste Policy Act of 1982 was signed into law on January 7, 1983, "[t]o provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes." (P.L. 97-425)

WHEREAS, the USDOE has the responsibility, pursuant to the Nuclear Waste Policy Act of 1982, to provide for the permanent disposal of high-level radioactive waste and spent nuclear fuel in order to protect the public health and safety and the environment.

WHEREAS, Congress has, in the Nuclear Waste Policy Act, found that State participation in the planning and development of a repository is essential in order to promote public confidence in safety of disposal of such waste and spent fuel.

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WHEREAS, the parties to this Agreement recognize that since 1976 the Hanford Site has been under evaluation by USDOE as a potential repository site and that an informal process of consultation and cooperation with the State has been ongoing since 1979.

WHEREAS, by letter dated February 2, 1983, the State was notified by the Secretary that the Hanford Site was a potentially acceptable repository site, as defined in Section 116(a) of the Act.

WHEREAS, by letter dated June 30, 1983, the State requested that the Secretary enter into a binding agreement with the State pursuant to Section 117(c) of the Act.

WHEREAS, the purpose of this Agreement, as established in Section 117 of the Act, is to set forth the procedures by which the State will receive "timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation or decommissioning of such repository." Both parties further recognize the Agreement is not limited to the above elements. In addition, "The Secretary shall consult and cooperate with the Governor and legislature of such state . . . in an effort to resolve the concerns of such state . . . regarding the public health and safety, environmental, and economic impacts of any such repository."

WHEREAS, the Secretary shall take the State's concerns into account to the maximum extent feasible as specified in this Agreement which is entered into pursuant to Section 117(c) of the Act.

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WHEREAS, the State has an obligation, as specified in this agreement, to express such concerns in a timely manner and to make all reasonable efforts to cooperate with DOE in resolving such concerns.

Therefore the parties agree as follows:

Article I - Definitions

- A. the term "State" means the sovereign State of Washington;
- B. the term "USDOE" means the United States Department of Energy;
- C. the term "Secretary" means the Secretary of the USDOE;
- D. the term "Commission" means the Nuclear Regulatory Commission;
- E. the term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geological disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery for a limited period during initial operation, of any materials placed in such system (such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted);

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F. the term "high-level radioactive waste" means:

- (1) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and
- (2) other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation;

G. the term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

H. the term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under Section 112 of the Act for site characterization, approved by the President of the United States under Section 112 of the Act for site characterization, or undergoing site characterization under Section 113 of the Act;

I. the term "site characterization" means activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations,

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excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken;

- J. the term "Act" means the Nuclear Waste Policy Act of 1982 (Public Law 97-425);
- K. the term "key event" means a significant activity in the siting, construction, operation or closure of a repository; and
- L. the term "BWIP" means the Basalt Waste Isolation Project located on USDOE's Hanford Site near Richland, Washington.
- M. the term "pre-site characterization" means activities undertaken to determine suitability for site nomination and recommendation for site characterization, including, but not limited to, activities that may be authorized under Section 112(f) of the Act.

Article II - Scope and Duration of the Agreement

This Agreement shall be applicable to all activities of the parties with respect to a possible location of a repository within the State, including pre-site characterization, ongoing and planned site characterization, siting,

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development, design, licensing, construction, operation, regulation, and decommissioning of such repository. The initial phase of the Agreement shall focus on the key events and documents listed in Appendix A hereto. It is recognized that it may be necessary to revise Appendix A from time to time to achieve the intended benefits of the consultation and cooperation process and that, in any event, this Agreement including Appendix A will require modification if consideration of a Washington State Site proceeds beyond site characterization. Any such modifications shall be made in accordance with Article III.

