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DEPARTMENT OF DEFENSE AND STATE MEMORANDUM OF AGREEMENT (DSMOA)

In order to expedite the cleanup of hazardous waste sites on Department of Defense (DoD) installations within the Commonwealth of Puerto Rico and ensure compliance with the applicable Commonwealth law and regulations of the Commonwealth, DoD and the Puerto Rico Environmental Quality Board (PREQB) on behalf of the Commonwealth of Puerto Rico enter into this Agreement.

Except as otherwise specified, the terms in this document are unique to this document only.

SECTION I
REIMBURSEMENT OF COMMONWEALTH COSTS

A. COVERAGE

1. This Agreement covers reimbursement of the costs associated with providing Commonwealth services to Department of Defense installations for activities funded under the Environmental Restoration, Defense (ER,D) appropriation. Installations covered by this Agreement are those owned by the Federal government on the effective date of the Agreement including installations with sites on the National Priorities List (NPL) and installations with sites not on the NPL. The installations covered by this Agreement are listed in Attachment A. This Agreement does not cover the costs of services rendered prior to October 17, 1986; services at properties not owned by the Federal government; and activities funded from sources other than ER,D appropriation.

2. Unless a site-specific agreement provides otherwise, this Agreement is the mechanism for payment of the costs incurred by the Commonwealth in providing the services listed in paragraph B of this Agreement in relation to ER,D funded activities at the installations covered by this Agreement. Full payment of Commonwealth costs pursuant to this Agreement constitutes final settlement of any claims the Commonwealth of Puerto Rico may have for performance of services outlined in Section I(B) with respect to ER,D funded work carried out after October 17, 1986, at all of the installations covered by this Agreement, except for those Commonwealth costs covered by a site-specific agreement.

3. DoD agrees to seek sufficient funding through the DoD budgetary process in accordance with Section II and to pay the Commonwealth of Puerto Rico for the services specified in paragraph B for all ER,D funded activities at installations

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covered by this Agreement, subject to the conditions and limitations set forth in this section.

B. SERVICES

Commonwealth services that qualify for payment under this Agreement include the following types of assistance provided by the Commonwealth commencing at site identification and continuing through construction, as well as any other activities that are funded by ER,D:

1. Technical review, comments and recommendations on all documents or data required to be submitted to the Commonwealth under an agreement between the Commonwealth and a DoD Component, all documents or data that a DoD Component requests the Commonwealth to review, and all documents or data that are provided by a DoD Component to the Commonwealth for review as a result of a request from the Commonwealth made under applicable Commonwealth law.
2. Identification and explanation of Commonwealth applicable or relevant and appropriate requirements related to response actions at DoD installations.
3. Site visits to review DoD response actions and ensure their consistency with appropriate Commonwealth requirements, or in accordance with site-specific requirements established in other agreements between the Commonwealth and DoD Component.
4. Participation in cooperation with DoD in the conduct of public education and public participation activities in accordance with Federal and Commonwealth requirements for public involvement.
5. Services provided at the request of DoD in connection with participation in Technical Review Committees.
6. Preparation and administration of a cooperative agreement (CA) to implement this Agreement, including the estimates of Commonwealth costs.
- [7. Other services that the Commonwealth will provide that are set out in this Agreement or are included in installation-specific agreements.]

C. ACCOUNTING PROCEDURES

1. Subject to the provisions of paragraphs D and E, reimbursement of eligible Commonwealth costs incurred between

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October 17, 1986, and the date of this Agreement shall be paid if the costs have been documented using accounting procedures and practices that reasonably identify the nature of the costs involved, the date the costs were incurred, and show that the costs were entirely attributable to activities at an installation covered by this Agreement.

2. Payment of eligible Commonwealth costs for services provided after the effective date of this Agreement must comply with all applicable Federal procurement and auditing requirements.

D. MAXIMUM REIMBURSEMENT

Reimbursement for services provided under paragraph B for all installations included in Attachment A shall not exceed one (1) percent of the estimated total costs for all of the work that has been funded by ER,D since October 17, 1986, and that will in the future be funded by ER,D or a total of \$50,000, whichever is greater. Estimates of cleanup costs developed under this Agreement are provided solely for the purpose of calculating the amount of funding the Commonwealth is eligible to receive.

