

**DEPARTMENT OF DEFENSE AND DISTRICT MEMORANDUM OF AGREEMENT
(DDMOA)**

In order to expedite the cleanup of hazardous waste sites on Department of Defense (DoD) installations within the District of Columbia (District) and ensure compliance with the applicable laws and regulations of the District of Columbia, DoD and the DC Environmental Regulation Administration (DC ERA), on behalf of the District of Columbia enter into this Agreement.

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

**SECTION I
REIMBURSEMENT OF DISTRICT COSTS**

A. COVERAGE

1. This Agreement covers reimbursement of the costs associated with providing District 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. This Agreement also includes those installations identified on the Base Realignment and Closure (BRAC) I list, (Pub. L. 100-526, dated October 4, 1988) and Base Realignment and Closure (BRAC II) list, (Pub. L. 101-510, dated October 5, 1990) as well as Defense Logistics Agency stock funded installations (DLASF). Coverage under this Agreement for BRAC I and BRAC II installations extends to only Defense Environmental Restoration Program (DERP) actions. These installations will be included in Attachment A, but will not be subject to the provisions in Section II (A and B). This Agreement also covers Formerly Used Defense Sites (FUDS) defined in Section 211 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), title 10 U.S.C., chapter 160, section 2701(c)(1)(B) as facilities or sites which were "under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous materials." DoD agrees to include FUDS for reimbursement if the following criteria are fulfilled: a. the Inventory Project Review (IPR) has determined the site to be FUDS eligible for funding under DERP; b. no litigation brought by the District is in process against DoD at the FUDS considered for reimbursement; and, c. the District certifies that no supplemental funds from other federal sources have been provided to the District by any federal agency for reimbursement of District expenses related to technical assistance support of DoD's remedial action at the site, except for the Spring Valley FUDS, where it is understood

that the District received funding from DoD's Defense Environmental Restoration Account (DERA) for Operation Safe Removal, Phase I (Spring Valley, Phase I). Because reimbursement under this Agreement will only reimburse reasonable response costs incurred at Spring Valley for Operation Safe Removal, Phase II (Spring Valley, Phase II), DoD agrees to reimburse reasonable response costs incurred at the Spring Valley FUDS during Spring Valley, Phase II, despite previous federal funding for Spring Valley, Phase I, provided criteria a and b listed above are met, and the District certifies that no supplemental funds from other federal sources have been provided to it by any federal agency for reimbursement of District expenses related to support of DoD's remedial action at the Spring Valley site for Spring Valley, Phase II. These installations will be included in Attachment A and are subject to the provisions in Section II (A and B). This Agreement does not cover the costs of services rendered prior to October 17, 1986; services at properties never owned by the Federal government; or activities funded from sources other than ER,D appropriation except as mentioned above.

2. Unless a site-specific agreement provides otherwise, this Agreement is the mechanism for payment of the costs incurred by the District in providing the services listed in Paragraph B of this section in relation to ER,D and BRAC funded activities at the installations covered by this Agreement. Full payment of District costs pursuant to this Agreement constitutes final settlement of any claims the District of Columbia may have for performance of services outlined in Section I.B with respect to ER,D and BRAC funded work carried out after October 17, 1986, at all of the installations covered by this Agreement, except for those District 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 District of Columbia for the services specified in paragraph B for all ER,D and BRAC funded activities at installations covered by this Agreement, subject to the conditions and limitations set forth in this section.

B. SERVICES

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

1. Technical review, comments and recommendations on all documents or data required to be submitted to the District under an agreement between the District and a DoD Component, all documents or data that a DoD Component requests the District to review, and all documents or data that are provided by a DoD Component to the District

for review as a result of a request from the District made under applicable District law.

2. Identification and explanation of District 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 District requirements, or in accordance with site-specific requirements established in other agreements between the District and DoD Component.

4. Participation in cooperation with DoD in the conduct of public education and public participation activities in accordance with Federal and District 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 estimate of District costs.

7. Preparation and administration of the DDMOA and amendments.

8. Technical review, comments and recommendations on all documents and data pursuant to Section II.B of the DDMOA and CA application.

9. Determination of scope of agreements, determination of legal and technical applicability of agreements and assurance of satisfactory performance of interagency agreements, but excluding any costs which may be incurred preparing for litigation against the U.S. Government.