The State and USDOE agree to conclude agreements authorized by the Act if (1) a site within the State is identified under Section 213(b) of the Act for the potential location of a test and evaluation facility; (2) a potential site for a monitored retrievable storage facility within the State is identified under Section 141(h) and 116(a) of the Act, or (3) a site within the State is selected by the Secretary under Section 135(d) of the Act for away-from-reactor storage of high-level radioactive waste. Each such written agreement shall, to the maximum extent feasible, be completed within 180 days after the events set forth in (1), (2) and (3) above. If any such agreement is not concluded within 180 days, USDOE shall report to Congress the status of negotiations of such an agreement and the report shall be accompanied by comments solicited by USDOE from the State.

This Agreement will terminate if a potentially acceptable site is not nominated under Section 112(b), or is nominated under 112(b) but is not

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recommended to the President and approved under 112(b)1(B), 112(b)1(C), and 112(c) of the Act. Otherwise, this agreement will continue in effect, subject to future modifications, while activity falling within the scope of this Agreement is ongoing in the State.

Article III - Modifications

As stated in Article II, this Agreement, including Appendix A, will require modification if consideration of a Washington State site proceeds beyond site characterization. In the event that the Secretary recommends to the President that the President approve a site within the State for the development of a repository, the parties shall begin good faith negotiations concerning modification within seven days of the Secretary's notice to the Governor and Legislature under Section 114(a) of the Act. The parties will endeavor to complete these negotiations prior to Presidential submission of a recommended site within the State to the Congress. It is recognized that modification of this Agreement after the Secretary's recommendation is of critical importance to the State, and the State has represented that failure to agree on modifications which the State deems essential may constitute a basis for a State notice of disapproval to the Congress under Section 116(b) of the Act.

At any time either party may request this Agreement be modified by submitting a written request to the other party containing the modification or modifications requested and the reasons therefor. The other party shall consider the request, respond thereto in writing within 30 days and enter into

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good faith negotiations concerning the proposed modification within a reasonable time of receipt of the request.

Any modification to this Agreement shall be in writing and signed by both parties.

Article IV - Procedures for State Review and Evaluation

An ongoing program of consultation shall be established between the State and USDOE. The program shall include, as a minimum, consultation scheduled to coincide with the key events and key documents identified in Appendix A. USDOE will, from the date of execution of this Agreement, keep the State fully and currently informed of schedule or program changes which may affect said key events. Consultation meetings will be scheduled at mutually convenient times for each key event unless the right to a meeting is waived by the State.

The State may monitor USDOE programs and may in that capacity conduct data verification studies, document reviews and analysis, inspect and utilize raw field data, and review USDOE and its contractor's technical records, provided, however, that the State shall conduct such activities in such a way that it does not unreasonably interfere with or delay USDOE's onsite activities.

The State may design and implement independent offsite studies and other programs to protect the public health and safety, and the environment

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including programs designed to inform the State's residents about USDOE activities. The State will provide USDOE the opportunity to review and comment on the scope and results of such studies and programs.

The State may conduct reasonable independent physical examinations or testing on the potential repository site, but such examination or testing shall not unreasonably interfere with or delay onsite activities. If the State identifies a concern which in its view requires independent examination at the repository site, the State may propose that a specific test or other remedy be employed. The State shall set forth the basis and rationale for the test or other remedy. The State may either (1) prepare a work plan by which it will undertake the examination onsite, or (2) request that USDOE develop and implement a work plan to undertake the test or other remedy. In either of the preceding cases USDOE may object to the State's proposal upon any of three grounds: (1) the proposal is not reasonable; (2) the proposal will unreasonably interfere with or delay onsite activities; or (3) the proposal cannot be undertaken within the limits of existing funding.

If USDOE objects to the State's request, USDOE shall file written objections with the State within 30 days after receipt of the State's request. The State may enter into negotiations with USDOE to resolve USDOE objections. If the objections are not resolved within 60 days after the inception of negotiations, USDOE or the State may request mediation of the dispute. If the parties cannot agree on a process for mediation or in the event mediation fails to result in an agreement of the parties within 90 days, either party may seek judicial review.

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The State will be permitted to have onsite representatives. Standard USDOE site access procedures will be employed.

