DEFENSE

Naval Communication Station

Agreement Between
the UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Washington July 16, 2008

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

AUSTRALIA

Defense: Naval Communication Station

Agreement signed at Washington July 16, 2008;
Entered into force November 24, 2011.

AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF AUSTRALIA

RELATING TO THE OPERATION OF AND ACCESS TO AN AUSTRALIAN NAVAL COMMUNICATION STATION AT NORTH WEST CAPE IN WESTERN AUSTRALIA

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA RELATING TO THE OPERATION OF AND ACCESS TO AN AUSTRALIAN NAVAL COMMUNICATION STATION AT NORTH WEST CAPE IN WESTERN AUSTRALIA

THE GOVERNMENT OF THE UNITED STATES OF AMERICA (in this Agreement called "the United States Government") AND THE GOVERNMENT OF AUSTRALIA (in this Agreement called "the Australian Government");

RECALLING the Security Treaty between Australia, New Zealand and the United States of America, done at San Francisco on 1 September 1951; recalling the Agreement Between the Government of the United States of America and the Government of the Commonwealth of Australia Concerning the Status of United States Forces in Australia, done at Canberra on 9 May 1963; and further recalling the Agreement between the Government of the United States of America and Government of the Commonwealth of Australia the relating to the Establishment of a United States Naval Communication Station in Australia, done at Canberra on 9 May 1963, as amended;

NOTING, in particular, Article II of the Security Treaty which provides that the parties thereto will separately and jointly maintain and develop their individual and collective capacity to resist armed attack;

DESIRING to cooperate further in efforts for collective defense and for the preservation of peace and security; and

CONSIDERING that the maintenance and operation of an Australian naval communication station at North West Cape in Western Australia and considering that the granting to the United States the right to guaranteed access and use of that base will materially contribute to that end;

HAVE AGREED as follows:

Article 1

In accordance with the terms and conditions set out in this Agreement, the Australian Government shall maintain and operate a naval communication station (in this Agreement called "the station") at North West Cape in the State of Western Australia.

Article 2

The Australian Government shall, for the duration of this Agreement, grant to the United States Government all necessary rights of access to and use of the station, its facilities, and services, subject to the provisions of this Agreement and in accordance with technical arrangements made between the cooperating agencies of the two Governments. For the purposes of this Agreement, on the part of the Australian Government, the cooperating agency shall be the Australian Department of Defence, and on the part of the United States Government, the cooperating agency shall be the Department of the Navy.

Article 3

(1) The two Governments will consult from time to time at the request of either Government on any matters connected with the station and its use.

(2) Except with the express consent of the Australian Government, the station will not be used for any purpose other than defense communication.

Article 4

The communication services of the station shall be available to the Australian and United States armed forces. The cooperating agencies shall mutually determine technical arrangements for the use of the station. United States use of the station shall be in accordance with the Australian Government's policy of full knowledge and concurrence.

Article 5

Equipment, materials, supplies and other property imported into or acquired in Australia by or on behalf of the United States Government free of taxes pursuant to the Agreement Concerning the Status of United States Forces in Australia, done at Canberra on 9 May 1963, shall not be disposed of within Australia except under conditions to be agreed by the two Governments.

Article 6

(1) Income derived wholly and exclusively from performance in Australia of any contract with the United States Government in connection with the maintenance or operation of the station by any person or company (other than a company incorporated in Australia) being a contractor, sub-contractor, or one of its personnel, who is in or is carrying on business in Australia solely for the purpose of such performance, shall be deemed not to have been derived in Australia, provided that it is not exempt, and is taxed, under the taxation laws of the United States. Such contractors, subcontractors and personnel, and the dependents of any of the above other than those persons who, immediately before becoming dependents, were and at all times thereafter have continued to be ordinarily resident in Australia, will not be subject to Australian tax in respect of income derived from sources outside Australia.

(2) Where the legal incidence of any form of taxation in Australia depends upon residence or domicile, periods during which such contractors, subcontractors, personnel and dependents are in Australia solely in connection with the maintenance or operation of the station shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation.