10. Costs associated with independent quality assurance/quality control (QA/QC) efforts by the District of up to 10 (ten) percent of samples collected by either the District, the installation or both at each DoD installation and FUDS covered by this Agreement.

11. Other services that the District 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 District costs incurred between 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 District 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 or BRAC since October 17, 1986, and that will in the future be funded by ER,D or BRAC or a minimum of \$50,000, per year over the term of the CA, whichever is greater, except for Spring Valley, Phase II, where reimbursement of reasonable response costs from the Defense Environmental Restoration Account/Formerly Used Defense Site (DERA/FUDS) funding, made available to the Department of Defense and State Memorandum of Agreement Program (DSMOA) Program by Department of the Army (DA), as indicated in Attachment D of this Agreement, will not be subject to the one (1) percent cap. Estimates of cleanup costs developed under this Agreement are provided solely for the purpose of calculating the amount of funding the District is eligible to receive. The total amount the District is eligible to receive will be based on calculations for all services provided under paragraph B for all installations included in Attachment A, and includes those reasonable response costs funded by the DERA/FUDS funding.

E. ANNUAL BUDGET LIMITS

The District may ordinarily request that up to a maximum of twenty-five (25) percent of the total District services funds for all installations and FUDS 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 District services funds if the District 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 District's services funding request will be provided in accordance with Section II of this Agreement during a fiscal year if the District requests an allocation of ten (10) percent or more for services under this Agreement. Nevertheless, requests for reimbursement relating to reasonable response costs incurred at Spring Valley, Phase II, and funded by DERA/FUDS, will not be limited to a maximum of twenty-five (25) percent of the total District services funds for all installations and FUDS listed in Attachment A per fiscal year. Instead, these reasonable costs funded by DERA/FUDS will be reimbursed when documentation provided by the District to support the basis for reimbursement is reviewed and approved for payment by the DA,

through the Corps of Engineers. The District may carry over unused funds into the second year of the CA. At the end of the second year, all unused funds are returned to DoD. Funds returned are not counted against the District's total project cost. If the cost of District services during a fiscal year exceeds the annual budget, the District may expend its own funds to pay the cost of those services. To the extent allowable under Federal procedures for CAs, the District may then seek reimbursement of these costs in a subsequent year through a CA as long as the total amount of the payments to the District 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 District of Columbia and the DoD.

F. ADJUSTMENT OF COST ESTIMATES

The District or DoD may request a review of total estimated ER,D and BRAC funded project costs covered by this Agreement once during the term of a CA. 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 District remains entitled to payment as follows:

- a. The District 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 District, 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 Record of Decision or equivalent documents costs; or,
 - ii) the remaining balance of the one (1) percent entitlement under the previous estimate.

The District may add additional eligible installations and FUDS meeting the criteria identified in Section I.A at any time during the two years by writing to the U.S. Army Corps of Engineers. No adjustment will be made to the cost estimates as a result of such additions.

G. PROCEDURES FOR REIMBURSEMENT

Procedures for District reimbursement through 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 DC ERA 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 sixty (60) days after the end of each quarter, the DC ERA shall submit to DoD a status report, including cost summaries which directly relate allowable costs actually incurred by the District 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 District programs shall be accomplished in accordance with Circular A-128.

H. ADDITIONAL WORK

When an installation requests that the District perform a specific technical study or similar technical support that could otherwise be done by a contractor, and ERA agrees to do the work, funding will be negotiated between the installation and the District outside of this Agreement.

I. EMERGENCIES

In an emergency situation involving a threat to public health or the environment, the District 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 District for its work will be handled directly between the DoD component and the District, and outside of this Agreement, except for the work at the Spring Valley, Phase II site which will be covered under this Agreement in accordance with the terms outlined in Attachment D by funding, in part, provided by the Department of the Army. 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 Under Secretary of Defense (Environmental Security), 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 obligation for response actions at DoD installations and FUDS, covered by this Agreement, within the District. 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 District and the EPA. Future enhancements or refinements to the model shall occur in consultation with the District and the EPA. DoD shall also involve the District 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 District regarding factors to be considered in decisionmaking in the annual prioritization process for allocating resources available for cleanups. The District 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 District 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 District. 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 District shall designate a lead District agency for each DoD installation within the District. The District of Columbia Environmental Regulation Administration (ERA) shall serve as the lead agency for an installation or FUDS to represent a single District position as to remedial/removal actions at the installation. The ERA shall designate a District Agency Coordinator (DAC) who shall be the single point of contact between the appropriate DoD component installation and the District regarding District involvement in the remedial and removal actions program at the installation or FUDS.