E. ANNUAL BUDGET LIMITS

The Commonwealth may ordinarily request that up to a maximum of twenty-five (25) percent of the total Commonwealth services funds for all installations listed in Attachment A be provided in accordance with Section II during any fiscal year. DoD may approve an annual budget limit that exceeds twenty-five (25) percent of the total Commonwealth services funds if the Commonwealth demonstrates the need for a higher percentage based on the scope of the work projected during the fiscal year. At least ten (10) percent of a Commonwealth's services funding request will be provided in accordance with Section II of this Agreement during a fiscal year if the Commonwealth requests an allocation of ten (10) percent or more for services under this Agreement. The Commonwealth may carry over unused funds into subsequent years. If the cost of Commonwealth services during a fiscal year exceeds the annual budget limit, the Commonwealth may expand its own funds to pay the costs of those services. To the extent allowable under Federal procedures for cooperative agreements, the Commonwealth may then seek reimbursement of these costs in a subsequent year through a cooperative agreement as long as the total amount of the payments to the Commonwealth does not exceed the one (1) percent ceiling, or the annual budget limit for that fiscal year. A payment schedule for reimbursement of past costs will be devised by the Commonwealth of Puerto Rico and the DoD.

F. ADJUSTMENT OF COST ESTIMATES

The Commonwealth or DoD may request a review of total estimated ER,D funded project costs covered by this Agreement once during the terms of a cooperative agreement. The total project costs shall be revised to reflect the new estimates. The ceiling of one (1) percent of the total project costs shall be adjusted based on the revisions of the total project costs since October 17, 1986. If the total project costs following the Record of Decision (ROD) or equivalent document are lower than previously estimated, the Commonwealth remains entitled to payment as follows:

- a. the Commonwealth is entitled to payment of all services rendered prior to completion of the new estimate so long as they are within the ceiling of the previous estimate; and,
- b. reimbursement of future incurred costs for providing services, at the option of the state, in an amount either:
 1. up to a total of previous and future costs of one (1) percent of the revised estimate; or,
 2. the lesser of:
 - i) one quarter (1/4) of one (1) percent of the post ROD or equivalent documents costs; or,
 - ii) the remaining balance of the one (1) percent entitlement under the previous estimate.

G. PROCEDURES FOR REIMBURSEMENT

Procedures for Commonwealth reimbursement through cooperative agreements (CAs) are as described in Attachment B and in accordance with Office of Management and Budget (OMB) Circulars A-102, A-87, and A-128. After a CA is awarded, the * [Commonwealth Agency] may submit a request for advance or reimbursement to DoD on a quarterly basis. DoD will process the request and transfer funds in accordance with Circular A-102. Within 60 days after the end of each quarter, the PREQB shall submit to DoD a status report, including cost summaries which directly relate allowable costs actually incurred by the Commonwealth under this Agreement during the quarter for services at each installation. Allowable costs shall be determined in accordance with this Agreement and Circular A-87. DoD shall reconcile continuing awards and close out completed awards in accordance with Circular A-102. Auditing of Commonwealths programs shall be accomplished in accordance with Circular A-128.

H. ADDITIONAL WORK

When an installation requests that a Commonwealth perform a specific technical study or similar technical support that could

otherwise be done by a contractor, and PREQB agrees to do the work, funding will be negotiated between the installation and the Commonwealth outside of this Agreement.

I. EMERGENCIES

In an emergency situation involving a threat to public health or the environment, the Commonwealth must, unless the nature of the emergency does not permit notification, notify the DoD Component prior to taking removal action in order to be reimbursed for its reasonable costs. Reimbursement of the Commonwealth for its work will be handled directly between the DoD component and the Commonwealth, and outside of this Agreement. Disagreements that arise under this paragraph are subject to the Dispute Resolution process in section IV.

SECTION II FUNDING AND THE PRIORITY SYSTEM

A. The Office of the Deputy Assistant Secretary of Defense (Environment), as the designee of the Office of the Secretary of Defense responsible for carrying out the Defense Environmental Restoration Program, and the DoD components shall seek sufficient funding through the DoD budgetary process to carry out their obligations for response actions at DoD installations within the Commonwealth. Funds authorized and appropriated annually by Congress under the ER,D appropriation in the DoD Appropriations Act shall be the source of funds for all work contemplated by this Agreement.

B. Should the ER,D appropriation be inadequate in any year to meet the total DoD requirements for cleanup of hazardous or toxic contaminants, DoD shall establish priorities among sites in a manner which maximizes the protection of human health and the environment. In the prioritization process, DoD shall employ a model which has been and will be further developed with the assistance of the Commonwealths and the EPA. Future enhancements or refinements to the model shall occur in consultation with the Commonwealths and the EPA. DoD shall also involve the Commonwealths and the EPA in its use of this prioritization model through review of technical site data. The DoD components shall receive and give full consideration to information provided by the Commonwealths regarding factors to be considered in decisionmaking in the annual prioritization process for allocating resources available for cleanups. The Commonwealth accepts that a DoD prioritization system developed and operated as described in this subparagraph is needed and provides a reasonable basis for allocating funds among sites in the interest of a national worst first cleanup program. To that extent, the

Commonwealth will make every effort to abide by the priorities developed thereunder.