Article V - Response to State Objections, Concerns and Comments

- A. USDOE shall keep the State fully and currently informed with respect to the key events and documents set forth in Appendix A in order that the State may make an independent review. USDOE shall give not less than 30 days prior written notice to the State of its intention to commence the key events identified in Appendix A.
- B. As the State develops formal objections, concerns or comments relating to the repository program, the State shall advise USDOE in writing of such objections, concerns or comments.
- C. USDOE shall provide at least an initial response in writing to the written objections, concerns and comments of the State within 30 calendar days from receipt thereof. If the initial response is not complete, the final response will be provided within 60 additional days. In the event USDOE's final response does not resolve or satisfy the State, the provisions of Article VII shall be followed. It is understood and agreed that both parties shall use all reasonable effort to resolve the objections and concerns of the State prior to invoking the provisions of Article VII.
- D. A less formal dialogue will continue to exist between the State and USDOE outside the formal response procedures described above. The purpose of

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these communications will be to facilitate the exchange of information of mutual interest and to be fully and currently informed as to each party's activities.

Article VI - Access to Information

Data collected relevant to a potential repository within the State of Washington will be made available to the State on a current continuing basis after the USDOE quality assurance check that the data has been obtained and documented properly. USDOE will also provide the State, on a quarterly basis, a listing of all reports, publications, documents, and preliminary technical and licensing information, including information on the second repository, pertaining to the national repository program whether publicly available or not. The State may request that such materials, as it deems of interest, be provided to its Olympia offices or that access be provided to State representatives to said information at mutually convenient times and places. Such requests will be honored as soon as possible. The State agrees not to represent preliminary technical and licensing information as the final position of USDOE or its contractors or consultants. In the event that USDOE does not satisfactorily respond to the State's request for information, and such failure to satisfactorily respond cannot be resolved at the working level, the State shall have the option to resort to the procedures contained in Section 117(a)(2) of the Act.

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USDOE will provide relevant reference material for a State public reference center in Olympia containing appropriate materials collected from USDOE, NRC and other sources.

USDOE will provide State access to its information release system such that the State may examine document catalogues, technical data, and USDOE models or computer programs, in addition to any other information which is relevant to repository development.

The State will provide USDOE copies of preliminary documents pertaining to the repository program prepared by the State or its contractors or consultants. Such data will be provided in a timely manner and, whenever practicable, the State will provide, to USDOE such materials for review and comment. USDOE agrees not to represent preliminary information as the final position of the State or its contractors or consultants.

Nothing in this Agreement shall be deemed to require the release by either party of information which it is precluded from releasing by applicable law or regulations from releasing. The parties agree, however, to exercise their best efforts to obtain access to any such information for and at the request of the other party.

Article VII - Conflict Resolution

The parties to this Agreement recognize that, notwithstanding the requirements for this formal Agreement, the consultation and cooperation process is an

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ongoing process and that all reasonable efforts should be made to resolve problems, issues and concerns without invoking any available formal procedures. The parties acknowledge that the failure to discuss and resolve differences of either party is counterproductive to the purpose of this Agreement and the intent of the Act. In the event that the State's concerns involving public health and safety, environmental and economic impacts cannot be mutually resolved, the parties agree to resolve such issues in accordance with the following procedures.

- A. Within 90 calendar days after the State notifies USDOE in writing of such issues, a minimum of three attempts shall be made by the officially designated representatives of USDOE and the State to negotiate resolution of the dispute. Meetings will be scheduled as frequently as necessary to ensure a good faith attempt to resolve issues during the allotted times.
- B. If the issue or issues are not resolved under Paragraph A, at least two meetings between the Director of the Department of Ecology and the Director of the Office of Civilian Radioactive Waste Management will be scheduled within a 60-day period to further negotiate a resolution.
- C. If the issue or issues remains unresolved following conclusion of the 60-day period referenced in Paragraph B, the Governor and the Secretary of Energy will meet to negotiate a resolution of the dispute at a mutually convenient time and place.