SECTION IV
DISPUTE RESOLUTION

A. The Remedial Project Manager (RPM) and the District Agency Coordinator (DAC) shall be the primary points of contact to coordinate the remedial and removal program at each military installation within the District, 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 DAC 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 ERA or their mutually agreed upon representatives designated in writing.

2. Should the installation commander and the chief of the designated program office of the ERA or their mutually agreed upon representatives designated in writing be unable to agree within ten (10) working days after the matter has been referred to them, the matter shall be elevated to the head of the ERA 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 ERA and the counterpart DoD representative fail to resolve the dispute within twenty (20) working days after the matter has been referred to them, the matter shall be referred to the Mayor 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 Mayor and the Service Secretary are unable to resolve a dispute, the District retains any enforcement authority it may have under District 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 reopener matter will be referred to an individual designated in writing by the signatories to this Agreement. In the event they

17 MAR 1994

fail to agree within ten (10) working days, the matter will be referred to the signatories of this Agreement or their successors in office. If no resolution is reached within twenty (20) days, the Agreement shall not be reopened.

SECTION VI
TERMINATION

This Agreement may be terminated by either party at the expiration of any CA entered into pursuant to this Agreement if the party seeking termination has notified the other party in writing at least ninety (90) days prior to the expiration of the CA. After receiving a notice of termination, a party may invoke the dispute resolution process in Section IV. Each signatory 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 Mayor of the District of Columbia and Deputy Under Secretary of Defense for Environmental Security. Alternative dispute resolution methods may be used. Failing their agreement, this Agreement shall be considered terminated as of the date the CA expires.



Sharon Pratt Kelly
Mayor, District of Columbia



Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

DATE: 5/9/94

DATE: 17 MAR 1994

ATTACHMENT A TO DDMOA

DOD INSTALLATIONS COVERED BY THIS AGREEMENT

District of Columbia

Army

1. Camp Simms
2. Fort McNair
3. Walter Reed Army Medical Center

Navy

1. NS Anacostia

Air Force

1. Bolling Air Force Base

Defense Logistics Agency

None

Formerly Used Defense Sites (FUDS)

1. Spring Valley

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

ATTACHMENT B to DSMOA

PROCEDURES FOR DISTRICT REIMBURSEMENT

- The Deputy Under Secretary of Defense (Environmental Security) (DUSD(ES)) and the Head of the Agency signing on behalf of the District will sign the DSMOA.
- The DSMOA is the overarching agreement of commitment between the DoD and the District, but **does not** obligate or commit funds.
- 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 U.S.C., the Base Realignment and Closure (BRAC) I list and the Base Realignment and Closure (BRAC) II list, and funded by the Base Closure Account (BCA), Section 2678 **et seq.**, of Title 10 U.S.C., and as specified in the DSMOA.
 - Reimbursement will commence as soon as possible with DERA and BRAC funds.
- DoD policies and procedures for processing CA applications and payments will be developed with input from the States and Territories and announced in a **Federal Register** notice.
 - In general, these activities will be centralized in the ODUSD(ES).
 - 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 the District's program status and financial status will be developed.
- 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 Part 33, Office of the Secretary of Defense, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - The District will submit a complete application package for Federal assistance, consisting of (1) Standard Form 424 (SF 424, Application for Federal Assistance), (2) SF 424A (Budget Information--Non-Construction Programs), (3) SF 424B (Assurances--Non-Construction Programs), (4) Cost Basis by

Installation or FUDS, (5) Distribution of Projected Total Costs By Category, (6) Site Background and Status of Installation and/or FUDS, (7) Implementation Plan, (8) Expense Summary, (9) Certification Regarding Lobbying, (10) Drug Free Form (Drug-Free Workplace Act, 1988), (11) State Signature Authority Form, (12) Debarment and Suspension Form, and (13) Copy of the signed DSMOA. The District's application must also include a description of the type and amount of support services that the State plans to provide for each installation and FUDS covered in the DSMOA for the specific award period of the CA.