(3) Personal property which is situated in Australia solely by reason of such contractors, sub-contractors, personnel and dependents being in Australia, or carrying on business in Australia, wholly and exclusively in connection with the performance in Australia of a contract or contracts with the United States Government in connection with the maintenance or operation of the station shall, in respect of the holding by, transfer by reason of the death of, or transfer to or by, those persons or companies, be exempt from taxation under the laws of the Australian Government relating to estate and gift duty.

(4) The last preceding paragraph shall apply only if the property concerned is subject, and is taxed under the laws of the United States relating to estate or gift tax, and shall not apply in relation to-

(a) property held as, or for the purpose of, an investment;

(b) intangible property registered, and copyright subsisting, in Australia; or

(c) property held in connection with the carrying on in Australia of any business not otherwise referred to in this Article.

(5) A person or company shall not be disqualified from being a contractor, sub-contractor or one of their personnel in respect of whom this Article applies by reason only of the contractor or sub-contractor having undertaken the performance in Australia of a contract for the United States Government in connection with activities, other than the station, agreed upon by the two Governments.

Article 7

(1) The Australian Government shall take the necessary steps to facilitate the admission into Australia of all equipment, materials, supplies and other property provided by or on behalf of the United States Government in connection with activities under this Agreement. Duties, taxes or like charges shall not be levied on such property which is certified at the time of entry as or intended to be the property of the United States Government.

(2) Australian indirect taxes shall be paid through a procedure whereby any such taxes incurred in respect of equipment, materials, supplies and other property and services purchased in Australia which are certified as being for use in connection with the activities under this Agreement and which are not for resale, provided that such property shall become the property of the United States Government prior to use in Australia, shall be paid by the Australian Department of Defence on behalf of the United States Government, Australian goods and services tax legislation having no provision for exemption.

Article 8

The United States Government may lease from the Australian Government communication services within Australia and to overseas destinations and may establish and operate radio circuits as required for the passing of defense communications. The radio frequencies, powers, bandwidths and other technical details shall be mutually determined by the cooperating agencies of the two Governments. The United States Government shall take all practicable measures to keep to a minimum all types of electronic interference from its radio transmitters. Such measures shall, pursuant to the International Telecommunications Union Constitution (1992, as amended) and the regulations thereunder, be particularly applicable in the case of harmful interference to established radio services.

Article 9

The cost of operation, maintenance, modernization, alteration and repair of the station shall be shared by the two Governments in accordance with technical arrangements made between the cooperating agencies.

Article 10

Technical arrangements implementing this Agreement shall be made by the cooperating agencies of the two Governments to determine, among other matters, the command and control, financial, security, and other responsibilities of the appropriate authorities of the two Governments for participation in the maintenance, operation of and access to the station, its facilities and services.

Article 11

The United States shall be compensated by the Australian Government for the residual value, if any, of the buildings and equipment constructed or improved since 1963 at the station at the expense of the United States Government and not removed on termination of this Agreement. The amount and manner of compensation will be set forth by the Governments' cooperating agencies in a separate technical arrangement.

Article 12

This Agreement shall enter into force following signature and upon the date on which the Government of Australia notifies the Government of the United States of America that domestic procedures required for its entry into force in Australia have been satisfied. This Agreement shall supersede the Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia relating to the Establishment of the United States Naval Communications Station in Australia, done at Canberra on 9 May 1963, as amended. This Agreement shall remain in force for an initial period of twenty-five years and, absent notification of termination, shall continue in effect for periods of five years. Either Government may terminate this Agreement upon one year's written notice to the other Government.

IN WITNESS WHEREOF the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, in duplicate, this sixteenth day of July 2008.

FOR THE GOVERNMENT OF UNITED STATES OF AMERICA:

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Robert M. Gates
Secretary of Defense

FOR THE GOVERNMENT OF THE AUSTRALIA:

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Hon. Joel Fitzgibbon
Minister for Defence