C. Nothing in this Agreement shall be interpreted to require obligation or payment with regard to a site remediation in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

SECTION III LEAD AGENCIES

Each DoD Component shall designate an individual responsible for managing remedial and removal actions for each installation within the Commonwealth. This individual shall be responsible for coordinating all tenant activities at the installation with regard to the remedial and removal action program. The individual will also act as remedial project manager (RPM) within the meaning of the National Contingency Plan (40 CFR Part 300).

The Commonwealth shall designate a lead Commonwealth agency for each DoD installation within the Commonwealth. (This agency may vary by installation). The lead Commonwealth agency for an installation shall coordinate among other Commonwealth agencies to represent a single Commonwealth position as to remedial/removal actions at the installation. The lead Commonwealth agency shall designate a Commonwealth Agency Coordinator (SAC) who shall be the single point-of-contact between the appropriate DoD component installation and the Commonwealth regarding Commonwealth involvement in the remedial and removal actions program at the installation.

SECTION IV DISPUTE RESOLUTION

A. The Remedial Project Manager (RPM) and the Commonwealth Agency Coordinator (SAC) shall be the primary points of contact to coordinate the remedial and removal program at each military installation within the Commonwealth, including the resolution of disputes. With regard to installations or sites for which there are executed Federal Facility Agreements under CERCLA section 120, dispute resolution provisions as specified in those agreements shall govern. For other sites, it is the intention of the parties that all disputes shall be resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All timeframes for resolving disputes below may be lengthened by mutual consent.

1. Should the RPM and SAC be unable to agree, the matter shall be referred in writing as soon as practicable but in no event to exceed ten (10) working days after the failure to agree, to the installation commander and the chief of the designated program office of the lead Commonwealth agency or

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their mutually agreed upon representatives designated in writing.

2. Should the installation commander and the chief of the designated program office of the lead Commonwealth agency or their mutually agreed upon representatives designated in writing be unable to agree within ten (10) working days, the matter shall be elevated to the head of the lead Commonwealth agency and a counterpart member of the lead Service involved who shall be a general/flag officer or a member of the senior executive service.

? 3. Should the head of the lead Commonwealth agency and the counterpart DoD representative fail to resolve the dispute within 20 working days the matter shall be referred to the Governor and the Service Secretary concerned for resolution.

B. It is the intention of the parties that all disputes shall be resolved in this manner. Alternative dispute resolution methods may be used. In the event that the Governor and the Service Secretary are unable to resolve a dispute, the Commonwealth retains any enforcement authority it may have under Commonwealth and Federal law.

SECTION V
REOPENER

The terms of this Agreement may be modified at any time by mutual Agreement of the parties. If a party requests the Agreement to be reopened but the other party does not concur, the matter will be referred to an individual designated in writing by the signators to this agreement. In the event they fail to agree within 10 working days the matter will be referred to the signators of this agreement or their successors in office. If no resolution is reached within 20 days, the Agreement shall not be reopened.

**SECTION VI
TERMINATION**

This Agreement may be terminated by either party at the expiration of any cooperative agreement entered into pursuant to this Agreement if the party seeking termination has notified the other party in writing at least 90 days prior to the expiration of the cooperative agreement. After receiving a notice of termination, a party may invoke the dispute resolution process in Section V. Each signator of the agreement may involve other officials to whom they report in the process of resolution. The parties by mutual agreement may also refer the matter to the Governor of the Commonwealth of Puerto Rico and his(her) counterpart within the Department of Defense. Alternative dispute resolution methods may be used. Failing their agreement, this Agreement shall be considered terminated as of the date the cooperative agreement expires.

Francisco Claudio
Director, Air and Superfund
Program

William H. Parker, III, P.E.
Deputy Assistant Secretary
of Defense (Environment)

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ATTACHMENT A to DSMOA
DOD INSTALLATIONS COVERED BY THIS AGREEMENT

Commonwealth of Puerto Rico

Army

1. e.g., Fort _____
2. etc.

Navy

1. e.g., Naval Air Station _____
2. etc.

Air Force

1. e.g., _____ Air Force Base
2. etc.

Defense Logistics Agency

1. e.g., Defense Supply Center _____
2. etc.