- CAs will be awarded for a term of two (2) years, based on an annual estimate of requirements. Applications will be accepted after signature of the DSMOA by both parties; processing time for applications is expected to be two months.

- The Corps of Engineers will accept the application, review it, and make a decision as to the award. This CA, with the Mayor signing on behalf of the District, comprises the contractual relationship between the DoD and the State.

- The District may request funds in accordance with the methods outlined in OMB Circular A-102 and 32 CFR Part 33. These documents provide for the following methods of payment: (1) Reimbursement and (2) Working Capital Advances. The District may request a payment method in its CA application.

• 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.

• 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/Territories:

1. DUSD(ES) will invite States/Territories to sign DSMOAs and submit applications for CAs.

2. DASD(E) [now DUSD(ES)] sent a memorandum (Attachment C) to the DoD Components (Army, Navy, Air Force, DLA, and other DoD agencies) asking them to cooperate with the States/Territories and compile necessary data. The States/Territories and Installations will communicate directly on response activities anticipated to take place over the next two years and on the total DERA and BRAC cost estimates.

3. DoD Components will use their Chain-Of-Command to develop and pass on data to DUSD(ES): 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 Depot).

4. The Components will provide information, obtained from their Installations and Major Commands, to DUSD(ES) by State/Territory.

5. Each State/Territory will contact DUSD(ES) about its desire to have a DSMOA and CA, and will work with the Corps of Engineers to have State/Territory-specific information inserted into the provisions where indicated in the model language and to fill out the CA application.

6. DUSD(ES) and the State/Territory sign the DSMOA. The CA is signed by the State/Territory.

7. The State/Territory will submit 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 DUSD(ES) staff and the State agency. IPRs will include State/Territory progress reports concerning activities and funding.

9. CA audits will be carried out in accordance with OMB Circular A-128.



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-6000

ATTACHMENT C

JUL 18 1989

PRODUCTION AND
LOGISTICS

E

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY,
ENVIRONMENT, SAFETY AND OCCUPATIONAL
HEALTH, OASA (I&L)
DEPUTY DIRECTOR FOR ENVIRONMENT, OASN (S&L)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE,
(E,S&OH), SAF/RQ
DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA-W)

SUBJECT: DoD Components' Cooperation with the States for
Cooperative Agreements on Site Cleanups

I am sending letters to the directors of State environmental agencies inviting them to enter into DoD and State Memoranda of Agreements (DSMOAs). There has been a recent strong State expression of interest in them. I request that you inform the appropriate people in your Component that they should be ready by mid-July to respond to requests from the States for information necessary for the States to prepare applications for cooperative agreements (CAs) in accordance with Attachment B of the Model DSMOA language.

Once a State and I have signed a DSMOA or started the process towards signature, the lead State agency can be expected to contact persons or offices designated by the Components as being "lead" for the Installation Restoration Program (IRP) for the installations listed in Attachment A of the DSMOA. States will need to determine what DERA-funded activities the installations have planned for the period of the proposed CAs (FY90/91). Each State will use this information to help prepare its application for a cooperative agreement and its request for funds. The designated installation representative should also give information to the State regarding probable DERA-funded activities through the life of the program, including total estimated cost. This will help the State plan its activities under the lifetime cap. The cost information should be acceptable to you before it is provided to the States.

This information is generally available from your program planning activities, FY90/91 DERA budget development data, and anticipated RI/FS results. States should also have much of this information if they are receiving notice of program activities and participating in such areas as: review of program planning and IRP documents, meetings of technical review committees,

negotiation and implementation of interagency agreements, and public participation activities.

Since the CAs will be centrally administered by DoD, we request Components to give my office the same total DERA cost information you provide the States. We would also like a summary of planned activities for the next two years (FY90/91) that the installation IRP representatives give to the States. Please try to provide this within four weeks of giving it to the States. Since the CAs are envisioned to encompass two years, the information on planned program activities and cost estimates will need to be updated every two years. During the CA period, if there is a significant change in response activities or estimated costs, the Component should notify the State as soon as possible. I will be providing you additional guidance on this matter in the next two weeks.

