Tom Leatherwood

Shelby County Register

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.

02097802

06/12/2002 - 09:30 AM

65 PGS : R - QUIT CLAIM	
LIZ 47182-2097802	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	0.00
DP FEE	0.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	0.00

STATE of TENNESSEE, COUNTY of SHELBY

TOM LEATHERWOOD

REGISTER OF DEEDS

160 N. Main St., Suite.519 ~ Memphis, Tennessee 38103

This instrument Prepared By:
James A. Wagoner, III
Attorney At Law
U.S. Army Engineer District, Mobile
ATTN: CESAM-RE-MD
P.O. Box 2288
Mobile, Alabama 36628-0001

This Instrument Prepared by and Return to:
Philip G. Kaminsky, Esq.
Apperson, Crump & Maxwell, PLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119-3972

QUITCLAIM DEED No. 1

Defense Distribution Depot Memphis, Tennessee

THIS QUITCLAIM DEED made and entered into between the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF THE ARMY**, (hereinafter referred to as the "**GRANTOR**"), under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, PL 101-510, as amended, (hereinafter referred to as "BRAC"), and the Depot Redevelopment Corporation of Memphis and Shelby County, a body corporate and politic, and existing under the laws of the State of Tennessee ("**Grantee**").

WITNESSETH THAT:

WHEREAS, pursuant to BRAC, the Grantor closed the military installation known as the Defense Distribution Depot Memphis, Tennessee (DDMT) located in Shelby County, Tennessee and has made a final disposal decision with respect thereto; and

WHEREAS, the Grantee, as the federally-recognized local redevelopment authority for DDMT, whose address is 2163 Airways Blvd., Bldg. 144, Suite 140, Memphis, Tennessee 38114, was granted the authority to oversee and implement the civilian reuse of DDMT in accordance with a locally-approved reuse plan; and

WHEREAS, the Grantee has made an application to the Army for a no-cost Economic Development Conveyance (EDC) under Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65); and

WHEREAS, the Grantor, as authorized by BRAC and implementing regulations, has determined that the Grantee's EDC application meets the applicable statutory criteria for economic development and job creation; and

WHEREAS, the Grantor and the Grantee have entered into a Memorandum of Agreement ("MOA"), dated January 3, 2002, establishing the terms and conditions for the EDC conveyance of the excess portions of the DDMT property approved in the Grantee's EDC application; and

WHEREAS, the MOA provides for the conveyance of the DDMT property in phases as Army mission requirements cease and environmental remediation is completed; and

WHEREAS, the remainder of DDMT property not to be transferred to the Grantee ("Retained Property") shall be retained by or disposed of by the United States at its discretion and pursuant to applicable law; and

WHEREAS, pursuant to BRAC, as amended, the Grantor has the authority to convey and with this Deed conveys to the Grantee, pursuant to the terms and conditions of the MOA, the parcels of land as described below and all of the improvements contained therein; located in the County of Shelby, State of Tennessee, at DDMT.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Grantor, pursuant to BRAC, and in consideration of other good and valuable consideration as provided for in the MOA between the parties, does hereby grant, remise, release, and forever quitclaim unto the GRANTEE, its successors and assigns, all such interest, rights, title, and claim as the GRANTOR has in and to certain parcels of land, together with buildings and improvements thereon located in the City of Memphis, Shelby County, Tennessee (the "Property"), which property contains approximately 13.362 acres as described below, subject to any existing easements, conditions and restrictions:

Commencing at a cotton picker spindle (found) at the northeast corner of the Depot property (shown as corner "4B" on a Garver & Garver survey dated Jan. 1990), thence S04°17'04"W, and with the east line of the Depot, a distance of 698.19 feet to a P.K. nail (set), the TRUE POINT OF BEGINNING; thence S04°17'04W a distance of 1,269 feet to Depot corner "5B"; thence S85°44'16"E a distance of 53.00 feet to Depot corner "6B"; thence S03°16'21"W, and passing a ¾ inch pipe at 1.00 feet, a total distance of 17.42 feet to a iron pin (set); thence N86°43'39"W a distance of 42.46 feet to a P.K. nail (set); thence N40°30"07"W a distance of 81.39 feet to a P.K. nail (set); thence S88°30"45"W a distance of 419.79 feet to a P.K. nail (set); thence N04°14'09"E a distance of 1,270.94 feet to a P.K. nail (set) ; thence S85°45'12E a distance of 465.23 feet to the POINT OF BEGINNING and containing 13.362 acres.

The legal description of the Property has been provided by the GRANTEE and the GRANTEE shall be responsible for the accuracy of the survey and description of the Property conveyed herein and shall indemnify and hold the GRANTOR harmless from any and all liability resulting from any inaccuracy in the description.

The words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees" respectively, whenever the sense of this Deed so requires and, whether singular or plural, such words shall be deemed to include in all cases the successors and assigns of the respective parties.

1. RESERVATIONS

The property conveyed herein is subject to the following land use restrictions:

A. Existing easements, reservations, and restrictions;

B. Such other easements, encumbrances, reservations or restrictions as may be reasonably required by the Government (i) for the use of roads, utilities and other services necessary or desirable for the enjoyment and benefit of the Retained Property, (ii) as may be required by applicable law or regulation, and (iii) for ingress and egress as may be necessary, subject to such reasonable terms and conditions as may be agreed upon in writing by the parties hereto or their successors and assigns to ensure compatibility with reuse activities;

2. ENVIRONMENTAL PROTECTION PROVISIONS

A. CERCLA NOTICE AND COVENANTS

Pursuant to Section 120 (h) (3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"):

A. Notification and Covenants

1. The GRANTOR hereby notifies the GRANTEE of the storage, release and disposal of hazardous substances on the Property. However, remaining concentrations are not inconsistent with unrestricted reuse; therefore, no remedial actions were required. For the purpose of this Deed, "hazardous substances" shall have the meaning attributed to such term under section 101(14) of CERCLA, 42 U.S.C. 9601(14).

2. The GRANTOR hereby covenants that:

a. All remedial action necessary to protect human health and the environment with respect to any such hazardous substances remaining on the Property has been taken before the date of conveyance hereunder; and

b. Any additional remedial action found to be necessary with regard to such hazardous substances remaining on the Property after the date of this Deed that resulted from past activities of the GRANTOR shall be conducted by the GRANTOR. This covenant shall not apply to the extent such remedial actions are caused by activities of the GRANTEE, its successors or assigns.

B. Access Rights and Easement

The GRANTOR reserves a right and easement for access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of this Deed. In exercising these rights of access, except in case of imminent endangerment to human health or the environment, the GRANTOR shall give the GRANTEE, or the then record owner, at least thirty (30) days prior written notice of actions to be taken in remediation of the Property, and shall use reasonable means, without significant additional cost to the GRANTOR, to avoid and/or minimize interference with the use of the Property by the GRANTEE, its successors and assigns. Furthermore, any such actions undertaken by the GRANTOR pursuant to this Section 2 will, to the maximum extent practicable, be coordinated with a representative of the GRANTEE, its successors and assigns. GRANTEE agrees that, notwithstanding any other provisions of the Deed, that the GRANTOR assumes no liability to the GRANTEE, its successors and assigns, or any other person, should remediation of the Property interfere with the use of the Property by the GRANTEE, its successors and assigns.

C. Transfer Documents

The GRANTEE and its successors and assigns covenant and agree that all leases, transfers or conveyances of the Property occurring subsequent to the date of this Deed shall be made subject to, and shall have the benefit of, the provisions contained in this Section 2.

D. FEDERAL FACILITIES AGREEMENT

The GRANTOR acknowledges that the former Defense Distribution Depot Memphis Tennessee has been identified as a National Priority List (NPL) site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The GRANTEE acknowledges that the GRANTOR has provided it with a copy of the Federal Facilities Agreement (FFA) dated March 6, 1995 as set out in Exhibit "A" attached hereto and incorporated herein by reference, and will provide the GRANTEE with a copy of any amendments thereto. The GRANTEE, its successors and assigns, agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this property transfer, the terms of the FFA will take precedence. The GRANTEE, its successors and assigns, further agree that notwithstanding any other provisions of this Deed, the GRANTOR assumes no liability to the GRANTEE, its successors and assigns, should implementation of the FFA interfere with the their use of the Property. The GRANTEE, its successors and assigns,

shall have no claim on account of any such interference against the GRANTOR or any officer, agent, employee or contractor thereof. The GRANTOR shall, however, comply with the provisions of Section 2.B. in the exercise of its rights under the FFA. The GRANTOR represents and warrants that all of the restrictions and environmental conditions which are described in the FFA and which are applicable or relate to the property conveyed in this Deed are set out in this Deed or in the attachments to this Deed.

E. ENVIRONMENTAL BASELINE SURVEY ("EBS") AND FINDING OF SUITABILITY TO TRANSFER ("FOST")

1. The GRANTEE has received the technical environmental reports, including the Environmental Baseline Survey for the Property dated November 5, 1996, and the FOST for the property dated May 2001, prepared by the GRANTOR, and agrees, to the best of the GRANTEE's knowledge, that they accurately describe the environmental condition of the Property. The GRANTEE has inspected the Property and accepts the physical condition and current level of environmental hazards on the Property and deems the Property to be safe for the GRANTEE's intended use.

2. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, GRANTEE or its successors or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to activities, ownership, use, or occupation of the Property prior to the date of this Deed, except to the extent caused by GRANTEE, its successors and assigns.. GRANTEE, its successors and assigns, as consideration for the conveyance, agree to release GRANTOR from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of this Deed, where such substance or product was placed on the Property by the GRANTEE, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This Section shall not affect the GRANTOR's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or GRANTOR'S covenants herein set out, or the GRANTOR's indemnification obligations under applicable laws.

F. NOTICE OF THE PRESENCE OF LEAD BASED PAINT AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES.

1. The GRANTEE is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may

present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

2. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey and (for residential properties) the lead-based paint risk assessment, which have been provided to the GRANTEE. All purchasers must receive the federally-approved pamphlet on lead poisoning prevention. The GRANTEE hereby acknowledges receipt of all of the information described in this subparagraph.

3. The GRANTEE acknowledges that it has received the opportunity to conduct its own risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

4. The GRANTEE covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the GRANTEE specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

The GRANTEE shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (2) Abate lead-based paint hazards in pre-1978 buildings and structures in paint, dust and bare soil in accordance with the HUD Guidelines, with the addition of abatement of bare soil with lead levels higher than 2000 ppm; and (3) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L). In cases where a transfer MOA has already been executed as of March 30, 2000, the GRANTEE is responsible for

conducting lead-based paint activities in accordance with the negotiated MOA transfer documents.

In complying with these requirements, the GRANTEE covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the property for residential purposes. The GRANTEE covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

5. The GRANTEE further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes.

6. The covenants, restrictions, and requirements of this Section 6 shall be binding upon the GRANTEE, its successors and assigns and all future owners and shall be deemed to run with the land. The GRANTEE on behalf of itself, its successors and assigns covenants that it will include and make legally binding, this Section 6 in all subsequent transfers, leases, or conveyance documents."

G. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

1. The GRANTEE is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials ("ACM") has been found in buildings and structures on the Property, as described in the EBS. GRANTOR covenants, represnts and warrants, to the extent of applicable law, that ACM in buildings and structures on the Property does not currently pose a threat to human health or the environment, and all friable asbestos that posed a risk to human health has either been removed or encapsulated.

2. The GRANTEE covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the GRANTOR assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the GRANTEE, its successors or assigns, have properly warned or failed to properly warn the individual(s) injured. The GRANTEE agrees to be responsible for any future remediation of asbestos in buildings and structures found to be necessary on the Property.

3. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

4. The GRANTEE acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos hazards or concerns.

5. The GRANTOR assumes no liability for any damages to person or property, and gives no warranties, either express or implied, with regard to the presence or absence of asbestos or ACM in buildings and structures, or whether the Property is or is not suitable for a particular purpose. Subject to the limitations in the last sentence of this paragraph, the GRANTEE further agrees to indemnify and hold harmless the GRANTOR, its officers, agents and employees from and against all suits, claims, demands or actions, liabilities, judgments, penalties, costs and attorneys' fees arising out of, or in any manner predicated upon, future asbestos abatement or remediation from within buildings and structures on the Property; disposal of ACM or asbestos after conveyance to the GRANTEE; personal injury, death or property damages resulting from, related to, caused by or arising out of exposure to asbestos within buildings or structures on the Property after the conveyance of such portion of the Property to the GRANTEE. The GRANTEE's obligation hereunder shall apply whatever the United States incurs costs or liabilities for actions giving rise to liability under this Section. The GRANTEE shall not be responsible for indemnifying or holding the GRANTOR harmless from any loss, claims, liabilities, judgments, penalties, costs, or damages arising out of exposure to asbestos that occurred prior to the date of this Deed.

H. STATUTORY INDEMNIFICATION

The GRANTOR recognizes its obligation to hold harmless, defend, and indemnify the GRANTEE and any successor, assignee, transferee, lender, or lessee of the GRANTEE or its successors and assigns, as required and limited by Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to other wise meet its obligations under law.

I. CONDITIONS, RESTRICTIONS, AND COVENANTS BINDING AND ENFORCEABLE

1. The above environmental protection provisions shall inure to the benefit of the public in general and the current or subsequent owners of adjacent lands within the DDMT, including lands retained by the United States, and, therefore, are enforceable by the United States Government and State of Tennessee. These restrictions and covenants are binding on the GRANTEE, its successors and assigns; shall run with the land; and are forever enforceable.

2. The GRANTEE covenants for itself, its successors and assigns, that it shall include and otherwise make legally binding the above environmental protection provisions in all subsequent lease, transfer or conveyance documents relating to the Property subject hereto. Notwithstanding this provision, failure to include the environmental protection provisions in subsequent conveyances does not abrogate the status of these provisions as binding upon the parties, their successors and assigns.

3. The GRANTEE, for itself, its successors and assigns, covenants that it will not undertake or allow any activity on or use of the Property that would violate the environmental protection provisions contained herein.

3. 2662 reporting

This conveyance is not subject to the reporting requirement in 10 United States Code 2662.

4. NOTICE OF NON-DISCRIMINATION

With respect to activities related to the Property, the Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities conducted on the Property because of race, color, religion, sex, age, handicap or national origin.

5. ANTI-DEFICIENCY ACT

The Grantor's obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act.

IN WITNESS WHEREOF, the GRANTOR has caused this Deed to be executed in its name by the Secretary of the Army and the Seal of the Department of the Army to be hereunto affixed this 6th day of May, 2002.

UNITED STATES OF AMERICA

By: _____
Joseph W. Whitaker
Deputy Assistant Secretary of the Army

COMMON WEALTH OF VIRGINIA)
) SS:
COUNTY OF ARLINGTON)

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the 30th day of November, 2002, do hereby certify that this day personally appeared before me in the Commonwealth of Virginia, County of Arlington, Joseph W. Whitaker, ~~Acting~~ Deputy Assistant Secretary of the Army, whose name is signed to the foregoing instrument, and with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the ~~Acting~~ Deputy Assistant Secretary of the Army , and that he as said ~~Acting~~ Deputy Assistant Secretary of the Army and that he, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing said instrument as ~~Acting~~ Deputy Assistant Secretary of the Army and he acknowledged the foregoing instrument to be his free act and deed, dated this 6th, day of May, 2002, and acknowledged the same for and on behalf of the UNITED STATES OF AMERICA.

Witness my hand and seal at office, this 6th day of May, 2002.

_____
Notary Public

KAREN A. COOPER NOTARY PUBLIC STATE OF VIRGINIA

The terms and conditions of this Quitclaim Deed are hereby accepted this 22 day of February 2002.

THE DEPOT REDEVELOPMENT CORPORATION OF MEMPHIS AND SHELBY COUNTY

By: _____
MICHAEL C. RITZ

Title: Chairman

This Instrument Prepared
and Return to:
Philip G. Kaminsky, Esq.
Apperson, Crump & Maxwell, PLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119-3972

(RECORDING INFORMATION)

Property Address:
US Army Defense Depot
Airways
Memphis, TN

New Property Owner:
The Depot Redevelopment Corporation
of Memphis and Shelby County
2163 Airways Boulevard
Bldg. 144, Suite 140
Memphis, Tennessee 38114

Tax I.D. No.:

060-092-001 E

Mail Tax Bills To:
Depot Redevelopment Corporation
ATTN: Jim Covington
2163 Airways Blvd.
Bldg. 144, Suite 140
Memphis, TN 38114

AFFIDAVIT OF VALUE

STATE OF TENNESSEE
COUNTY OF SHELBY

I, or we, hereby swear or affirm that, to the best of affiant's knowledge, information, and belief, the actual consideration for this transfer is $0.00 - EXEMPT TRANSACTION - GOVERNMENTAL AGENCY IS GRANTEE.

_____
Affiant

Subscribed and sworn to before me this _____ day of _____, 2002.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT "A"

"EXHIBIT A"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

MAR 13 1995

4WD-FFB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Eric Holladay
Acting Commander
Defense Distribution Depot Memphis
2163 Airways Boulevard
Memphis, Tennessee 38114-5297

Mr. E. Joseph Sanders
Legal Services Director
Tennessee Department of Environment and Conservation
Office of General Counsel
401 Church Street
Nashville, Tennessee 37243-1548

SUBJ: Federal Facility Agreement;
Defense Distribution Depot Memphis, Tennessee
EPA I.D. Number: TN4 210 020 570

Gentlemen:

The Environmental Protection Agency (EPA) is pleased to provide you with an original copy of the signed and executed Federal Facilities Agreement (FFA) for the Defense Distribution Depot Memphis (DDMT), Tennessee. As required by Section XXXIV of the FFA, EPA hereby notifies you that the effective date of the DDMT FFA is March 6, 1995. This is the date that the last Party, EPA, signed the FFA. Your commitment to, and assistance in, developing and finalizing this Agreement is greatly appreciated.

If you or your staff have any questions or comments regarding this document or the contents of this letter, please do not hesitate to contact me at (404) 347-3016.

Sincerely,

Jon D. Johnston

Jon D. Johnston, Chief
Federal Facilities Branch

Enclosure

This Instrument Prepared by and Return to:
Philip G. Kaminsky, Esq.
Apperson, Crump & Maxwell, PLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119-3972

FEDERAL FACILITIES AGREEMENT

BETWEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

AND

UNITED STATES DEFENSE LOGISTICS AGENCY

AT THE

DEFENSE DISTRIBUTION DEPOT MEMPHIS

MEMPHIS, TENNESSEE

This instrument prepared by and Return to:
Philip G. Kaminsky, Esq.
Apperson, Crump & Maxwell, PLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119-3972

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV
AND THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND THE
UNITED STATES DEFENSE LOGISTICS AGENCY

IN THE MATTER OF:	)	
	)	
THE U.S. DEFENSE LOGISTICS AGENCY	)	
	)	FEDERAL FACILITY
	)	AGREEMENT UNDER
	)	CERCLA SECTION 120
	)	and
DEFENSE DISTRIBUTION DEPOT MEMPHIS	)	RCRA Sections
TENNESSEE	)	3008(h) and 3004(u)
	)	and
	)	3004(v)
	)	Administrative
	)	Docket Number:
	)	TN4 210 020 570

Based on the information available to the Parties, as hereinafter defined, on the effective date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. PARTIES

The Parties to this Agreement are the United States of America through the Environmental Protection Agency (EPA), the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC), and the United States Department of Defense through the Defense Logistics Agency (DLA) at the Defense Distribution Depot, Memphis, Tennessee (DDMT). The terms of this Agreement, shall apply to and be binding upon the Parties, including EPA, TDEC and DLA and their respective agents, employees, response action contractors for the Site, as hereinafter defined, and all subsequent owners, operators and lessees of DDMT. The undersigned representative of each Party certifies that he or she is fully authorized to enter into the terms and conditions of this

Agreement and to legally bind such Party to this Agreement.

II. DETERMINATIONS

The following constitutes a summary of the determinations relied upon by the Parties to establish their jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions by any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

A. The United States is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

B. DDMT is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9) T.C.A. Sections 68-212-201 et seq., T.C.A. 68-212-01 et seq. and by 10 U.S.C. Section 2701 et seq.

C. There has been a release or a substantial threat of a release of hazardous substances, pollutants or contaminants; or solid wastes; or hazardous wastes or hazardous constituents from the Facility within the meaning of Sections 101(14), 101(22), 101(33) and 104(a)(2) of CERCLA, 42 U.S.C. Sections 9601(14), 9601(22), 9601(33) and 9604(a)(2), and Sections 1004(27) and 1004(5) of RCRA, 42 U.S.C. Sections 6903(27) and 6903(5) and T.C.A. Sections 68-212-107, 68-212-206, 68-212-202(2) and 68-212-104(7) and the Tennessee Compilation of Rules and Regulations, Chapter 1200-1-11-.01(2)(a) and 1200-1-13-.01(1).

D. The actions provided for in this Agreement are consistent with the NCP.

E. The Work provided for in this Agreement is necessary to protect the public health or welfare or the environment.

F. The United States Department of the Army is the owner of the Facility. DLA is the operator of the Facility (DDMT) within the meaning of Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20), and operates the Facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607(a)(1) and T.C.A. Section 68-212-202. DLA is the lead agency of the United States to manage the Defense Environmental Restoration Program (DERP) as it applies to the Facility.

G. This Agreement provides for the expeditious completion of all necessary response actions.

H. DLA is subject to, and shall comply with, CERCLA, the NCP, RCRA and applicable State Law in implementing this Agreement.

III. JURISDICTION

Each Party is entering into this Agreement pursuant to the following authorities:

A. EPA Region IV, enters into those portions of this Agreement that relate to the response action process pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA) and the Resource Conservation and Recovery Act (RCRA), Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA) and Executive Order 12580;

B. EPA enters into those portions of this Agreement that relate to response actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). Sections 6001, 3008(h), and Sections 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h) and 42 U.S.C. Sections 6924(u) and (v) and Executive Order 12580;

C. DLA enters into those portions of this Agreement that relate to the response action process pursuant to Section 120(e) of CERCLA, 42 U.S.C. Section 9620(e), Sections 6001, 3008(h) and Sections 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h), 6924 (u) and (v), Executive Order 12580 and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.

D. DLA enters into those portions of this Agreement that relate to response actions for OUs and final response actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), Sections 6001, 3008(h) and 3004(u) and (v) of RCRA, 42 U.S.C. Sections 6961, 6928(h) and 6924(u) and (v); Executive Order 12580, and the DERP; and

E. TDEC enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f), and the Tennessee Code Annotated (T.C.A.) Sections 68-212-201 et seq. and T.C.A. 68-212-101 et seq.

IV. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and RCRA shall control the meaning of the terms used in this Agreement. However, if any of the following terms are amended by revision of the NCP after the effective date of this Agreement, the revised NCP definition shall control the meaning of that term, as applicable. The revised definition shall be applied in accordance with any statutory or regulatory language on applicability specific to the amended or revised term. Also, for the purposes of this Agreement and the Work required herein, CERCLA terminology shall be used whenever possible in order to simplify the terminology. Appendix A to this Agreement identifies the RCRA counterparts for all CERCLA terms used.

A. Agreement shall mean this document and shall include all attachments to this document. All such attachments shall be appended to and made an integral and enforceable part of this document.

B. Applicable State Laws shall include, but not be limited to, all laws determined to be applicable or relevant and appropriate requirements as described in Section 121(d) of CERCLA, 42 U.S.C. Section 9621(d). It is recognized that in some instances in which this phrase is used, there may be no applicable State Laws.

C. Applicable or Relevant and Appropriate Requirement (ARAR) shall mean "legally applicable" or "relevant and appropriate" requirements, laws, standards, criteria or limitations as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621(d).

D. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law 99-499.

E. CERFA shall mean the Community Environmental Response Facilitation Act of 1992 (Public Law 102-426) which amends CERCLA Section 120(h) to expedite the sale of federal land that is determined to be uncontaminated.

F. Comprehensive Site-Wide Operable Unit shall mean the OU which includes the entire Site, to be evaluated following the issuance of RODs for all other OUs at the Site. The purpose of this OU is to document and evaluate all risk which is anticipated to remain at the Site following implementation of the response

actions required by all preceding RODs and removal actions. The Comprehensive Site-Wide OU shall be used to determine whether the previously-selected response actions are cumulatively protective of human health and the environment, or whether additional response action is required to address this cumulative risk, as required by CERCLA, the NCP and applicable EPA policy and guidance.

G. Days shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on a Saturday, Sunday, or Federal or State of Tennessee holiday shall be due on the following business day.

H. Deadline shall mean the date on which EPA and TDEC must receive any Primary Documents under the terms of this Agreement and the Site Management Plan (SMP). Deadlines shall be subject to stipulated penalties.

I. DLA shall mean the Defense Logistics Agency for the United States of America, its successors and assigns, at the Defense Distribution Depot, Memphis, Tennessee (DDMT), its successors and assigns, including the U.S. Department of Defense to the extent necessary to effectuate the terms of the Agreement, including, but not limited to appropriations and Congressional reporting requirements. This definition is not intended to limit the liability of any tenant not a field activity of the Defense Logistics Agency which is a potentially responsible party for the purposes of Section 107(a) of CERCLA, 42 U.S.C. Section 9607 and/or T.C.A. Section 68-212-201, et seq. DLA shall be the lead agency responsible for implementing and completing all Work at the Site in accordance with the terms of this Agreement, CERCLA, the NCP, RCRA and applicable Tennessee law.

J. DoD shall mean the United States Department of Defense.

K. EPA shall mean the United States Environmental Protection Agency, its successors and assigns, and its duly authorized representatives.

L. Facility shall have the meaning set forth in Section 101(9) of CERCLA, 42 U.S.C. 9601(9). For purposes of this Agreement the term includes that property owned by the United States Department of the Army known as DDMT located in Shelby County, Tennessee.

M. HSWA shall mean the Hazardous and Solid Waste Amendments Act of 1984, Public Law 98-616.

N. National Contingency Plan or NCP shall mean the National Oil and

Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendments thereto.

O. Operable Unit or OU shall mean a discrete action that comprises an incremental step toward comprehensively addressing Site problems. This discrete portion of a remedial response may eliminate or mitigate a release, threat of release, or pathway of exposure or manage the migration of a release. OUs may address geographical portions of a Site or specific Site problems. OUs may also address the initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The remediation of the Site can be divided into a number of OUs, depending on the complexity of the problems associated with the Site. The term "operable unit" is not intended to refer to the term "operating unit" as used in RCRA. OUs shall be formally proposed via preparation of the corresponding Proposed Plan (pursuant to CERCLA) and listed in the approved SMP. Prior to preparation of the corresponding Proposed Plan, each OU shall be regarded as a potential OU. All potential OUs shall also be listed in the approved SMP, subject to revision based on data or information obtained during the Remedial Investigation/Feasibility Study (RI/FS).

P. Permit shall mean the RCRA permit, issued to DDMT by EPA and TDEC, and any modifications thereto. This permit includes the HSWA portion (permit number TN4 210 020 570), issued by EPA, and the RCRA portion, issued by TDEC, which together comprise the full RCRA permit (permit number TNHW-053, effective September 28, 1990) for DDMT.

Q. Project Manager(s) shall mean the individual designated by EPA, DLA and TDEC to oversee and provide technical assistance for the response actions required under the Agreement.

R. RCRA shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616.

S. Site shall mean the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for the implementation of all response actions for the Site.

T. Site Management Plan (SMP) shall mean the plan submitted by DLA to EPA and TDEC which identifies and prioritizes the OUs to be remediated. The SMP shall also include a schedule of activities to be conducted by DLA through a Record of Decision, at a minimum, for each OU. The Deadlines established in the

approved SMP shall be enforceable for the current and upcoming two fiscal years (FY, FY+1 and FY+2), and projected for subsequent fiscal years.

U. Solid Waste Management Units (SWMUs) shall have the same meaning as defined in RCRA and the Permit and shall include those units at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at the Site at which solid wastes have been routinely and systematically released.

V. Target Dates shall mean the date on which EPA and TDEC must receive any Secondary Documents under the terms of this Agreement and the SMP. Target Dates shall not be subject to stipulated penalties.

W. TDEC shall mean The State of Tennessee Department of Environment and Conservation.

X. Work shall mean all activities required by this Agreement including, without limitations, the activities specified in Sections XV (Consultation Process for Primary and Secondary Documents), XVI (Administrative Record and Public Participation), XVII (Retention of Records), XVIII (Progress Reports), XIX (Additional Work), XX (Five Year Review) and XXI (Schedules for Document Submittal). In general, work shall include all activities necessary to successfully accomplish all screening, RI/FS, Remedial Design/ Remedial Action (RD/RA) and Operation and Maintenance (O&M) activities for each site or OU identified by the Parties for DDMT.

V. INSTALLATION DESCRIPTION

A. For the purposes of this Agreement, DDMT is located in the south central section of Memphis, Shelby County, Tennessee, and encompasses six hundred forty-two (642) acres of Federal land. DDMT lies four miles southeast of the central business district and one mile north of Memphis International Airport. The Facility is set in a mixed residential, commercial and industrial land use area. ~~DDMT~~ consists of two sections: Dunn Field, an open storage and burial disposal area about sixty (60) acres in size, and the main installation, which is extensively developed.

B. The mission of DDMT is to receive, store, maintain and ship items. DDMT warehouses and distributes an extensive inventory of supplies including clothing, food, medical supplies, electronic equipment, petroleum products, and industrial chemicals used by United States Military Services and Federal

agencies. Due to the nature of its mission and the large supply volumes handled, some items were spilled, leaked or disposed of within Facility boundaries during the last fifty years.

C. The hydrogeologic regime beneath DDMT consists of the Upper Fluvial Aquifer and the underlying Memphis Sand Aquifer. The predominant source of domestic/potable water supply in the Memphis area is the Memphis Sand Aquifer. The Upper Fluvial Aquifer is not used within the City of Memphis for potable purposes. Recharge to the Memphis Sand Aquifer predominantly occurs via percolation of precipitation in outcrop areas approximately thirty (30) to sixty (60) miles east of the City of Memphis. The potentiometric surface in the Memphis Sand Aquifer beneath the installation is approximately one hundred fifty (150) feet below land surface.

D. The majority of surface water features at the Site are ditches, swales, concrete-lined channels and an efficient storm drainage system. Most of the Site is either level with, or higher than, the surrounding terrain. Only two permanent surface water bodies exist at the DLA Memphis Site. These are Lake Danielson and the Golf Course Pond.

VI. FINDINGS OF FACT

A. For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. This Section contains findings of fact, determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

B. The installation was constructed in 1941 and was activated on January 26, 1942 as the Memphis General Depot, operating under the Army, the owner of the Facility. The Army operated the Facility until 1962. In 1962, the Defense Logistics Agency (then called Defense Supply Agency) became the operator of the Facility under permit from the Department of the Army, and named it Defense Depot, Memphis, Tennessee (DDMT). In 1991, Defense Distribution Region Central (DDRC) was established to provide operational direction to several DLA distribution depots in the Central United States. DDMT became a secondary level field activity or distribution site of DDRC. In 1993, DDRC was disestablished and the installation renamed DDMT.

C. The Department of Defense (DoD) developed the Installation Restoration Program (IRP) to evaluate and remediate the effects of past hazardous waste

management and disposal practices at its facilities and to comply with the provisions of CERCLA, 42 U.S.C. Section 9620 et seq.

D. In conformance with DLA environmental programs and the DoD IRP, a number of technical studies have been conducted at the Site. These are listed and described in Appendix B of this Agreement. DLA is currently preparing and revising documents which propose the means for: (i) completing the Remedial Investigation(s) for the Site; and (ii) implementing preliminary response actions to address ground water contamination beneath the Dunn Field area.

E. In January 1990, EPA conducted a RCRA Facility Assessment (RFA) of DDMT. The RFA resulted in the identification of forty-nine (49) Solid Waste Management Units (SWMUs) and eight (8) Areas of Concern (AOCs) at the Facility. Of these, fourteen (14) SWMUs and four (4) AOCs required no further action. Thirty-one (31) SWMUs and three (3) AOCs require further investigation in the form of confirmatory sampling and analysis or a RCRA Facility Investigation (RFI). Four (4) SWMUs and one (1) AOC were identified as needing only RFI characterization. These sites are identified in the Permit.

F. On September 28, 1990, EPA and TDEC issued a RCRA Permit to DDMT under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (see Section IV (Definitions)) and T.C.A. Section 68-212-101 et seq.

G. In accordance with Section 120(d)(2) of CERCLA, 42 U.S.C. 9620(d)(2), EPA prepared a final Hazard Ranking System (HRS) Scoring Package for the Facility. Based on the final HRS score of 58.06, EPA added DDMT to the National Priorities List (NPL) by publication in the Federal Register, 199 Federal Register 47180, October 14, 1992.

H. Based upon the information above, the Parties agree that the following are applicable to the provisions of this Agreement:

1. Work done and data and reports generated prior to the effective date of this Agreement shall be retained and utilized in preparing the RI/FS pursuant to CERCLA and RCRA to the maximum extent feasible, without violating Applicable or Relevant and Appropriate Requirements (ARARs), regulations, or guidelines.

2. Appendix C (FY94 Site Management Plan) contains a list of those known sites which have been identified as requiring further investigation. If any additional sites are identified after the

effective date of this Agreement, the Parties will determine what investigation or action is required for such sites through mutual consensus and in accordance with Section IX (Statutory Compliance/RCRA-CERCLA Integration).

VII. PURPOSE AND SCOPE OF AGREEMENT

A. The general purposes of this Agreement are to:

1. Ensure that DLA conducts the Work necessary to ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated in accordance with the authorities cited in Section III (Jurisdiction) of this Agreement, and all provisions of CERCLA, the NCP, RCRA and applicable State Law;

2. Ensure that DLA develops and implements all appropriate response actions as necessary to protect the public health, welfare and the environment in accordance with the authorities cited in Section III (Jurisdiction) of this Agreement, and all provisions of CERCLA, the NCP, RCRA and applicable State Law; and

3. Facilitate cooperation, exchange of information and participation of the Parties in conducting these actions.

B. Specifically, the purposes of this Agreement are to ensure that DLA, consultation with, and with the mutual consensus of, EPA and TDEC:

1. Meets the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2), for an interagency agreement among the Parties.

2. Identifies the response action necessary for all identified sites at DDMT. The Site Management Plan (Appendix C) lists all known RI/FS, screening and NFI sites, as well as all RCRA Units, as agreed to by the Parties. RI/FS sites shall be included in an OU and undergo a Remedial Investigation. Screening sites shall undergo a Preliminary Assessment/Site Investigation (PA/SI). Upon completion of the PA/SI, screening sites shall either be (i) upgraded to RI/FS status and included in an OU, or (ii) designated as NFI sites and dropped from further consideration. NFI sites include those sites for which sufficient information apparently already exists to make the determination that no further

investigation or response action is necessary. A final decision by the Parties regarding the NFI status of these sites shall be made following the submittal of adequate written documentation by DLA, and review of this information by EPA and TDEC. Any additions, modifications and deletions to the list of sites at DDMT shall be made through the Parties' approval of the annual update of the SMP.