INSTALLATIONS MAY BE ADDED TO THIS LIST PERIODICALLY AS NECESSARY
IN ACCORDANCE WITH SECTION V, REOPENER.

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7.03-10/19/89**B. Points of Contact**

The Components have provided initial and/or final points of contact for the installations to be listed in Attachment A of the DSMOAs as follows:

Army: Contact the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) at Aberdeen Proving Ground, Maryland, Attention: Mr. Bob Turkeltaub or Mr. Conrad Swann (Phone: 301-671-2270). USATHAMA is establishing a network of remedial project managers and others who know about cleanup activities at each installation, and will redirect inquiries to the appropriate people. *

Navy: Contact the Head of the Facilities Management Department (Code 09B) at the Engineering Field Division (EPD) which is conducting ER,D funded activities for the installation. See the attached list entitled "Navy Contacts for DoD-State Cooperative Agreement on Site Cleanup, which has been provided by Mr. Bill Judkins (Phone: 202-325-8176), Naval Facilities Engineering Command, Alexandria, Virginia.

Air Force: Contact the POC or POC & RPM in the attached list entitled "USAF Installation Restoration Program Facilities." The list indicates whether inquiries should be directed to the installation or to the major command which controls the installation. Mr. Karl Kneeling (Phone: 202-767-4107), USAF Headquarters, Bolling AFB, Washington, DC, provided the list.

DLA: Contact the DLA Environmental Policy Office at Cameron Station, Alexandria, Virginia, Attention: Mr. Dennis Lillo (Phone: 202-274-6967). He will redirect inquiries to the appropriate people. *

Status of list of Installations (27 Jul 89)

Army: USATHAMA is checking draft.

Navy: OK

Air Force: OK - 27 Jul Update

DLA: OK

USAF INSTALLATION RESTORATION PROGRAM FACILITIES

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INSTALLATION	ST	CMD	RGN	NPL/ DCC	NAME	R P M ADDRESS	DR	F O C	PHONE	REMARKS
PORTLAND IAP	OR	ANG	10		CAPT Roger Rein	138 Fighter Interceptor Group/DE OR Portland International Airport Portland, OR 97218-2797			658-4462 503-335-4462	AV # POC COM #
NORTH BEND ANG	OR	ANG	10		CAPT Roger Rein	138 Fighter Interceptor Group/DE OR Portland International Airport Portland, OR 97218-2797			658-4462 503-335-4462	AV # POC COM #
KINGSLEY FIELD	OR	ANG	10	D	LT Chris Gatz	114 Tactical Fighter Training Site Kingsley Field Klanath Falls, OR 97603-0400			830-6361 503-833-6361	POC AV # COM #
GREATER PITTSBURG IAP	PA	AFB	3		J. Michael Petrell	1911 TAG/DEEV Greater Pittsburgh International AP Pittsburgh, PA 15321-0459			412-269-3749	COM # POC & RPM
GREATER PITTSBURG IAP	PA	ANG	3		CAPT Doug Reynolds	171 Air Refueling Wing/DE PA ANG Greater Pittsburgh International AP Pittsburgh, PA 15321-0459			277-8474 412-269-8474	AV # POC & RPM COM #
PUNTA SALINAS	PR	ANG	2		MAJ E. Figueroa	156 Tactical Fighter Group/DE PR ANG PO Box 12307 Loiza Station San Juan, Puerto Rico 00914-2376			860-9172 809-728-5450	AV # POC COM #
QUONSET PT STATE AIRPORT	RI	ANG	1		LT James Salem	143 Tactical Airlift Group/DE RI ANG Quonset State Airport North Kingstown, RI 02852-0794			476-3222 401-885-3960	AV # POC COM #
MCENTIRE AFB	SC	ANG	4		CAPT Zellie Green	167 Tactical Fighter Group/DE SC ANG McEntire Air National Guard Base Eastover, SC 29044-9690			586-8291 803-776-5121	AV # FCC COM #
CHARLESTON AFB	SC	MAC	4	D	CAPT Lane	437 ABS/DEEV Charleston AFB SC 29404-5045			583-2287 803-554-2287	AV # POC & RPM COM #
SHAW AFB	SC	TAC	4	D	Mr. Marshall Dixon	363 CSB/DEEV Shaw AFB, SC 29152-5000			965-2902 803-668-2902	AV # POC COM
MYRTLE BEACH AFB	SC	TAC	4	D	Steve Strickland	354 CSB/DEEV Myrtle Beach AFB SC 29579-5000			749-7520 603-238-7520	AV # POC COM #
JOE FOSS FLD	SD	ANG	8		MAJ Thomas Molchon	114 Tactical Fighter Group/DE SD ANG P.O. Box 5044 Joe Foss Field Sioux Falls, SD 57177-5044			939-7780 605-333-5780	AV # POC COM #
ELLSWORTH AFB	SD	SAC	8	D	Eivie Feep	812 CSB/DEEV Ellsworth AFB, SD 57706-5000			675-2840 605-385-1000	AV # POC & RPM