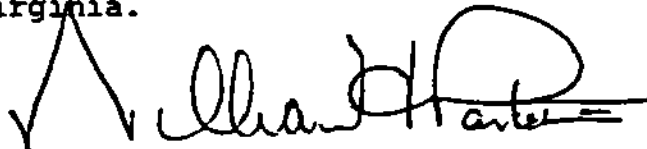
Please provide a copy of the attached model DSMOA language to those who will be responsible for providing the necessary information to the States.

We will also provide more detailed information in the following documents as they are developed:

- o DoD Policies and Procedures for the Cooperative Agreements Program under DSMOAs
- o Federal Register notice announcing the program and the availability of funds.

Cooperation and communication are paramount to the success of this program. I encourage you and your installations to make every effort to continually build a good working relationship with your counterparts in the State agencies. I believe that a cooperative effort with the States, to include mutual consideration of each others comments and program objectives, is the key to cost-effective and timely execution of the Defense Environmental Restoration Program.

Thank you for your continuing efforts in making the program a success. If you have questions or comments, Sam Napolitano remains my point of contact for DSMOAs, and LtCol Ken Cornelius has the lead in carrying out the CA Program. You may reach either of them at (202) 325-2211 (Autovon: 221-2214) in our offices in Alexandria, Virginia.



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

Attachment



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000 ATTACHMENT D



17 MAR 19

Ms. Ferial Bishop
Administrator
District of Columbia Environmental
Regulation Administration
2100 Martin Luther King Jr. Ave., SE
Washington, DC 20020

Dear Ms. Bishop:

This letter clarifies those services that may be eligible for reimbursement under the Defense and District Memorandum of Agreement (DDMOA) between the District of Columbia (DC) and the Department of Defense (DoD). It also supplements the DDMOA as Attachment D.

1. **Eligibility of Spring Valley Site** - The DDMOA will cover those services DC has provided, or will provide, for environmental restoration of DoD installations. The term "DoD installations" includes: active sites; Base Closure and Realignment sites; Defense Logistics Agency Stock Fund sites; and Formerly Used Defense Sites (FUDS). In accordance with Section I.A.1 of the DDMOA, the DDMOA will not reimburse DC for the environmental services DC has furnished, if DoD funds have already been provided to DC for reimbursement of such incurred costs. This DDMOA will cover eligible environmental services provided by DC at the Spring Valley FUDS for Operation Safe Removal Phase II (Spring Valley, Phase II), which began February 2, 1993. This DDMOA will not cover reimbursement of those eligible environmental services DC provided for Spring Valley, Operation Safe Removal Phase I (Spring Valley, Phase I), as these services have already been reimbursed by DoD funding from the Defense Environmental Restoration Program (DERP).

2. **Spring Valley Services Covered By DDMOA** - Section I.B of the DDMOA provides for reimbursement of: "other services that the District will provide that are set out in this Agreement or are included in installation specific agreements". This Attachment D will further define these "other services" to include services DC provided for Spring Valley, Phase II in response to the removal actions occurring at the Spring Valley site. Such services are limited to reasonable response costs which include: security and evacuation support, provided by the Metropolitan Police Department (MPD); fire suppression, HAZMAT and emergency medical services support, provided by the Fire and Emergency Medical Services Department (FEMSD); public evacuation coordination, relief assistance, guidance and advice on public health and environment matters uniquely related to Spring Valley, Phase II.

provided by the Department of Human and Social Services (DHS); street utility maps and historical community development data, provided by the Department of Public Works (DPW); and liaison support at the Spring Valley resident office, and coordination of support by the DC Departments and with other Federal agencies (such as the Department of State), provided by the District of Columbia Office of Emergency Preparedness (DCOEP).