3. Identifies OUs and potential OUs which are appropriate at the Site in accordance with the program management principles of CERCLA, the NCP and applicable State Law. The last OU designated for the Site shall be the Comprehensive Site-Wide OU, as defined in Section IV (Definitions). Potential OUs shall be identified and proposed by the Parties in the SMP as early as possible prior to the formal proposal of OUs via the preparation of Proposed Plans, pursuant to CERCLA. OUs and potential OUs shall be established, and updated as needed, in the SMP.

4. Implements the Work and response action schedules for each OU which are required by the SMP.

5. Completes a Remedial Investigation (RI) for each OU to determine adequately the nature and extent of the threat to the public health or welfare or the environment caused by the release and/or threatened release of hazardous substances, pollutants, contaminants or constituents from that OU.

6. Completes a Feasibility Study (FS) for each OU which identifies and evaluates feasible remedial alternatives for preventing, mitigating, or abating the release and/or threatened release of hazardous substances, pollutants, contaminants or constituents from that OU.

7. Identifies the nature, objective and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of remediation of hazardous substances, pollutants or contaminants mandated by CERCLA, the NCP and applicable State Law.

8. Implements the selected response action(s) for each OU in a timely manner, and consistent with the applicable ROD, to ensure consistency with the ultimate goal of protecting human health, welfare and the environment.

9. Identifies and integrates all federal and state ARARs into the response action process in accordance with the authorities cited in Section III (Jurisdiction) of this Agreement, and all provisions of CERCLA, the NCP, RCRA and applicable State Law. EPA and TDEC shall assist DLA in identifying and integrating State and Federal ARARs into the response action process.

10. Completes any Additional Work which is identified and agreed upon by the Parties in accordance with Section XIX (Additional Work) of this Agreement and the authorities cited in Section III (Jurisdiction) of this Agreement, and all provisions of CERCLA, the NCP, RCRA and applicable State Law.

11. Coordinates the response action process for each OU with the mission and support activities of DDMT.

VIII. ENFORCEABILITY

A. The Parties agree that:

1. Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. Section 9659 and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. Sections 9659(c) and 9609; and

2. All schedules or Deadlines associated with the response action process shall be enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. Section 9659(c), and any violation of such schedules or Deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA; 42 U.S.C. Sections 9659(c) and 9609.

3. All terms and conditions of this Agreement which relate to response actions, including corresponding Deadlines or schedules, and all Work associated with the response actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. Section 9659(c) and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of

CERCLA, 42 U.S.C. Sections 9659(c) and 9609; and

4. Any final resolution of a dispute pursuant to Section XXV (Resolution of Disputes) of this Agreement which establishes a term, condition, Deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA,42 U.S.C. Section 9659(c) and any violation of such term, condition, Deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. 9659(c) and 9609.

5. Upon modification of the Permit, as appropriate, to incorporate this Agreement, pursuant to Section IX (Statutory Compliance/RCRA-CERCLA Integration), all terms and conditions of this Agreement become enforceable by TDEC/EPA as terms and conditions of that Permit, except as otherwise provided in this Agreement or by law.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any CERCLA action or Work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA 42 U.S.C. Section 9613(h).

C. Nothing in this Agreement shall be considered as a restriction or waiver of any rights the Parties may have under CERCLA including but not limited to any rights under Sections 113, 120, and 310 of CERCLA, 42 U.S.C. Sections 9613, 9620, and 9659. DLA does not waive any rights it may have under Section 120 of CERCLA, 42 U.S.C. Section 9620, SARA Section 211, 10 U.S.C. Section 2701 et seq. and Executive Order 12580. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

D. Consistent with this Agreement, the Parties agree to exhaust fully the remedies provided in Section XV (Consultation Process for Primary and Secondary Documents) and Section XXV (Resolution of Disputes) of this Agreement prior to exercising any other rights the Parties may have relative to the Site or any judicial rights the Parties may have.

E. Appendix D to this Agreement is a letter from the U.S. Department of Justice to the Defense Logistics Agency which sets forth the Department of Justice's position on the enforceability of Federal Facility Agreements entered into pursuant to CERCLA Section 120(e), 42 U.S.C. 9620(e).

IX. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

A. The Parties intend to integrate DLA's CERCLA response obligations and the RCRA corrective action obligations of the Permit into this comprehensive Agreement. Therefore, the Parties intend that compliance with this Agreement will achieve compliance with CERCLA, 42 U.S.C. Section 9601 et seq.; will satisfy the corrective action requirements of Section 3004(u) and 3004(v) of RCRA, 42 U.S.C. Sections 6924(u) and (v), the Permit and Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h), for interim status facilities; and will meet or exceed all applicable or relevant and appropriate Federal and State Laws and regulations to the extent required by Section 121 of CERCLA, 42 U.S.C. Section 9621 and applicable State Law. A list of the documents common to RCRA and CERCLA, and a flow chart for their submittal, are provided in Appendix A to this Agreement. All work done and data generated prior to the effective date of this Agreement shall be retained and utilized as appropriate under this Agreement to the maximum extent feasible without violating applicable or relevant and appropriate laws, regulations or guidelines.

B. Based upon the foregoing, the Parties intend that any response action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action to address such releases under RCRA as amended, and T.C.A. Section 68-212-101 et seq. The Parties agree that with respect to releases of hazardous waste or hazardous constituents covered by this Agreement, RCRA and T.C.A. Section 68-212-101 et seq. shall be considered applicable or relevant and appropriate requirements (ARAR's) pursuant to Section 121 of CERCLA, 42 U.S.C. Section 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and Federal environmental requirements.

C. EPA intends to reference and incorporate this Agreement, including appropriate procedures for the selection of remedial action(s), schedules and provisions for extension of such schedules, into the Permit. For instance, EPA intends to modify the Permit as appropriate, to incorporate the remedial action(s) selected under this Agreement as corrective measures, when appropriate to satisfy Sections 3004(u) and (v) of RCRA 42 U.S.C. Sections 6924(u) and (v). DLA shall submit all necessary requests for permit modification to EPA and TDEC in a timely manner in accordance with 40 C.F.R. 270.42 et seq. With respect to those portions of this Agreement incorporated by reference into such permit, EPA intends that judicial review of the incorporated portions shall, to the extent authorized by law, only occur under the provisions of CERCLA.

D. TDEC decisions for RCRA units contained in TDEC's portion of the Permit shall not be subject to Section XXV (Resolution of Disputes) of this Agreement. The list of such units, shall be revised by TDEC in annual updates of the SMP, as needed.

X. PERMITS

A. The Parties recognize that under 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(e)(1), and the NCP, 40 C.F.R. Part 300 et seq. (1988), as amended, portions of the CERCLA response actions selected and carried out pursuant to this Agreement and conducted entirely on Site are exempted from the procedural requirement to obtain a Federal, State, or local permit but to the extent required by CERCLA must satisfy all the applicable or relevant and appropriate Federal and State laws, standards, requirements, criteria, or limitations which would have been included in any such permit. The Parties further recognize that ongoing hazardous waste management activities at DDMT may require issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits.

B. When DLA proposes a response action other than a time-critical removal action to be conducted entirely on Site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 962(e)(1), and the NCP would require a Federal, State, or local permit, DLA shall include in the Remedial Action Work Plan:

1. Identification of each permit which would otherwise be required;

2. Identification of the laws, standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit; and

3. An explanation of how the response action will meet the standards, requirements, criteria or limitations ,identified in Subsection B.2. immediately above, but only to the extent that this information is not covered by the statutory obligations of the Parties to identify ARARs. Upon request of DLA, EPA and TDEC will provide their position with respect to Subsections B.2. and B.3 above within thirty (30) days if feasible.

C. Subsection A above is not intended to relieve DLA from complying with Federal, State, or local hazardous waste management requirements whenever it proposes response actions involving the shipment or movement of a hazardous substance and/or hazardous waste off the Facility.

D. DLA shall provide TDEC and EPA Project Managers written notice of any permits required for off Site activities as soon as it becomes aware of the requirement. Upon request, DLA shall provide TDEC and EPA Project Managers copies of all such permit applications and other documents related to the permit or approval process.

E. If a permit or other authorization necessary for implementation of this Agreement is not issued/granted, or is proposed to be issued or renewed in a manner which is materially inconsistent with the requirements of any work plan reached pursuant to this Agreement, DLA agrees it shall notify TDEC and EPA of the inconsistency as soon as possible. The Project Managers shall then meet to consider the appropriate course of action.

F. During the pendency of any delay pursuant to Subsection E above, DLA shall continue to implement those portions of the applicable work plan which are not directly or indirectly dependent upon a permit/approval in question and which can be implemented pending final resolution of the permit/approval issue(s).

G. Except as otherwise provided in CERCLA, or as agreed to by the Parties, DLA shall comply with applicable State and Federal hazardous waste management requirements such as those in Sections 3004 and 3005 of RCRA, 42 U.S.C. Sections 6924 and 6925, at the Site.

H. To the extent that this information has been provided by DLA in another document or report required under this Agreement, it is not the intent of the Parties that this Section requires resubmission of this information.

XI. RESERVATION OF RIGHTS

A. The Parties, after exhausting their remedies under this Agreement, expressly reserve any and all rights they may have under any law, including but not limited to CERCLA, all provisions of the Hazardous Waste Management Act of 1977, T.C.A. Section 68-212-101 et seq. or any provision of any other State, Federal, or local law, including any laws pursuant to a Federally authorized program, where those rights are not inconsistent with the provisions of this Agreement, CERCLA or the NCP. In addition, by entering into this Agreement and despite any other provision contained herein, the Parties do not waive their sovereign immunity, except as otherwise provided by law.

B. Nothing in this Agreement shall limit the discretion of any Party to enter into an agreement with any other potentially responsible party for the performance of a remedial investigation, feasibility study, or remedial action

at or in the vicinity of the Facility if EPA, in consultation with DLA and TDEC determines that such other party is qualified to do the Work and the remedial investigation, feasibility study, or remedial action activities will be done properly by such other party under the provisions of Section 120(e)(6) of CERCLA, 42 U.S.C. Section 9620(e)(6).

C. This Agreement shall not be construed as a bar or release of any claim, cause of action, right to assess penalties, or demand in law or equity including but not limited to any right TDEC may have in relation to DLA's failure to comply with any term or condition of this Agreement, or for DLA's failure to comply with any schedule or Deadline established pursuant to this Agreement or for any violation of Tennessee Law.

D. This Agreement does not waive, bar, release or affect any claims TDEC may have for damages to natural resources.

E. TDEC shall retain all rights it has pursuant to Section 121(f)(3) of CERCLA, 42 U.S.C. Section 9621(f)(3) and Tennessee Law. If TDEC does not exercise its rights under Section 121(f)(3) of CERCLA, 42 U.S.C. Section 9621(f)(3) in a timely manner, the response action may proceed.

XII. OTHER CLAIMS

A. Nothing in this Agreement shall constitute or be construed as a bar or release from any claims, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to the Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances and hazardous wastes and hazardous constituents, pollutants, or contaminants found at, taken to, or taken from the Site.

B. Neither the EPA or TDEC shall be held as a party to any contract entered into by DLA with any other party to implement the requirements of this Agreement.

C. DLA and other State and Federal trustees shall act on behalf of the public as the trustees for the natural resources present at DDMT. In this capacity, DLA shall notify the appropriate Federal and State natural resource trustees as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. DLA shall also be responsible for assessing damages (injury, destruction, loss of resources) resulting from releases of hazardous substances on DDMT, and for implementing

measures designed to mitigate, and/or compensate for, such damages. These authorities are vested in DLA (as specified in Executive Order 12580) pursuant to Section 107(f) of CERCLA and Section 311(f) of the Federal Water Pollution Control Act. Except as provided herein, DLA is not released from any liability which it may have pursuant to any provisions of State and Federal Law, including any claim for damages for liability to the destruction of, or loss of natural resources.