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- D. If the Governor and Secretary are unable to resolve the dispute, the Secretary shall submit to the State a written determination which shall include a proposed decision and the basis therefore. The State shall have 30 days from the date of receipt to prepare proposed additions and modifications to the Secretary's written determination. The Secretary shall then issue a final determination which shall constitute the final decision of the Secretary for the purpose of judicial review. In the event of judicial review, the parties agree that although it is the decision of the Secretary which is being reviewed, to the extent authorized by law, the Court shall give equal weight to the Secretary's written determination and the additions and modifications proposed by the State. If the State initiates an action for judicial review, it may request that the Secretary cease, or petition the Court to enjoin further activities at the site.
- E. Neither the Governor or the Secretary may delegate his or her responsibilities under this Article.

Article VIII - Grants - Financial Assistance

- A. Pursuant to Section 116(c) of the Act, USDOE will continue to make grants to the State for the purpose of conducting the activities authorized under this Agreement and the Act. Such grants will be issued in accordance with USDOE Assistance Regulations, 10 C.F.R. Part 600, as amended, Subparts A and B, and the provisions of the Act. Any salary or travel expense that

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would ordinarily be incurred by the State or any political subdivision of the State will not be considered eligible for funding. However, salary and travel expenses incurred by the State which would not have been incurred but for the passage of the Act may be considered eligible for funding. Employees working less than full time on the program will maintain time sheets for accounting purposes.

- B. Recognizing that the State may have committed substantial resources to participate in the activities specified in this Agreement, and to assure that grants are phased out in a reasonable and orderly manner, USDOE agrees to provide funding for up to one year for close-out activities in the event this Agreement is terminated pursuant to Article II.

- C. In the event a site located within the State is approved for site characterization pursuant to Section 112(c) of the Act, the Secretary shall grant to the State and unit of general local government in which a site for a repository is approved under Section 112(c) an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax site characterization activities at such site, and the development and operation of such repository as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

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Article IX - Impact Assistance

In the event a site located within the State is approved for site characterization pursuant to Section 112(c) of the Act, the USDOE will provide financial assistance to the State for the purpose of developing a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository in the State, and of developing a request for impact assistance under Section 116(c)(2)(A) of the Act. The State will independently assess impacts upon the State and its political subdivisions, which assessment may include such activities as the collection of baseline statistics on health, population, employment, schools, traffic patterns, hospitals, fire protection, water resources, agricultural activities, and other relevant issues of concern to the local community and the State.

If, following site characterization, construction of a repository within the State is authorized and the State's report for impact assistance has been submitted to the Secretary, the Secretary shall provide financial and technical assistance designed to mitigate the impact on the State and its political subdivisions of the development of the repository. The report may include any economic, social, public health and safety, and environmental impacts likely as the result of the development of a repository site in the State. Mitigation may be included for, but will not necessarily be limited to community services and facilities, emergency response planning, and the upgrading and maintenance of interstate highways, state highways, roads, and

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costs incurred by the State associated with upgrading and maintenance of other transportation facilities within the State of Washington. Such assistance shall commence within 6 months following the granting by the Commission of a construction authorization for the repository and following the initiation of construction activities at the site, and the amount of the assistance and the procedures to be followed in providing such assistance shall be established by a written agreement between the parties.

Article X - Public Involvement

The success of the national repository program under the Nuclear Waste Policy Act of 1982 depends upon both citizen awareness and involvement.

Under the Act, the State has the right to conduct a broad, independent review of USDOE repository-related actions and to carry out such activities to enable increased citizen awareness and understanding of the national repository development program.

Also, USDOE has the responsibility to assure that the public has awareness of, and opportunity to participate in the planning and development of USDOE activities to evaluate and potentially site, construct, operate, and monitor a nuclear waste repository in Washington State.

In order for the State to fully discharge its responsibilities, a public involvement program funded by USDOE is essential. Consistent with Article

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VIII, USDOE agrees to financially support a State-designed program to increase citizen involvement in and understanding of the national program.