3. **Specific Spring Valley Services Covered** - The security services provided include security for: the open pits within the FUDS; the munitions stored in the interim holding area; and other than routine security of residential and business premises. The security services also include communication services, traffic control and usage of any supplies/materials or equipment necessary to maintain traffic control (i.e. traffic flares, traffic barricades, traffic advisories, communication equipment, security equipment). Evacuation services include evacuation of residents and businesses, and may include evacuation center staffing performed by the MPD or another D.C. agency. The fire suppression, HAZMAT support and emergency medical services support provided by the FEMSD include other than routine services provided for: fire suppression; medical triage and related transportation services; HAZMAT services; training unique to the operation; communication services and equipment; medical equipment; HAZMAT equipment; and weatherpaks. Use of supplies/materials and equipment provided by the MPD, the FEMSD and any other D.C. agency in response to Spring Valley, Phase II will be eligible for reimbursement as reasonable response costs provided: the supplies/materials or equipment is purchased specifically for Spring Valley, Phase II and will only be used for Spring Valley, Phase II; the supplies/materials or equipment is leased or rented specifically for Spring Valley, Phase II as a result of the response action. In the event equipment is contaminated beyond reuse or repair as a result of the Spring Valley, Phase II response, replacement equipment will be eligible for reimbursement as an allowable response cost. However, new equipment that will be used by the District for a period of one year or more after its initial use for Spring Valley, Phase II will not be eligible for reimbursement as a response cost. Likewise, routine maintenance of equipment that will be used for a period of one year or more after its initial use for Spring Valley, Phase II will also not be eligible for reimbursement as a response cost. Furthermore, equipment used for Spring Valley, Phase II that is damaged as a result of negligence on the part of the District will not be reimbursed as a response cost. Finally, the other than routine services provided by DHS, DPW and DCOEP for Spring Valley, Phase II are also eligible for reimbursement under the DDMOA.

4. **Basis For Spring Valley Reimbursement and General Cost Estimates**

a. **Basis for Reimbursing Spring Valley Site Costs** - The one (1) percent cap applies to all costs for District

reimbursement from October 17, 1986, to the end of Defense Environmental Restoration Account (DERA) expenditures, except for those reasonable response costs at the Spring Valley, Phase II site for "remaining services" as stated below. Although all eligible costs at the Spring Valley, Phase II site will be used to calculate the one (1) percent cap applicable to DC, only those costs in paragraph 3, above, associated with: training unique to the operation; HAZMAT services; HAZMAT or technical equipment; and guidance and advice on public health and environmental matters will be subject to the DDMOA's one (1) percent cap. Because DC provided the remaining services outlined in Paragraph 3 above to assist the Secretary of Defense in carrying out his response actions at the Spring Valley, Phase II site, and these remaining services have been deemed to be reasonable response costs, DC will be eligible for reimbursement of these remaining services under the DDMOA from DERA/FUDS funding made available to the DSMOA Program from the Department of the Army (DA), in accordance with 10 U.S.C. Section 2703. These payments for the remaining services will not be subject to the DDMOA's one (1) percent cap. DA, through the Corps of Engineers (COE), will be responsible for: determining what services were, are or will be required from DC, which includes reviewing invoices received from DC to determine if they are properly payable; and forwarding a listing of services to be reimbursed under the DDMOA. DA will provide DERA/FUDS funding to the COE for the DSMOA Program for payment of those reasonable response costs at the Spring Valley, Phase II site that embody these remaining services.

b. Basis for Cost Estimates and Reservation of Rights

The one (1) percent cap applies to all costs for District reimbursement from October 17, 1986, to the end of DERA expenditures, except for those costs excluded in Paragraph 4(a) above. The DDMOA covers all District services listed in Section I.B. for all installations that are currently owned by the Defense Department and are listed in Attachment A of the DDMOA. Reimbursement under the DDMOA covers the entire period of DERA funded DoD activity including site discovery, the initiation of the preliminary assessment and site inspection through the installation of a remedial action system and operation and maintenance (O&M) expenses. It also includes all response actions (removal, remedial, and interim response actions) that are undertaken by DoD on the installations. The Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)) is authorized to enter into agreements and provide reimbursement for funds under its control. Any other expenditures or claims for reimbursement of funds are specifically not included in the DDMOA. Entering into a DDMOA does not constitute a waiver of additional claims DC believes it may have to reimbursement, nor does the DDMOA constitute an acceptance by the Office of the Secretary of Defense for the validity of such claims not covered by this Agreement. DC agrees to use administrative procedures outlined in any installation specific agreements or in the DDMOA prior to seeking judicial remedies.