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KEY: RGN = EPA REGION, CMD = MAJDF COMMAND, N = ON NPL, D = ON DOCKET

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ATTACHMENT B to DSMOA
PROCEDURES FOR STATE REIMBURSEMENT

o The Deputy Assistant Secretary of Defense for Environment (DASD(E)) and the Head of the Agency signing on behalf of the State will sign the DSMOA.

o The DSMOA is the overarching agreement of commitment between the DoD and the State, but does not obligate or commit funds.

o Reimbursement will be accomplished, using Federal procedures for cooperative agreements (CAs), with States that have signed DSMOAs. Eligible activities are limited to those authorized for the Defense Environmental Restoration Program (DERP), and funded by the Defense Environmental Restoration Account (DERA), Sections 2701 et seq, of Title 10 USC, and as specified in the DSMOA.

- Reimbursement will commence as soon as possible with DERA funds.

o DoD policies and procedures for processing CA applications and payments will be developed with input from the States and announced in a Federal Register notice.

- In general, these activities will be centralized in the ODASD(E).

- It is anticipated that these policies and procedures will encompass the following: who may apply; what can be funded; evaluation criteria for awards; submission procedures and closing dates for receipt of applications; and State responsibilities.

- Within this framework, it is anticipated that monitoring and quarterly reporting procedures for States' program status and financial status will be developed.

o Administration of CAs will be in accordance with Office of Management and Budget (OMB) Circular A-102, Grants and Cooperative Agreements with State and Local Governments, and Title 32 CFR 278, Office of the Secretary of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- A State will submit a complete application package for Federal assistance, consisting of Standard Form 424 (SF 424) and attachments, including a proposal narrative, the signed DSMOA, and a project management plan. The State's application must also include a description of the type and amount of support services that the State plans to provide for each installation covered in the DSMOA for the specific award period of the CA.

- CAs will be awarded for a term of two years, based on an annual estimate of requirements. Applications will be accepted after signature of the DSMOA by both parties; DoD processing time for applications is expected to be two months.

- The DASD(E) will accept the application, review it, and make a decision as to the award. This CA agreement, when signed by both the DASD(E) and the Head of the Agency signing on

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behalf of the State, comprises the contractual relationship between the DoD and the State.

- States may request funds in accordance with the methods outlined in OMB Circular A-102 and 32 CFR 278. These documents provide for the following methods of payment: (1) Advances (Letter of Credit), (2) Reimbursement, and (3) Working Capital Advances. A State may request a payment method in its cooperative agreement application.

o Allowable costs will be determined in accordance with OMB Circular A-87, Cost Principles for State and Local Governments. Specific services to be provided by the States will be as described in the DSMOA.

o Auditing of States programs will be accomplished in accordance with OMB Circular A-128, Audits of State and Local Governments.

The following is additional information regarding the general procedures that DoD plans to use in implementing DSMOAs and CA's with the States:

1. DoD DASD(E) will invite States to sign DSMOAs and submit applications for CAs.
2. DASD(E) will send a memorandum (Attachment C) to the DoD Components (Army, Navy, Air Force, DLA, and other DoD agencies) asking them to cooperate with the States and compile necessary data. The States and Installations will communicate directly on response activities anticipated to take place over the next two years and on the total DERA cost estimate.
3. DoD Components will use their Chain-Of-Command to develop and pass on data to DASD(E): Component Headquarters will give the message to their Major Commands (e.g., Army Materiel Command), and the Major Commands will forward the message to their Installations (e.g., Sacramento Army Ammunition Depot).
4. The Components will provide information, obtained from their Installations and Major Commands, to DASD(E) by State.
5. Each State contacts DASD(E) about its desire to have a DSMOA and CA, and works with DoD to have State-specific information inserted into the provisions where indicated in the model language and to fill out the CA application.
6. DASD(E) and the State sign the DSMOA and the CA.
7. The State submits requests for payment in advance based on anticipated workload or for reimbursement of services provided under the CA, on a quarterly basis.
8. Quarterly In-Process Reviews (IPRs), or alternative arrangements by mutual consent, will be held between DASD(E) staff and the State agency. IPRs will include State progress reports concerning activities and funding.
9. CA audits will be carried out in accordance with OMB Circular A-128.