

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
U.S. ECONOMIC DEVELOPMENT ADMINISTRATION  
AND THE  
U.S. DEPARTMENT OF ARMY**

**SUBJECT:** Support for the Environmental Restoration Management Program of the Economic Development Administration, U.S. Department of Commerce

1. **PURPOSE:** This Memorandum of Agreement (MOA) establishes a framework for the U.S. Department of the Army (DA), acting through the U.S. Army Corps of Engineers (USACE), to furnish assistance to the Economic Development Administration (EDA), U.S. Department of Commerce (DOC), in connection with EDA's Environmental Restoration Program (the Program). This MOA is entered pursuant to 31 U.S.C. 1535, and 10 U.S.C. 3036(d).

2. **SCOPE:**

a. The USACE will provide a broad range of environmental restoration management services to EDA or designated regional subordinate activities in meeting environmental compliance requirements including, but not limited to, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA).

b. Nothing in this MOA shall be construed to require EDA to use the services of the USACE, nor to require the USACE to accept assignments from EDA.

3. **RESPONSIBILITIES:**

a. EDA.

(1) EDA shall retain responsibility for overall management and implementation of the Program. Such responsibility includes, but is not limited to, definition of the Program scope, establishment of priorities, and development of guidance for Program implementation. EDA Headquarters may delegate primary management responsibility for specific projects to any designated EDA representative.

(2) EDA Headquarters or the designated EDA representative shall be responsible for determining the specific services to be requested from the USACE, and will provide USACE with written statements fully describing the nature of the required environmental restoration services, including implementing instructions and other relevant guidance.

(3) EDA shall retain responsibility for coordinating discussions with the appropriate Federal, State, and local regulatory agencies. With support from USACE, EDA shall also be responsible for all notification, community relations, administrative record and permitting requirements, as well as state and

Federal involvement requirements for removal actions, and for compliance with the National Environmental Policy Act (NEPA).

(4) An EDA representative shall be available to sign all hazardous waste manifests on behalf of the Wisconsin Steel Trust and other future projects for all hazardous waste leaving the site.

(5) EDA shall be responsible for public affairs as further specified in paragraph 10 of this MOA.

(6) EDA shall provide a point of contact authorized to work with the USACE to facilitate funding obligations and all the rights and clearances (e.g., site access; permitting; real estate agreements) necessary for the USACE to perform unhindered site activities, including rapid response actions.

(7) EDA shall provide any necessary office space, parking and storage space as may be required for operations during a specific project.

(8) EDA shall provide other information or requirements deemed necessary for the USACE to perform remediation activities at EDA sites.

b. USACE.

(1) USACE shall be responsible for providing assistance to EDA upon written request and funding and for executing Program activities as assigned by EDA. USACE's responsibilities may include any of the following:

(a) Providing management services to EDA Headquarters.

(b) Conducting RCRA and CERCLA studies, Remedial Designs (RDs), Remedial Actions (RAs) and Removal Actions.

(c) Providing Rapid Response action at EDA sites in accordance with paragraph 8.

(d) Providing technical assistance related to the planning, engineering, design and construction of environmental restoration projects at EDA sites.

(e) Performing technical reviews of reports pertaining to environmental restoration activities at EDA sites, including hazardous waste studies, RDs and other technical products prepared by architect-engineer firms under

contract to EDA.

(f) Providing professional and technical assistance at meetings or regulatory conferences with Federal, State, and local regulators to address EDA's environmental restoration management responsibilities, as well as assisting EDA in the negotiation of all matters relating thereto, including cost allocations associated with Potentially Responsible Parties (PRP's).

(g) Furnishing other environmental restoration support including real estate, research and development, training, procurement, cost estimation, permitting, developing work plans, and community relations services.

(h) Providing contractor oversight and field quality control/quality assurance (QA/QC).

(i) Notifying EDA when on-site work is to begin and when such work has been completed.

(2) Support will be provided to EDA through a combination of contract and in-house effort. EDA reserves the right to review, consult and make recommendations on all solicitations before they are issued. In addition, for negotiated contracts, EDA may designate a representative to participate in the formal source selection process. Unless otherwise required by law, all contract work undertaken by USACE shall be performed in accordance with Department of Army (DA) procurement policies and procedures.

(3) USACE shall assure compliance with all applicable Federal, State, and Local laws, regulations, and ordinances. EDA shall advise USACE of all terms, conditions and actions required under any applicable agreements including, but not limited to, the prospective Memorandum of Understanding between EDA, the U.S. Environmental Protection Agency, and the Illinois Environmental Protection Agency.

#### 4. PROCEDURE:

a. EDA or its subordinate activities shall submit requests for assistance under this MOA to Headquarters USACE (HQUSACE) (ATTENTION: CEMP-R). Such requests for assistance shall be in writing and shall describe the scope of the services desired and the proposed location of the project or site to which the services relate; and shall designate an authorized representative for EDA for purposes of further communication on all matters relating to the request including the obligation of funds.

b. Upon receipt of such a request for assistance, USACE shall provide the EDA authorized representative, with an acknowledgment in writing of the request for assistance and shall designate for purposes of further communication relating to that request an authorized representative for USACE.