5. **Reimbursement Ceiling** - The DDMOA provides for a reimbursement ceiling of one (1) percent of the estimated total costs of all work funded by DERA from October 17, 1986, through program completion, excluding those costs for remaining services enumerated in Paragraph 4(a) above. DoD understands that DC believes all legitimate and documented expenditures falling within the scope of the DDMOA (as detailed in Section I.B) should be reimbursed. DoD intends to reevaluate the one (1) percent ceiling at the end of this DDMOA's two year term. DoD will not lower the one (1) percent ceiling during this DDMOA's two year term.

6. **Past Costs** - Past costs included in the one (1) percent cap of reimbursement costs under the DDMOA include those DC costs within the definition of services listed in Section I.B. of the DDMOA, incurred after the enactment of SARA, October 17, 1986, and prior to the execution date of the Cooperative Agreement (CA) by both parties, and in accordance with Paragraph 4(a) above.

7. **Effect of Claiming in Excess of One (1) Percent Cap** - Currently, the one (1) percent cap on the amount of funding provided to a state/territory would apply to DC. The one (1) percent cap is based on the sum of the cleanup cost estimates for all of the installations and FUDS named in Attachment A of the DDMOA. If, in the CA, DC requests an amount (which is not excluded from the one (1) percent cap in accordance with Paragraph 4(a) above), that combined with past costs paid to DC for any of the FUDS or installations identified in Attachment A exceeds the one (1) percent cap, the amount of the CA will have to be reviewed and approved by ODUSD(ES) before any payment can be made.

8. **Site Eligibility** - All currently owned DoD installations where DERA funds are being spent, will be spent, or were spent from October 17, 1986, are eligible for inclusion on Attachment A. FUDS are eligible for reimbursement if 1) there is a determination by DoD that the site is eligible for funding under DERP, 2) no litigation is in process against DoD at the FUDS considered for reimbursement, and, 3) there is District certification that no supplemental funds from other sources of DoD funding were provided for costs incurred or previously paid to the District by any Federal agency for reimbursement of District expenses related to technical assistance support of DoD's remedial action at the site. This includes all installations listed on the National Priorities List (NPL) as well as sites not listed on the NPL. This also includes off-installation impacts that originate from the installations. Site eligibility also includes those installations where there are multiple responsible parties at the facilities. → like

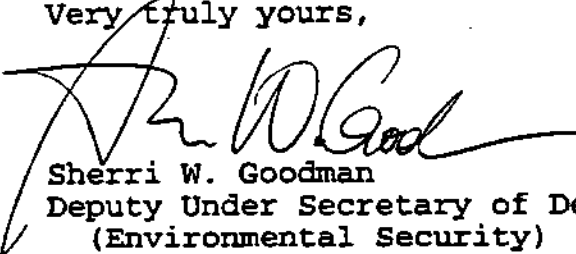
9. **Adjustment of Cost Estimates** - There are two types of adjustments that may occur. The duration of this DDMOA and CA is for two years. DC may request once during this initial two year period that the cost estimates be revised. This may or may not

occur after the first year of the term depending upon when DC requests the reevaluation of costs. If the cost estimates increase, the reimbursement covered by the one (1) percent ceiling will also increase, and the CA amount will increase if substantiated by the CA review process. If the cost estimates decrease, as determined by the selection of a final remedy, in a Record of Decision or equivalent document, the procedures detailed in Section I.F. of the DDMOA are used. DC is not penalized for expenditures made up to the annual allocation as approved in the CA. DC will not be required to return funds (except as specified in OMB Circular A-128 or through other audit procedures as specified in the referenced documents in Attachment B).

The Spring Valley site is located in the middle of an international residential and business neighborhood in the Nation's Capitol. Therefore, a chemical release at this site, such as a release of mustard gas, related to prior DoD activities, could cause significant harm to the public. Consequently, the services D.C. has provided, or will provide, as a result of the Spring Valley site are being treated as unique circumstances.

I hope this addresses your concerns. I have enclosed a DDMOA for your signature. If there are any questions pertaining to either the DDMOA or the CA application, please contact Ms. Deborah Swichkow at (703) 697-9789. I look forward to working with the District of Columbia in this joint effort.

Very truly yours,



Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

Enclosure