XIII. PROJECT MANAGERS

A. On or before the effective date of this Agreement, EPA, DLA, and TDEC shall each designate and notify the other Parties in writing of the name and address of their Project Manager and an Alternate Project Manager. The Project Managers shall be responsible, on a daily basis, for assuring proper implementation of all Work performed under the terms of the Agreement. In addition to the procedures set forth in Section XXXI (Written Notification Procedures), to the maximum extent practicable, communications among DLA, EPA, and TDEC on all documents, including reports, comments and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Alternate Project Manager shall be authorized to exercise the authority of the Project Manager in his or her absence.

B. DLA, EPA and TDEC may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within five (5) Days of the change and prior to the new Project Manager exercising his or her delegated authority.

C. The Project Managers shall confer informally as provided for in Section XV (Consultation Process for Primary and Secondary Documents). The Project Manager for DLA shall be responsible for day-to-day field activities at the Site. The absence of EPA and/or TDEC or DLA Project Managers from the Site shall not be a cause for the delay or stoppage of Work. Whenever possible, the Project Managers shall resolve informally, by consent, any issue related to the implementation of this Agreement. Although DLA has ultimate responsibility for meeting the Deadlines and schedules required by this Agreement and the SMP, the Project Managers shall assist in this effort, including scheduling meetings to address documents, reviewing reports, overseeing the performance of environmental monitoring at the Site, and reviewing the progress of the response action process.

D. Subject to the limitations set forth in Section XXVII (Site Access), the authority of the Project Managers shall include, but is not limited to:

1. Taking or splitting samples and ensuring that sampling and other field work is performed in accordance with the terms of this Agreement and any approved Work Plan or Statement of Work;

2. Observing, taking photographs and making such other reports on the progress of the Work as the Project Managers deem appropriate;

3. Reviewing records, files and documents relevant to the Work performed; and

4. Recommending and requesting minor field modifications to the Work to be performed pursuant to an approved Work Plan, or in techniques, procedures, or designs utilized in carrying out such Work Plan.

E. Any minor field modification proposed by a Party pursuant to this Section must be approved orally by all Parties' Project Managers to be effective. The DLA Project Manager will make a contemporaneous record of such modification and approval in a written log, and a copy of the log entry will be provided as part of the next progress report. No Project Manager may require implementation of an approved modification by a government contractor without approval of the appropriate government Contracting Officer.

F. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a force majeure event, any Party shall notify by telephone the other Parties' Project Managers within two (2) working days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or schedule because of the event, the procedures of Section XXIII, (Extensions), shall apply.

XIV. TECHNICAL REVIEW COMMITTEE

Pursuant to 10 U.S.C. Section 2705(c), DLA shall establish a Technical Review Committee (TRC). The Parties shall participate in the TRC as follows:

A. A DLA representative who shall chair the TRC;
B. An EPA representative; and
C. A TDEC representative.

The Parties shall encourage representatives from the following organizations to serve as members of the TRC:

D. A representative from Shelby County Government; and

E. A representative from the City of Memphis Government.

The chairman shall schedule quarterly meetings of the TRC unless the Parties agree to meet less frequently. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings of the TRC shall be for the purpose of reviewing progress under the Agreement. Special meetings of the TRC may be held at the request of the members. Minutes of each TRC meeting shall be prepared and sent to all Parties.

XV. CONSULTATION PROCESS FOR PRIMARY AND SECONDARY DOCUMENTS

A. Applicability:

The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding response action documents, specified herein as either Primary or Secondary Documents. In accordance with Section 120 of CERCLA, 42 U.S.C. Section 9620 and 10 U.S.C. Section 2705, and the approved SMP, DLA will be responsible for issuing Primary and Secondary Documents to EPA and TDEC. As of the effective date of this Agreement, all documents shall be prepared, distributed and subject to dispute resolution in accordance with Subsections B through E below.

The designation of a document as "draft" or "draft final" is solely for purposes of consultation with EPA and TDEC in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law.

B. General Process for Primary Documents:

1. Primary Documents include those reports, plans and studies that are major, discrete portions of the response action process. DLA shall complete and transmit the following draft and draft final Primary Documents, to EPA and TDEC for review and comment in accordance with the provisions of this Section, Section XXI. (Schedules for Document Submittal) and the approved SMP. Unless otherwise specified the documents shall be for a specific OU(s).

a. Site Community Relations Plan.

b. Remedial Investigation and Feasibility Study (RI/FS)

Work Plans.

c. Remedial Investigation (RI) Reports (including Baseline Risk Assessments).

d. Feasibility Study (FS) Reports (including detailed analysis of alternatives).

e. Proposed Remedial Action Plans (PRAPs)

f. Records of Decision (RODs).

g. Remedial Design (RD) Work Plans (including schedules for the development and submittal of Incremental (e.g., 30%, 60%, 90%) and Final RD Reports).

h. 100% Remedial Design (RD) Reports (including the RA Bid Package and final design plans and specifications).

i. Remedial Action (RA) Work Plans (including the awarded RA contract, and schedules for RA implementation and the submittal of Quality Control Plan(s), Post-Construction Report(s), Operation & Maintenance Plan(s) and Final Remediation Report(s)).

j. Written Notification of RA Implementation Start Date

k. Final Remediation Reports (including Preliminary Closeout Reports).

l. Five Year Review Reports

m. Finding of Suitability for Transfer (FOST), as needed

n. Finding of Suitability for Lease (FOSL), as needed

o. Site Closeout Report, including Notice of Intent to Delete.

p. Site Management Plan (SMP)

2. DLA shall complete and transmit each draft Primary Document to EPA and TDEC such that it will be received on or before the corresponding Deadline established in the SMP for EPA and TDEC receipt of the document.

3. Unless the Parties mutually agree to another time period, in accordance with Subsection B.8. of this Section, all draft Primary Documents shall be subject to a sixty (60) Day period for review and comment. Review of any Primary Document by the EPA and TDEC may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, consistency with CERCLA, the NCP, and any pertinent guidance and policy which is applied by the EPA and TDEC. Comments by EPA and/or TDEC shall be provided with adequate specificity so that DLA may respond to the comment and, if

appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based. In cases involving complex or unusually lengthy documents, EPA and/or TDEC may extend the comment period for an additional twenty (20) Days by written notice to DLA prior to the end of the comment period. This 20-Day extension period shall not be subject to the requirements of Section XXII (Extensions). EPA and TDEC shall transmit their written comments to DLA such that the comments are received by DLA on or before the close of the comment period.

4. Following the close of the comment period for a draft Primary Document, DLA shall give full consideration to all written comments on said document which were submitted during the comment period. DLA shall transmit a written response to said comments such that the response is received by EPA and TDEC as soon as possible, and no later than sixty (60) Days from the close of the comment period on said draft Primary Document. DLA shall transmit a draft final Primary Document such that said document is received by EPA and TDEC no later than one hundred and twenty (120) Days from the close of the comment period for the corresponding draft Primary Document. While the resulting draft final Primary Document shall be the responsibility of DLA, it shall be the product of consensus to the maximum extent possible.

5. DLA may extend the one hundred and twenty (120) day period for issuing the draft final Primary Document by an additional twenty (20) Days by providing written notice to EPA and TDEC. This 20-Day extension period shall not be subject to the requirements of Section XXII (Extensions). In appropriate circumstances, the above time periods may be further extended in accordance with Section XXII (Extensions) of this Agreement.

6. Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XXV (Resolution of Disputes) of this Agreement. When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XXV (Resolution of Disputes).

7. Except for a ROD, the draft final Primary Document shall become the final Primary Document if no Party invokes dispute resolution

within thirty (30) Days of issuance of the document or, if invoked, at completion of the dispute resolution process should the DLA position be sustained. If DLA's determination is not sustained in the dispute resolution process, DLA shall prepare, within not more than thirty-five (35) Days, a revision of the draft final Primary Document which conforms to the results of dispute resolution. In appropriate circumstances, this time period for revision may be extended in accordance with Section XXII (Extensions) of the Agreement. A draft final ROD is subject to dispute thirty (30) Days after it is submitted to EPA and TDEC. The ROD shall become final upon signature by DLA and concurrence by EPA and TDEC.

8. All Primary Documents shall be subject to the time frames provided in Subsections B.1. through B.7. above unless otherwise agreed to by the Parties. Alternate time frames shall be proposed and agreed upon by the Parties on a case-by-case basis for individual Primary Documents, and shall be formally documented in the approved SMP. Any extensions to the agreed-to time frames shall be subject to the conditions of Section XXII (Extensions).

9. Following finalization of any Primary Documents, any Party may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in paragraphs a. and b. below.

a. A Party may seek to modify a Primary Document after finalization if it determines, based on significant new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and state the new information upon which the request is based.

b. In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a Primary Document shall be required only upon a showing

that: (1) the requested modification is based on significant new information/significant new Site conditions, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health, welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health, welfare and the environment.

C. General Process for Secondary Documents:

1. Secondary Documents include those reports, plans and studies that are discrete portions of the Primary Documents and are typically input or feeder documents. DLA has completed or shall complete and transmit draft documents of all Secondary Documents required by the approved SMP, to EPA and TDEC for review and comment in accordance with the provisions of this Section, Section XXI (Schedules for Document Submittal) and the approved SMP. Unless otherwise specified, each document shall be for a specific OU. Secondary Documents, as needed, may include but are not limited to:

a. Preliminary Characterization Summary Reports.
b. Preliminary Risk Assessment Reports
c. Sampling and Analysis Plans (SAPs) (including Quality Assurance Project Plans (QAPPs) and Field Sampling Plans (FSPs)).
d. Site Quarterly Progress Reports.
e. Treatability Study Reports.
f. Responsiveness Summaries.
g. Remedial Action (RA) Progress Reports.
h. Incremental Remedial Design Reports (e.g., 30%, 60%, 90%).
i. Remedial Action (RA) Post-Construction Reports.
j. Operation and Maintenance (O&M) Plans.
k. Data Management Plan (DMP).

2. DLA shall complete and transmit each draft Secondary Document to EPA and TDEC such that it will be received on or before the Target Date established for EPA and TDEC receipt of the document pursuant to Section XXI (Schedules for Document Submittal) of this Agreement.

3. Secondary Documents shall be subject to the review process specified for Primary Documents unless otherwise agreed to by the

Parties. Alternate procedures and time frames for the review of secondary documents shall be specified in the approved SMP. However, the Parties may not establish Target Dates which adversely impact the Parties' ability to meet the Deadlines established for Primary Documents.

4. Although EPA and TDEC may comment on Secondary Documents, and DDMT shall respond to any comments received, Secondary Documents shall not necessarily be subject to review and comment, and may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed only in the context of the corresponding Primary Document.

D. Coordination of the Project Managers on Development of Documents:

1. The Project Managers shall confer monthly except as otherwise agreed by the Parties, to review and discuss the progress of Work being performed at the Site on the Primary and Secondary Documents. Prior to preparing any draft document described in Subsections C and D above, the Project Managers shall discuss the data to be reported in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

2. Representatives of DLA shall make themselves reasonably available to EPA and TDEC during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by DLA on the close of the comment period.

3. In commenting on a draft document which contains a proposed ARAR determination, whenever EPA and/or TDEC objects, it shall explain the basis for its objection in detail. EPA or TDEC shall also identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

4. EPA and TDEC shall identify all pertinent written guidance in response to written requests by DLA for said guidance to assist DLA in satisfying the requirements pursuant to this Agreement.

E. Identification and Determination of Potential ARARs:

1. For those Primary or Secondary Documents that consist of or include ARAR determinations, prior to the issuance of a draft document, the Project Managers shall confer as early as possible to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. TDEC shall coordinate with DLA on all potential State ARARs as early in the remedial processes as possible consistent with the requirements of Section 121(d)(2)(a)(ii) of CERCLA, 42 U.S.C. Section 9621(d)(2)(a)(ii) and the NCP. DLA shall consider any written interpretation of ARARs provided by TDEC. Draft ARAR determinations shall be prepared by DLA in accordance with Section 121(d)(2) of CERCLA, the NCP, and pertinent guidance and policy which is applied by EPA and TDEC consistent with CERCLA and the NCP.