Since the State and USDOE each have responsibilities for carrying out public information programs, it is necessary that advance notice of schedule for public hearings and meetings be mutually provided.

USDOE will schedule public comment periods around key events, when appropriate, and will provide the State advance notification of these schedules.

Article XI - Utilization of Available Expertise - Joint Review and Monitoring - Permit Procedures

The parties agree to jointly use available expertise, engage in joint project reviews and joint surveillance and monitoring to the extent consistent with the State's right of independent review and DOE's responsibility for management of the BWIP project. The parties recognize that such joint efforts are desirable in order to avoid duplication of efforts and to assure prudent expenditure of funds.

Article XII - Coordination with Affected Indian Tribes

In the event one or more Indian tribes are "affected Indian tribes" within the meaning of Section 2 of the Act, and with respect to the BWIP Project, the

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parties agree, to the maximum extent practicable and to the extent it is consistent with the State's right of independent review, to coordinate their activities with such Indian tribes in order to avoid duplication.

Article XIII - State Permits

The State will be kept informed by USDOE of all permitting applications submitted to the State and political subdivisions by USDOE or its contractors, and the State will lend its assistance in seeing that such applications are dealt with on a timely basis.

Article XIV - Liability (Proposed by the State)

USDOE agrees that the United States will be strictly and absolutely liable, without regard to fault, for any damages caused by a nuclear incident at a repository within the State of Washington or associated with the transport of radioactive material to or from such a repository, regardless of the cause of such incident.

Article XIV - Liability - Nuclear Hazards Indemnity (Proposed by USDOE)

A. USDOE acknowledges that the State has requested that the United States Government, acting through the USDOE, assume unlimited liability for the siting, design, construction, operation (including transportation of spent nuclear fuel or radioactive high-level waste within the State) and

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decommissioning of a repository, if a repository is located within the State of Washington. USDOE has represented that its liability is presently circumscribed by the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2671 et seq.) and that its contractors' liability for a nuclear incident (" . . . any occurrence, . . . within the United States causing . . . bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear or byproduct material . . ." 42 U.S.C. § 2014(q)) is limited to an aggregate liability for each such incident of \$500 million (Section 170.d., of the Atomic Energy Act of 1954, as amended; 42 U.S.C. § 2210(d) et seq.; Section 4 of the Price-Anderson Act).

USDOE agrees that it will assist the State in presenting the State's views with respect to liability to Congress. However, this agreement does not require or imply DOE concurrence in any State recommendation for amendment of the Price-Anderson Act or any other law. The parties acknowledge that the Secretary has recommended to Congress that authority to provide Price-Anderson coverage be extended beyond August 1, 1987, that the dollar limits be raised, and that the extraordinary nuclear occurrence feature be enlarged to include commercial and defense waste facilities.

- B. USDOE has the authority to extend the Price-Anderson Act indemnity coverage to the operation of a repository in the State if such a facility is authorized for the emplacement of high-level radioactive waste or spent fuel pursuant to the terms of the Act.

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C. The term "persons indemnified" as used in the Price-Anderson Act and implementing indemnity agreements prescribed for the technical support contractor for BWIP includes the State and its political subdivisions and municipalities.

D. While the "waiver of defenses" provision of Section 170n of the Atomic Energy Act of 1954, as amended, for "extraordinary nuclear occurrences" would be inapplicable to a nuclear incident at a repository site itself (because a repository is not "production or utilization facility" or a "device"), the "waiver of defenses" provision would be applicable in the event of an "extraordinary nuclear occurrence" which would occur in the course of the transportation of high-level radioactive waste or spent fuel to such a repository site from "a production or utilization facility" because the wastes would be "special nuclear material" or "by-product material."