C. EDA's request for assistance shall describe in detail the scope of the assistance to be provided, necessary generalized funding arrangements, and such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested assistance.

d. To minimize response time, all rapid response project request shall be submitted directly to CEMRD-MD-HA with copy furnished to HQUSACE (ATTN: CEMP-R) (see Appendix A).

5. **MANAGEMENT ARRANGEMENTS:** HQUSACE shall be responsible for managing the support provided to EDA and insuring consistency with the policy directives of the Assistant Secretary of the Army (Civil Works). HQUSACE (CEMP-R) will serve as the point of contact (POC) for all EDA requests for support. Work normally will be performed by the USACE Major Subordinate Command (MSC) having geographic responsibility over the site which is the subject of the Program effort. USACE will task the appropriate MSC and coordinate with EDA Headquarters and the designated EDA representative.

6. **PROGRAM FUNDING:**

a. EDA shall fund all costs of assistance provided under this MOA. Actual funding arrangements shall be addressed after initial cost estimates are supplied to EDA by USACE. Funds shall be provided to USACE by EDA in installments for specific phases of the work to be agreed upon by USACE and EDA in advance of USACE incurring any obligation under this MOA.

b. The necessary funds required to complete specific tasks will be identified by USACE. If the actual cost to the USACE is forecast to exceed the amount of funds so provided, USACE shall promptly notify EDA of the amount of additional funding necessary to pay for the assistance requested. EDA shall either provide additional funds for the assistance, require that the scope of the assistance be limited to that which can be financed by the available funds, or direct termination of the assistance. Upon furnishing the assistance contemplated by a support agreement, the USACE shall conduct a final accounting to determine the actual costs of the assistance provided. Any funds remaining upon termination or completion of the assistance shall be returned to EDA, following settlement of all total costs incurred to date.

7. **REPORTING:** USACE will provide status reports to EDA on tasks assigned to USACE, including providing financial reports on all funds received, obligated, and expended. EDA may establish reasonable requirements concerning the content and timing of any reports. Reports shall be provided monthly, except as otherwise noted.

8. **RAPID RESPONSE ACTION:**

a. Upon request from EDA, USACE will review and approve eligible and appropriate Rapid Response (RR) projects within three working days of receipt of the completed Rapid Response Project Request Form (Appendix A).

b. To be eligible for RR action, the related project must meet one of the following criteria for RR:

(1) The site contamination poses a potential imminent threat to human health and/or the environment in the absence of prompt response action;

(2) The site contamination must be promptly remediated to meet regulatory constraints (e.g., Notice of Violation; Site Complaint; Consent Order; Correction Agreement);

(3) The point source(s) of the site contamination must be promptly removed;

(4) The response/removal action is as defined in the National Contingency Plan (NCP).

C. If a project does not meet the RR criteria, USACE will recommend an alternative means to accomplish the project.

d. All RR activities will be in full compliance with federal, state and local environmental regulations.

9. **CONTRACT CLAIMS AND APPEALS:** USACE shall be responsible for all contract claims and appeals related to USACE-let contracts. USACE shall secure EDA's consultation and recommendation prior to settlement of any claims and appeals. EDA shall provide the USACE with any funds that may be necessary to pay the costs of meritorious claims or appeals. USACE shall advise the office of General Counsel, Contract Law Division, DOC, concerning all pending claims related to the MOA.

10. **DISPUTE RESOLUTION:** The parties agree that in the event of disputes between the parties, that both USACE and EDA will use their best efforts to resolve those disputes in an informal fashion through consultation and communication. The parties agree that in the event that informal consultation and communication fail to resolve the dispute, that the dispute shall be referred to the office of Management and Budget pursuant to Executive Orders 12088 and 12146, as modified by 12608.

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11. **PUBLIC INFORMATION COORDINATION:** Decisions on disclosure of information to the public regarding actions taken under this MOA will be made in accordance with applicable laws and regulations, following consultation between EDA and USACE. Overall responsibility for congressional liaison and public announcements on EDA tasking to USACE will rest with EDA. However, USACE may make public announcements associated with the solicitation and contract award process, to include responding to congressional inquiries on such matters.

12. **IMPLEMENTATION:** EDA and USACE will issue instructions to their respective field organizations

concerning implementation of this MOA.

13. EFFECTIVE DATE, AMENDMENT AND TERMINATION: This MOA shall become effective when signed by both parties. It may be notified or amended only by written agreement. Either of the signatories of this MOA may terminate this MOA by providing sixty calendar days written notice. The termination shall be effective upon the sixtieth calendar day following the notice date, unless a later date is set forth. In the event of termination, EDA shall continue to be responsible for all costs incurred by the USACE under this MOA, and for the costs of closing out or transferring any ongoing contracts.

U.S. Economic Development  
Administration

Michael Oberlitner  
/signed/  
Director, Liquidation Division

Date: 4/22/91

U.S. Department of Army

James W. Ray  
/signed/  
Major General, USA  
Director of Military Programs

Date: 4/19/91