2. In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site- specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at the site, or OU, the particular actions proposed as a remedy and the characteristics of the site or OU. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until the ROD is issued.

XVI. ADMINISTRATIVE RECORD AND PUBLIC PARTICIPATION

A. The Parties agree that the Work to be conducted; this Agreement and modifications hereto; and all response actions arising hereunder shall comply with the Administrative Record and public participation requirements of Sections 113(k) and 117 of CERCLA, 42 U.S.C. Sections 9613(K) and 9617, including any guidance and/or regulations promulgated by EPA with respect to such sections; the NCP; the public hearing requirements of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h); and applicable State Law. This shall be achieved through implementation of the approved Community Relations Plan (CRP) prepared and implemented by DLA. When appropriate, the Parties intend to coordinate public participation activities under this Agreement with those required under other State and Federal environmental laws (including RCRA) regulating activities at DDMT that are not covered by this Agreement.

B. DLA shall develop and implement the CRP pursuant to the schedule set forth in the approved SMP in a manner consistent with Section 117 of CERCLA, 42

U.S.C. Section 9617; the NCP; applicable EPA guidance; and any modifications thereto.

C. To the extent practicable, any Party issuing any press release to the media regarding any of the Work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least two (2) business days before the issuance of such press release and of any subsequent changes prior to release. This provision for notice, however, does not extend to contract solicitations for work or modifications thereto that are routinely publicized for competition purposes.

D. DLA agrees it shall establish and maintain an official Administrative Record for each OU, which will include an index of all documents contained therein in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613(k), at or near the following location:

Memphis/Shelby County Public Library
Main Branch (also called the "Main Library")
1850 Peabody Avenue
Memphis, TN 38104-4021

in accordance with Section 113(k) of CERCLA, 42 U.S.C. Section 9613(K). The Administrative Record shall be established and maintained in accordance with applicable EPA policy and guidelines. A copy of each document placed in the Administrative Record will be provided to EPA and TDEC upon request. An updated index of documents in the Administrative Record shall be provided to EPA and TDEC on a semiannual basis.

XVII. RETENTION OF RECORDS

DLA shall preserve all records and documents forming the Administrative Record for a minimum of ten (10) years after termination of this Agreement despite any other retention policy to the contrary. After this ten (10) year period, each Party shall notify the other Parties at least forty-five (45) Days prior to the destruction or disposal of any such documents or records. Upon request by any Party, the requested Party shall make available such records or documents for the requesting Parties' review and retention.

XVIII. PROGRESS REPORTS

DLA shall submit to TDEC and EPA quarterly written progress reports during the fiscal year which identify and briefly describe the actions which DLA has taken during the previous quarter to implement the requirements of this

Agreement. Progress reports shall also identify and briefly describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be submitted by the tenth (10th) Day of each quarter following the first full quarter after the effective date of this Agreement. The progress reports shall include a statement of the manner and extent to which the requirements and time schedules set out in this Agreement are being met. In addition, the progress reports shall identify any anticipated delays in meeting time schedules, the reason(s) for the delay and actions taken to prevent or mitigate the delay. DLA shall submit written notification of a significant new Site condition/significant new information which may impact SMP schedules or require Additional Work within five (5) Days of such determination by DLA.

XIX. ADDITIONAL WORK

A. Except as provided in Section XV (Consultation Process for Primary and Secondary Documents) of this Agreement, either EPA or TDEC may at any time request Additional Work, including field modifications, remedial investigatory work, or engineering evaluations, which they determine to be necessary to accomplish the purposes of this Agreement. Such requests shall be in writing to DLA with copies to the other Parties. DLA agrees to give full consideration to all such requests. DLA may either accept or reject any such requests and shall do so in writing together with a statement of reasons, within forty-five (45) Days of receipt of any such requests. If there is no agreement concerning whether or not the requested additional work or modification to Work should be conducted, then dispute resolution may be invoked only at the time of review of the subsequent corresponding Primary Document, in accordance with the procedures set forth in Section XV (Consultation Process for Primary and Secondary Documents) of this Agreement.

B. Should Additional Work be required pursuant to this Section, the appropriate work plan shall be prepared or amended and proposed by DLA for review and approval by EPA and TDEC.

C. The discovery of previously unknown sites, releases of hazardous substances, contamination, or other significant new site conditions may be addressed as Additional Work under this Section.

D. Any Additional Work or modifications to Work proposed by DLA shall be proposed in writing to the other Parties and shall be subject to review in a Primary Document (or modification to an existing Primary Document) in accordance with Section XV (Consultation Process for Primary and Secondary Documents) of this Agreement. DLA shall not initiate such Work prior to review and approval

by EPA and TDEC, except for emergency removal actions taken under Subsection XI(C) (Imminent and Substantial Endangerment).

E. Any Additional Work or modification to Work agreed to be required under this Section, shall be completed in accordance with the standards, specifications, and schedules determined or approved by EPA and TDEC and shall be governed by the provisions of this Agreement.

XX. FIVE YEAR REVIEW

A. Consistent with Section 121(C) of CERCLA, 42 U.S.C. Section 9621(C), (and OSWER Directive 9320.2-3A, Procedures for Completion and Deletion of NPL Sites) DLA agrees that if the remedial action(s) selected results in any hazardous substance, contaminant or pollutant remaining at the Site above levels that allow for unlimited use and unrestricted exposure, EPA and TDEC shall evaluate such remedial action through review of the Five Year Report to be submitted in accordance with Section XV (Consultation Process for Primary and Secondary Documents) and the approved SMP every five years after the initiation of such final remedial action(s) to assure that human health, welfare, and the environment are being protected by the remedial action(s) being implemented. Such five year reviews will continue so long as any hazardous substance, pollutant or contaminant remains on Site above levels that allow for unlimited use and unrestricted exposure. If, upon such review, it is the judgment of the Parties that additional action or modification of the remedial action is appropriate in accordance with Sections 104, 106 or 120 of CERCLA, 42 U.S.C. Section 9604, 9606 and 9620 then DLA shall submit a proposal to implement such additional or modified actions which shall be subject to review and approval by EPA and TDEC. The Parties shall also update the SMP to include any resultant changes to the approved schedules. Any report produced under this Section shall be a Primary Document as described in Section XV (Consultation Process for Primary and Secondary Documents).

B. Any dispute under this Section shall be resolved under Section XXV (Resolution of Disputes) of this Agreement.

XXI. SCHEDULES FOR DOCUMENT SUBMITTAL

A. The purpose of the (Site Management Plan) SMP is to set forth the schedule under which DLA will conduct all response activities associated with the investigation and remediation of each OU for the Site, including the submission of Primary Documents. The SMP shall be a Primary Document and subject to stipulated penalties pursuant to Section XXIV (Stipulated Penalties) in the event

that DLA fails to submit the SMP in accordance with the schedule specified in this section.

B. The SMP shall include, at a minimum:

1. A listing, brief description of, and rationale for, each OU and potential OU subject to the Agreement;
2. A rationale for the prioritization of each OU at the Site;
3. Activities, schedules and submittal dates for Work planned for each OU through a Record of Decision (ROD);
4. Activities, schedules and submittal dates for Remedial Design and Remedial Action Work for those Operable Units with an approved ROD; and
5. The enforceable Deadlines for all Primary Documents for the current (FY) and subsequent two (FY+1 and FY+2) fiscal years (FY 1994 and 1995 in the attached SMP) as defined in Section XV (Consultation Process for Primary and Secondary Documents).

C. In addition, the SMP shall be updated to include the following information and schedules as indicated below:

1. Within twenty-one (21) days of issuance of a Record of Decision, DLA shall propose schedules and Deadlines for Remedial Design and Remedial Action activities and submittal of the associated Primary and Secondary Documents. Such Deadlines shall be proposed and finalized in accordance with the procedures set forth in this Section.

2. In accordance with CERCLA and the NCP, DLA shall provide the other Parties with written notification of the date on which Remedial Action activities are initiated for an OU no later than 15 months from issuance of the ROD for that OU.

D. The FY94 Site Management Plan (SMP) is attached to this Agreement as Appendix C. No later than December 1 of each fiscal year, following the effective date of this Agreement, the DLA shall submit a revised draft SMP which shall propose Deadlines for each of the draft Primary Documents to be submitted in FY+1 and FY+2.

E. Within thirty (30) Days of receipt, EPA and TDEC shall review and provide comments to the DLA regarding the draft SMP. Within thirty (30) Days following receipt of the comments DLA shall, as appropriate, make revisions and

resubmit the amended SMP as a draft final document. The Parties shall meet as necessary to discuss and finalize the proposed Primary Document Deadlines and Work priorities for the Site. If the Parties agree on proposed Deadlines and Work priorities for the Site, the finalized Deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree by March 1 on the proposed Deadlines and Work priorities for the Site, the matter shall immediately be submitted for formal dispute resolution as described in Section XXV (Resolution of Disputes).

F. The FY+1 enforceable commitments in the existing, previously approved SMP shall become current FY enforceable commitments on October 1, FY+1 and shall remain in effect until amended or replaced by a revised SMP which is approved by all the Parties. The SMP may be further amended or replaced at any time by mutual consensus of the Parties.

G. Of the Primary Document Deadlines contained within the approved SMP, only those which fall within the current FY, FY+1 and FY+2 for each annual update of the SMP shall be enforceable and subject to stipulated penalties as set forth in Section XXIV (Stipulated Penalties). All later Deadlines shall be regarded as projected dates, subject to review and revision in the annual update of the SMP as required in Subsections C through E above.

H. The final Deadlines established pursuant to this Section shall be available as part of the Administrative Record.

I. The Deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Sections XXII (Extensions) and XV. (Consultation with EPA and TDEC for Primary and Secondary Documents) of this Agreement.

J. Within thirty (30) Days after DLA receives its annual budget allotment from the DOD Comptroller, DLA shall notify EPA and TDEC in writing as to whether or not the appropriations were sufficient to meet the budget request for DDMT for that fiscal year.

K. To the extent that DLA has diligently sought but does not receive funding from Congress for the current FY commitments, the Parties shall meet within thirty (30) Days of the written notification referred to in Subsection J above, to modify the enforceable timetables and deadlines for the current FY commitments contained in the SMP. Within fifteen (15) Days of the meeting, DDMT shall submit a draft revised SMP to EPA and TDEC. EPA and TDEC shall review and comment on the draft revised SMP within fifteen (15) Days of receipt. Within

fifteen (15) Days of receipt of EPA and TDEC comments, DLA will revise, if necessary, the draft revised SMP and submit a draft final SMP. The Parties agree to finalise the revised SMP no later than one hundred and five (105) Days from the date of DLA's initial request.

XXII. EXTENSIONS

A. Either a Deadline or a schedule set forth in this Agreement or the approved SMP shall be extended upon receipt of a timely request for extension by DLA and when good cause exists for the requested extension in accordance with Subsection B below. Any request for extension by DLA shall be submitted in writing to EPA and TDEC at least 10 days prior to the Deadline or scheduled due date and shall specify:

1. The Deadline or the schedule that is sought to be extended;
2. The length of the extension sought;
3. The good cause(s) for the extension; and
4. Any related Deadline or schedule that would be affected if the extension were granted;

B. Good cause exists for an extension when sought in regard to:

1. An event of Force Majeure as defined in Section XXIII (Force Majeure);
2. A delay caused by EPA's or TDEC's failure to meet any requirement of this Agreement;
3. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
4. A delay caused, or that is likely to be caused by, the granting of an extension in regard to another Deadline or schedule; or
5. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. Absent agreement of EPA or TDEC with respect to the existence of good cause, DLA may seek and obtain a determination through the dispute resolution process that good cause exists.

D. Within ten (10) Days of receipt of a request for an extension of a schedule or Deadline, EPA and TDEC shall each advise DLA, in writing, of their respective positions on the request. If EPA or TDEC does not concur with the requested extension, it shall include in its statement of nonconcurrence an

explanation of the basis for its position. Any failure by EPA or TDEC to respond in writing within ten (10) Days shall be deemed a concurrence with the request for an extension.