E. USDOE agrees and stipulates that USDOE will amend and include in any new or modified contract for the operation of a repository upon completion of its construction, a specific statement in the standard nuclear hazards indemnity article that the phrase "persons indemnified" under the contracts includes the State, its municipalities and political subdivisions by the inclusion of the following clause:

The term "Persons Indemnified" has the meaning set out in 42 U.S.C. Sec. 2014(t), and, without limitation, includes the State of Washington, its municipalities and political subdivisions.

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F. The parties recognize that Price-Anderson Act indemnification coverage for the State is dependent upon USDOE's exercising its discretion to include the nuclear hazards indemnity article in a contract for operation of a future repository. The USDOE has already determined that such an operating contract for a repository involves "activities under the risk of public liability for a substantial nuclear incident." In accordance with this decision, a nuclear hazards indemnity article has been included in the contract with Rockwell Hanford Operations, the current technical support contractor for BWIP and a potential operating contractor for a completed repository. Pursuant to this decision, it is USDOE's current intention also to exercise its discretion in such a manner as to include a nuclear hazards indemnity article in any repository operating contract. While USDOE considers that a reversal of this decision is highly unlikely, USDOE cannot stipulate away its discretion in this regard. However, USDOE does agree and stipulate that the State of Washington shall be given at least 60 days' prior written notice of USDOE's intent to reverse the current decision to include a nuclear hazards indemnity article in its operating contract for a repository. Such notice shall also set forth the reasons for the decision and shall provide the State an opportunity to comment on such a decision to USDOE and have its comments considered by USDOE before any such reversal of such decision is given effect. This stipulation does not waive or otherwise preclude the State from taking such other administrative or judicial actions as it may see fit with respect to such reversal decision by USDOE.

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- G. The USDOE agrees and stipulates that it will deliver and file with the State of Washington copies of all BWIP or repository-related contracts, or portions thereof, which relate to the Price-Anderson Act indemnification coverage for the State and its citizens in order for the State to review them to insure that such protections are being provided, including but not limited to (1) the repository operating contract, (2) prime contracts for the operation of any "production or utilization facilities" or other facilities which may be the source or destination of any nuclear waste transported to or from a repository site, and (3) any contracts with the transporters of the waste to the site repository.
- H. It is USDOE's current intention to use contractor employees for the operation of a repository site and the transportation of waste to or from the repository site should a decision be made to construct and operate the repository as authorized in the Act. While USDOE recognizes that if it chooses to operate a repository or transport the high-level radioactive waste or spent fuel to or from a repository site by federal agents, Price-Anderson Act indemnification for the State and financial protection to the public hereunder would be lost, USDOE cannot agree or stipulate that it would not so use such federal agents. However, in the unlikely event that USDOE should reverse its present decision to use contractor employees for the operation of a repository and the transportation of waste to or from a repository, USDOE agrees and stipulates that it will give the State of Washington at least 60 days' prior written notice of its intention to reverse its present decision, which notice shall include its

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reasons for reversing such decision, and USDOE shall afford the State the opportunity to comment on the reversal of its decision and have its comments considered by USDOE before it is effectuated. This stipulation does not waive or otherwise preclude the State from taking such other administrative or judicial actions as it may see fit with respect to such reversal of USDOE decision.

- I. The USDOE agrees and stipulates that, in the event a repository is authorized for operation pursuant to the terms of the Act, the State's own financial protection available through its own liability insurance or legislative appropriations would not have to be exhausted or applied to pay for its public liability before it would be indemnified under the Price-Anderson Act.

- J. The USDOE agrees and stipulates that, pursuant to its procurement regulations, the nuclear hazards indemnity article included in BWIP related ontracts shall provide that the 500 million dollar Price-Anderson Act fund would not be first depleted by the costs of investigating or settling claims and defending suits before claimants would be paid therefrom.

- K. The wastes to be shipped to or from a repository site shall be owned by USDOE and shall be shipped to such site by transportation contractors engaged by USDOE or its contractors or in vehicles owned by USDOE. In the event of a transportation accident involving such shipments, whether or

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not such an accident shall result in the exposure of any such wastes to the biosphere within the State upon or adjacent to the transportation corridors involved, USDOE shall cause, at its expense, the cleanup and removal of any such wastes and the decontamination of any areas within the State which are exposed to radiation by such wastes to a level which shall be consistent with nationally accepted radiation protection standards and also subject to consultation with the State as provided for herein.