E. If there is consensus among the Parties that the requested extension is warranted, DLA shall extend the affected Deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the Deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

F. Within ten (10) Days of receipt of a statement of nonconcurrence with the requested extension, DLA may request dispute resolution. If DLA does not invoke dispute resolution within ten (10) days of receipt of a statement or nonconcurrence, then DLA shall be deemed to have accepted the statement of nonconcurrence and the existing Deadline or schedule shall remain in effect.

G. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original Deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the Deadline or schedule as most recently extended.

H. It shall not be grounds for an extension of time if DLA has not provided a copy of this Agreement to its agents, employees and/or response action contractor(s) for the Site and a delay is caused by failure to provide a copy of this Agreement.

XXIII. FORCE MAJEURE

A. Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement. Examples of events that may constitute a Force Majeure include, but are not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability

to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Party claiming the Force Majeure; or delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence.

B. Depending on the facts, Force Majeure may also include any strike or labor dispute not within the control of the Parties affected thereby and, for EPA and DLA only, insufficient availability of appropriated funds which have been diligently sought, if DLA made timely request for such funds as part of the budgetary process as set forth in Section XXXII (Funding) of this Agreement. TDEC does not agree that lack of funding can ever constitute a Force Majeure.

C. The listing of examples of events that may constitute a Force Majeure does not create a presumption that such events will in every instance be a Force Majeure. The Parties shall have the right to invoke dispute resolution as to whether or not any particular event constitutes a Force Majeure and/or to contend that any particular event does not constitute Force Majeure in any action brought to enforce this Agreement.

XXIV. STIPULATED PENALTIES

A. In the event that DLA fails to submit an Adequate Primary Document as identified in Section XV (Consultation Process for Primary and Secondary Documents) and in Section XXI (Schedules for Document Submittal) to the EPA or TDEC pursuant to the appropriate schedule or Deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition (including any Deadlines or schedules for Work under this Agreement) which relates to a CERCLA response action, DLA may be assessed a stipulated penalty. A stipulated penalty may be assessed in an amount not to exceed $5,000 (total amount of EPA and TDEC assessment) for the first week, or part thereof, and $10,000 (total amount of EPA and TDEC assessment) for each additional week (or part thereof) for which a failure set forth in this Section occurs.

B. Upon determining that DLA has failed in a manner set forth in Subsection A, EPA and/or TDEC shall so notify DLA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DLA shall have thirty (30) Days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. DLA shall not be liable for the stipulated penalty assessed by EPA and/or TDEC if the failure is determined, through the dispute resolution process, not to have

occurred. No assessment of a stipulated penalty shall be final until the conclusion of any dispute resolution procedures related to the assessment of the stipulated penalty, if invoked.

C. The DLA annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. Section 9620(e)(5) shall include, with respect to each final assessment of a stipulated penalty against DLA under this Agreement, each of the following:

1. A statement of the facts and circumstances giving rise to the failure;
2. A statement of any administrative or other corrective action taken at the relevant Facility or a statement of why such measures were determined to be inappropriate;
3. A statement of any additional action taken by or at the Facility to prevent recurrence of the same type of failure; and
4. The total dollar amount of the stipulated penalty assessed for the particular failure.

D. Stipulated penalties assessed by EPA pursuant to this Section shall be payable to the Hazardous Substance Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DoD.

E. Stipulated penalties assessed by TDEC pursuant to this Section shall be payable to the Tennessee Remedial Action Fund.

F. In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. Section 9609.

G. This section shall not affect DLA's ability to obtain an extension of a Deadline or schedule pursuant to Section XXII (Extensions) of this Agreement.

H. Nothing in this Agreement shall be construed to render any officer or employee of the DoD personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

XXV. RESOLUTION OF DISPUTES

A. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply.

B. Informal Resolution:

1. Within thirty (30) Days after: (1) issuance of a draft final Primary Document pursuant to Section XV (Consultation Process for Primary and Secondary Documents) of this Agreement or; (2) any action which leads to or generates a dispute, any Party may invoke informal dispute resolution.

2. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level before invoking the formal dispute resolution procedures set forth below. During this informal dispute resolution process, the Parties shall meet as many times as necessary to discuss and attempt resolution of the dispute. Upon determination by any Party that the dispute cannot be resolved, and notification to the other Parties, the Party may invoke formal dispute resolution as provided for in Subsection C.

C. Formal Resolution:

1. If the Parties are unable to resolve the dispute in the informal dispute resolution process set forth in Subsection B., the disputing Party shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the information the disputing Party is relying upon to support its position. The date of the written statement of dispute shall serve as the date for initiation of formal dispute.

2. The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which Agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purpose of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region IV. DLA's designated member is the Commander of DDMT. TDEC's designated member is the Director of the Division of Superfund. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other

Parties pursuant to the procedures of Section XXXI (Written Notification Procedures) of this Agreement.

3. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) Days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within the twenty-one (21) Day period, the written statement of dispute shall be forwarded within seven (7) Days after the close of the twenty-one (21) Day resolution period to the Senior Executive Committee (SEC) for resolution.

4. The SEC will serve as the forum for resolution of disputes for which Agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region IV. The DLA's representative on the SEC is the Staff Director, Environment and Safety Policy Office. The TDEC representative is the Assistant Commissioner for Environment of the Department of Environment and Conservation. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If the SEC is unable to unanimously resolve the dispute within twenty-one (21) Days, EPA's Regional Administrator shall issue a written position on the dispute. The Director of DLA or the Commissioner of TDEC may, within twenty-one (21) Days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that neither the Director of DLA nor the Commissioner of TDEC elects to elevate the dispute to the Administrator within the designated twenty-one (21) Day elevation period, DLA and TDEC shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

5. Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection C(4), the Administrator or her designee will review and resolve the dispute within twenty-one (21) Days. Upon request, and prior to resolving the dispute, the EPA Administrator or her designee shall meet and confer with the Director of DLA or the Deputy Under Secretary of Defense for Environmental Security and the Commissioner of TDEC to discuss the issue(s) under dispute. If any of the Parties are unable to meet or confer during the twenty-one

(21) Day period, the Party shall provide written notice to the other Parties and request an extension under Section XXII (Extensions). Upon resolution, the Administrator or her designee shall provide all Parties with a written final decision setting forth resolution of the dispute. The Administrator may designate only EPA's Assistant Administrator for Enforcement to review and resolve disputes pursuant to this Subsection.

6. The pendency of any dispute under this Section shall not affect DLA's responsibility for timely performance of the Work required by this Agreement, except that the time period for completion of Work affected by such dispute may be extended, pursuant to Section XXII (Extensions), for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the Work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable Deadline or schedule.

7. When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Waste Management Division Director for EPA's Region IV requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, any Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if any Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the Work stoppage. Following this meeting, and further consideration of the issues, EPA's Waste Management Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

8. Within twenty-one (21) Days of resolution of a dispute pursuant to the procedures specified in this Section DLA shall incorporate

the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

9. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of such dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the Agreement.

XXVI. SAMPLING AND DATA QUALITY AND AVAILABILITY

A. The Parties shall provide as soon as possible, but no later than (90) Days after collection, quality assured results of sampling, tests or other data generated by such Party, or on their behalf, with respect to the implementation of this Agreement.

B. The Parties shall use field and laboratory procedures which are presented in the following EPA guidance documents. All such procedures shall be performed in accordance with the approved quality assurance and quality control procedures described in the EPA Region IV Environmental Compliance Branch Standard Operating Procedures and Quality Assurance Manual (ECBSOPQAM) (January, 1991) throughout all sample collection and analysis activities:

1. ECBSOPQAM (January 1991);
2. Field Screening Methods Catalogue User's Guide (EPA/540/2-88/005, as amended);
3. RCRA Ground Water Monitoring Technical Enforcement Guidance Document (OSWER-9950.1, as amended);
4. Compendium of Superfund Field Operations Methods: Volumes 1 & 2 (EPA/540/P-87/001b, as amended);
5. Compendium of ERT Surface Water and Sediment Sampling Procedures (EPA/540/P-91/005, as amended);
6. Compendium of ERT Surface Soil Sampling and Surface Geophysics Procedures (EPA/540/P-91/006, as amended);
7. Compendium of ERT Groundwater Sampling Procedures (EPA/540/P-91/007, as amended);
8. Compendium of ERT Waste Sampling Procedures (EPA/540/P-91/008, as amended);
9. Compendium of ERT Toxicity Testing Procedures (EPA/540/P-91/009, as amended);
10. Data Quality Objectives for Remedial Response Activities:

Volumes 1 & 2 (OSWER-9355.0-7B, March 1987)
11. Test Methods for Evaluating Solid Waste, Current Edition, GPO #955-001-00000-1, EPA #SW-846.

Any deviation from the above referenced procedures shall be submitted and approved as part of the RI/FS Work Plan.

C. At the request of any Party the sampling Party shall allow split samples to be taken by any other Party during sample collection conducted during the implementation of this Agreement. Except for sampling performed during the course of routine compliance inspections, the Project Manager obtaining the sample shall notify the other Project Managers not less than twenty-one (21) Days in advance of any sample collection to the maximum extent practicable. If it is not possible to provide twenty-one (21) Day notification, the Project Manager shall notify the other Project Managers as soon as possible after becoming aware that a sample(s) will be collected.

D. All data and studies generated under this Agreement shall be managed and presented in accordance with an approved Data Management Plan (DMP) to be prepared by DLA and submitted to EPA and TDEC for review in accordance with Section XV (Consultation Process for Primary and Secondary Documents) and the approved SMP.

XXVII. SITE ACCESS

A. EPA, TDEC and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for purposes consistent with this Agreement including but not limited to:

1. Inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement;
2. Reviewing the progress of DLA, its response action contractors or lessees in implementing this Agreement;
3. Gathering samples and conducting such analyses of those samples as is necessary to implement this Agreement; and
4. Verifying the data submitted to EPA and TDEC by DLA.

B. Upon request for access, EPA and TDEC shall present proper credentials. However, the rights to such access by EPA and TDEC shall be subject to those statutes and regulations as may be necessary to protect national security, including DLA security regulations, DLAR 5705.1 and DLAM 5710.1. DLA agrees to notify EPA and TDEC of any restricted area that would relate to the Work to be

performed pursuant to this Agreement. DLA shall provide an escort whenever EPA and TDEC require access to restricted areas of DLA for purposes consistent with the provisions of this Agreement. Before using any camera, sound or other electronic recording device at DLA, EPA and TDEC shall request permission of the DLA Project Manager. DLA shall not unreasonably withhold such permission.

C. Consistent with Federal statutes and regulation, should DLA determine it will be necessary to deny access to the Site, DLA shall provide an explanation within forty-eight (48) hours of the reason for the denial and, to the extent possible, provide a recommendation for accommodating the requested access in an alternative manner. The Parties agree that this Agreement is subject to Section 120(j), of CERCLA, 42 U.S.C. Section 9620(j).

D. To the extent that access is required to areas of the site presently owned by or leased to parties other than DLA, DLA agrees to initiate negotiations and exercise any authority it may have to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. Section 9604(e), from the present owners and/or lessees within thirty (30) calendar Days after the relevant documents which require access are finalized. DLA shall use its best efforts to obtain access Agreements which shall provide reasonable access to the authorized representatives of all Parties.

E. During negotiations with property owners on whose property DLA monitoring wells, pumping wells, treatment facilities or other response actions are to be located, DLA will request owners to notify the Parties by registered/return receipt mail, at least forty-five (45) Days prior to any conveyance or any other transfer of any interest in the property. DLA will use its best efforts to ensure the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

F. Should DLA be denied access to non-Federal property, within thirty (30) calendar Days of the denial, it will advise the Parties of that denial and will describe those actions taken to gain access. Within sixty (60) Days or such shorter period as may be agreed to by the Parties, DLA shall submit appropriate modification(s) to affected Work Plans and schedules.

G. The DLA Project Manager may request the assistance of the other Parties' Project Managers in obtaining access to non-Federal property as appropriate.

XXVIII. REMOVALS AND CESSATION OF WORK

A. Notwithstanding any other provision of this Agreement, DLA retains the right, consistent with Executive Order 12580, to conduct such emergency actions as may be necessary to alleviate immediate threats to human health or the environment from the release or threat of release of hazardous substances, pollutants, constituents or contaminants at or from the Site. Such actions may be conducted at any time, either before or after the issuance of the ROD, and shall be conducted in accordance with all applicable laws and the Permit. Consistent with 10 U.S.C. Section 2705, DLA shall provide EPA, TDEC and local officials with an adequate opportunity to timely review and comment on any proposal by DLA to carry out response actions with respect to any discovery of releases or threatened releases of hazardous substances creating an imminent and substantial endangerment and before undertaking such response actions. The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

B. DLA shall provide the other Parties with oral notice as soon as possible but no later than the following business day after DLA determines that an emergency action is necessary due to an imminent and substantial endangerment to human health, welfare or the environment. In addition, within seven (7) Days of initiating such action, DLA shall provide written notice to the other Parties explaining why such action is or was necessary to abate an imminent and substantial endangerment. Promptly thereafter DLA shall provide the other Parties the written basis (factual, technical, scientific) for such action and any available supporting documents. Upon completion of such an emergency action, DLA shall notify the other Parties in writing that the emergency action has been implemented. Such notice shall state whether, and to what extent, the emergency action varied from that described in the prior written notice provided pursuant to this section.

C. An authorized DLA Official shall order a temporary cessation of Work (of either his own volition or at the request of an EPA or TDEC Project Manager) in order to respond to a situation creating an imminent and substantial endangerment to human health, welfare and the environment.

D. In the event that any Party requests a cessation of Work, the Parties agree that DLA shall immediately discontinue Work and toll relevant Deadlines for such period of time as needed to take appropriate action, to abate the danger. Within twenty-four (24) hours thereafter, the Project Manager for the Party requesting the cessation of Work shall provide the other Project Managers with

a written notification which shall include the reason for ceasing Work, the authority under which the Party is acting to request the cessation and the signature of the authorizing official. Any dispute regarding the existence of an imminent and substantial endangerment or any action necessary to abate such condition will be resolved pursuant to Section XXV (Resolution of Disputes) of this Agreement.

E. This Section shall not be construed to relieve DLA from compliance with State and Federal notice requirements applicable to releases.

XXIX. CONFIDENTIAL INFORMATION

A. DLA may possess information which is subject to a confidentiality claim as established by DLA pursuant to regulation found at 32 C.F.R. Part 55 2(b). In the event that DLA submits information to other Parties pursuant to this Agreement which is subject to a confidentiality claim, such information shall be clearly designated by DLA as confidential. If no confidentiality claim accompanies the information when it is submitted, the information may be made available to the public without further notice to DLA.

B. Upon receipt of material claimed as confidential, EPA shall review the confidentiality claim pursuant to 40 C.F.R. Part 2, and shall make an independent confidentiality determination. DLA prior confidentiality determination shall be relevant to, but shall not control, EPA's confidentiality determination.

C. In the event that EPA determines that information submitted by DLA pursuant to this Agreement contains confidential business information ("CBI"), EPA shall manage such information according to EPA procedures for the management of CBI.

D. In the event that EPA determines that information submitted by DLA pursuant to this Agreement does not contain CBI as established pursuant to 40 C.F.R. Part 2, the Parties to this Agreement, recognize that the conflicting confidentiality determinations made by EPA and DLA give rise to a unique inter-agency dispute. Therefore, in the event of such conflicting determinations, EPA and DLA agree to jointly elevate the resulting dispute to their respective offices of General Counsel for assistance in resolving the dispute. The Parties agree to abide by the final inter-agency resolution of the dispute resulting from such elevation; including appropriate management of the information in question in accordance with the resolution of the dispute.

E. Nothing in this Agreement shall serve as a limitation on DLA's right

to classify information for national security purposes pursuant to the national security provisions referenced in Section 120(j)(2) of CERCLA, 42 U.S.C. Section 9620(j)(2), or to seek Site-specific Presidential orders under Section 120(j)(1) of CERCLA, 42 U.S.C. Section 9620(j)(1). Except as otherwise provided by Section 120(j)(1) of CERCLA, 42 U.S.C. Section 9620(j)(1), analytical data shall not be claimed as confidential by DLA.

F. If Federal law so requires, such information shall not be publicly disclosed by TDEC pursuant to applicable Tennessee laws. If no claim of confidentiality accompanies the information when it is submitted, the information may be made available to the public without further notice to DLA.

XXX. CONVEYANCE OF TITLE

No conveyance of title, easement, or other interest in the property in which any containment system, treatment system, monitoring system or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by DLA without provision for continued maintenance of any such system or other response action(s) in accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h) and all applicable Federal Property Management Regulations. At least ninety (90) Days prior to any such conveyance, DLA shall notify EPA and TDEC of the transfer of real property subject to this Agreement and the provisions made for the continued operation and maintenance of any response and/or corrective action(s) or systems installed or implemented pursuant to this Agreement and submit a Finding Of Suitability for Transfer (FOST) or Finding For Suitability for Lease (FOSL) as appropriate for concurrence by EPA and TDEC. DLA shall not transfer any real property from the Site except in compliance with Section 120(h) of CERCLA, 42 U.S.C. 9620(h) as amended by CERFA. This provision does not relieve DLA of its obligations under 40 C.F.R. Part 270 or applicable State Law.

XXXI. WRITTEN NOTIFICATION PROCEDURES

A. Unless otherwise specified in this Agreement, the following shall be sent by certified-mail, return receipt requested; commercial overnight delivery service; facsimile machine or hand delivery to a Project Manager or his or her designated agent(s).

1. Any document provided pursuant to a schedule or Deadline identified in or developed under this Agreement.
2. Any required notice of Significant New Site Conditions/Significant New Information.

3. Any notice of dispute and response thereto submitted under Section XXV (Resolution of Disputes) of this Agreement.

4. Any request, and response thereto, for extensions under Section XXII (Extensions) of this Agreement.

5. Any notice of Force Majeure under Section XXIII (Force Majeure) of this Agreement.

6. Any notice of cessation of Work due to an imminent and substantial endangerment situation under Section XXVIII (Removals and Cessation of Work) of this Agreement.

B. The items listed in Subsection A above shall be transmitted as shown below:

1. To EPA:

U.S. Environmental Protection Agency Region IV
Federal Facilities Branch
Mail Code: 4WD-FFB
ATTN: DDMT Remedial Project Manager
345 Courtland St., N.E.
Atlanta, Georgia 30365

2. To TDEC:

Tennessee Department of Environment and Conservation
Division of Superfund
2500 Mt. Moriah
Suite E645
Memphis, Tennessee 38115-1511

3. To DDMT:

Commander
ATTN: DDMT-D
Defense Depot Memphis Tennessee
2163 Airways Blvd.
Memphis, Tennessee 38114-5210

Information copies of the items listed in Subsection A above shall be delivered to:

Director of Installation Services
ATTN: DDMT-W
Defense Depot Memphis Tennessee
2163 Airways Blvd.
Memphis, Tennessee 38114-5210

U.S. Army Engineer Division - Huntsville
ATTN: CEHND-PM-EP
P.O. Box 1600
Huntsville, AL 35807

TDEC - Division of Superfund
401 Church Street
4th Floor, Annex, L&C Building

Nashville, Tennessee 37243-1538

XXXII. FUNDING

A. It is the expectation of the Parties to this Agreement that all obligations of DLA arising under this Agreement will be fully funded. DLA agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligation under this Agreement.

B. In accordance with Section 120(e)(5)(B) of CERCLA, 42 U.S.C. Section 9620(e)(5)(B), the DOD shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

C. Any requirement for the payment or obligation of funds, including stipulated penalties, by the DLA established by the terms of this Agreement shall be subject to the availability of appropriated funds which have been diligently sought by DLA, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

D. If funds are not appropriated by Congress to fulfill DLA's obligations under this Agreement, EPA and TDEC reserve the right to initiate an action against any other person or to take any response action which would be appropriate absent this Agreement.

E. Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation (DERA) in the Department of Defense Appropriation Act for Environmental Security to DLA will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. In the event that Congress replaces or supplements DERA with another source of funding, any Party may submit a written request for modification under Section XXXV (Modification of Agreement) of this Agreement.

XXXIII. RECOVERY OF EXPENSES

A. Reimbursement of EPA's Expenses:

The Parties agree to amend this Section at a later date in accordance with subsequent resolution of the national issue of DOD/EPA cost reimbursement for CERCLA response costs incurred by EPA.

B. Reimbursement of Tennessee's Expenses:
DLA and TDEC agree to use the Defense State Memorandum of Agreement, DSMOA, for the reimbursement of services provided in direct support of DLA environmental restoration activities at the Site pursuant to this Agreement.

XXXIV. EFFECTIVE DATE OF AGREEMENT

Upon the close of the public comment period on this Agreement, the Parties shall execute the signature pages of this Agreement after considering all significant public comments received during the public comment period and modifying this Agreement as appropriate. The Parties shall return the executed signature pages to EPA. The Agreement shall become effective upon EPA's receipt of the executed signature pages from all of the Parties. Upon receipt of all signature pages, EPA shall immediately issue a notice letter to all Parties stating the date on which the Agreement became effective.

XXXV. MODIFICATION OF AGREEMENT

A. After execution of the Agreement, any Party may submit a written request for modification of this Agreement, including the SMP, to the other Parties.

B. This Agreement may be modified by the unanimous written Agreement of the Parties. If the Parties do not reach unanimous Agreement to the proposed modification they may enter into negotiations with a view toward resolving all points of disagreement. If, following negotiations, unanimity cannot be achieved, the modification will not occur. Modification proposals under this Agreement are not subject to Section XXV (Resolution of Disputes) of this Agreement.

C. The public notice procedures of Section 117 of CERCLA, 42 U.S.C. Section 9617, as well as any public participation requirements established in the approved CRP, shall be followed for all proposed major modifications of this Agreement. A modification shall be considered "major" upon designation as such by any Party. Public Notice is not required for minor modifications. Minor modifications shall be made informally, upon consent of the Project Managers, and confirmed in writing within ten (10) days following the consent of the Project Managers. Minor modifications shall be designated by the Parties and shall be limited to ministerial, editorial, or other such insignificant changes to this Agreement, for example:

1. Corrections or changes in addresses or telephone numbers; and

2. The addition or deletion of Solid Waste Management Units requiring further investigation as listed in the Permit.

D. The Parties expressly acknowledge that this Agreement shall be modified, as appropriate, to incorporate the conditions of and otherwise address the authorities and the requirements of the Federal Facilities Compliance Act of 1992. Such modification may be initiated by any Party.

XXXVI. TERMINATION OF AGREEMENT

A. When DLA determines that the Work set forth in this Agreement has been completed in accordance with the requirements of this Agreement, it shall so advise EPA and TDEC in writing and shall propose that the Agreement be terminated on a showing that the Agreement's objectives have been satisfied. This Agreement shall be deemed satisfied and terminated upon receipt by DLA of written notice from EPA and TDEC that DLA has completed its obligations under the terms of this Agreement.

B. If EPA/or TDEC denies or otherwise fails to grant a termination notice within sixty (60) Days of receiving a written proposal from DLA, the Party denying termination shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice. If the Parties do not reach consensus on a proposed termination of the Agreement, the issue shall be resolved through Section XXV (Resolution of Disputes).

XXXVII. TOTAL INTEGRATION

There are no promises, verbal understandings or other Agreements of any kind pertaining to this Agreement or its attachments herein other than specified herein. This Agreement shall constitute the entire integrated agreement of the Parties.

This Instrument Prepared
and Return to:
Philip G. Kaminsky, Esq.
Apperson, Crump & Maxwell, PLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119-3972

Joint City & City Agency prep