Article XV - Transportation

In the event that a site within the State is recommended under Section 114(a)(2)(A) of the Act for construction of a repository, the USDOE will prepare plans in consultation with the State for the packaging, transportation, and inspection of high-level radioactive waste and spent nuclear fuel shipments. The State shall be provided an opportunity to review and comment on any such plans prior to the shipment of any such material into the State for permanent storage in the repository. USDOE agrees that it will give good-faith consideration to the State's comments in the finalization and implementation of such plans.

In addition to the State's right to review and comment on USDOE's plans, the parties also agree that the State shall have the right to

- (1) independently monitor the transportation of nuclear waste to and from the repository site within the State;

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- (2) have access to and review pertinent shipping records, and records and documents kept by USDOE, relating to the type, source, curie content and nature of the waste being shipped to or from the repository site to insure compliance by carriers with U. S. Department of Transportation or USDOE standards for shipping nuclear waste;

- (3) have access to the repository site to conduct transportation monitoring and inspection, provided such activities are conducted in such a way that they do not result in undue interference with, or expense to, or compromise the safety of the repository operations;

- (4) conduct offsite transportation inspections and monitoring of vehicles carrying nuclear waste to or from the repository site at the point of entry into or exit from the State or at other offsite locations in the State as to possible radiation leaks, the condition of the drivers and the condition of the trucks and containers, so long as such monitoring and inspection do not unreasonably interfere with the transportation of the waste to the site and so long as such inspections do not involve the breaking of any seals on the trucks or the opening of any canisters or other shipping containers;

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- (5) participate and concur in the designation of routes within the State of Washington to be used for the transportation of nuclear waste to or from the repository, from among those routes approved by USDOT under the provision of the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801-1812) and regulations promulgated by the U. S. Department of Transportation thereunder; and
- (6) receive timely prior notification from USDOE of nuclear waste shipments to or from the repository.

The parties recognize that it may be necessary or desirable to agree to additional and/or more specific procedures concerning transportation if and when construction of a repository in the State is authorized; therefore, they agree that the provisions of this Article will be reviewed sufficiently in advance of any shipment of waste to the repository to permit timely and good-faith negotiation of any such modifications or additions in order to avoid delay of any shipments.

The USDOE agrees that it will make a good faith effort to support the State if the State decides to establish alternate preferred routes under U. S. Department of Transportation regulations for highway shipment of spent nuclear fuel or high-level radioactive waste.

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Article XVI - Emergency Response

In the event that a site within the State is recommended under Section 114(a)(2)(A) of the Act for construction of a repository, USDOE will prepare emergency response plans covering both facility operations at the repository and transportation of nuclear materials to and from the repository. The USDOE will provide the State the opportunity to review, comment and approve those plans.

Article XVII - Defense Waste

USDOE will provide for the effective input by the State of Washington to the federal decision process concerning integration of civilian and defense waste storage pursuant to Section 8 of PL 97-425. The State will be afforded the opportunity to comment and make recommendations throughout the process leading to the decision on this issue.

Article XVIII - Second Repository

In accordance with the Act, the USDOE will continue to work toward the establishment of a second geologic repository with consideration of the need for regional distribution of repositories. The USDOE will keep the State of Washington informed as to its progress in this regard and shall report any schedule slippage and the reason for such delays to the State as well.

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Article XIX - Signature Authority

It is expressly understood that the signatories to this agreement are acting appropriately under State and Federal law and are authorized to commit the State of Washington and the United States Department of Energy to the conditions herein, and that the agreement is binding upon their successors unless modified or terminated pursuant to Articles II and III.

State of Washington

**U. S. Department of Energy
Alex G. Fremling, Manager
Richland Operations Office**

Attest:
