

US EPA ARCHIVE DOCUMENT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF:

General Services Administration)
Bannister Federal Complex)
Kansas City, Missouri)
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Docket No: CERCLA-07-2010-0006

ENVIRONMENTAL
WORK AGREEMENT FOR
SITE INVESTIGATIONS,
REMOVAL ASSESSMENT AND
RESPONSE ACTIONS UNDER CERCLA
SECTIONS 101, 104, 107, 120, and 122

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I. INTRODUCTION

This Environmental Work Agreement (“Agreement”) is entered into by the United States Environmental Protection Agency (“EPA”) and the United States General Services Administration (“GSA”). This Agreement concerns the performance of Site Investigations, Removal Assessments, and Response Actions at the GSA facility within the Bannister Federal Complex in Kansas City, Missouri (“Site”). This Agreement is based on the information available to the Parties on the Effective Date and is entered into by the Parties without trial or adjudication of any issues of fact or law:

II. JURISDICTION

1. GSA and EPA enter into this Agreement pursuant to their respective authorities contained in Sections 101, 104, 107, 120, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C §§ 9601, 9604, 9607, 9620, and 9622 (“CERCLA”); and Executive Order 12580 delegated EPA’s authority to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C and this authority has been further redelegated to the EPA Region 7, Regional Administrator.

III. STATEMENT OF PURPOSE

2. In entering into this Agreement, the objectives of the Parties are:
 - i. For GSA to conduct environmental investigations including Site Investigations (SI), Removal Assessments (RA) and Response Actions under the oversight of EPA to perform environmental activities in accordance with this Agreement and the Work Plan required by this Agreement and to address the contamination

identified in the Site Preliminary Assessment and Site Inspection (May 2008) and as otherwise subsequently identified during the SI and SA.

- ii. To provide for oversight by EPA of the actions undertaken by GSA pursuant to this Agreement.
- iii. To facilitate exchange of information by the Parties.
- iv. The activities conducted under this Agreement shall be consistent with CERCLA and the National Oil and Hazardous Substance Pollution Contingency Plan (“NCP”), 40 C.F.R. Part 300, and EPA Guidance. In addition, GSA activities conducted under this Agreement shall be consistent with CERCLA § 120.
- v. To facilitate communication with the public and the creation of a Community Advisory Panel to provide input to the agencies on matters related to environmental conditions and redevelopment of the Bannister property.

IV. PARTIES BOUND

3. This Agreement shall apply to and be binding upon GSA and EPA.
4. Under no condition shall a party under this Agreement utilize the services of any consultant, prime contractor, or subcontractor who has been suspended, debarred, or voluntarily excluded within the scope of 40 C.F.R. Part 32 or under the Federal Acquisition Regulation at 48 C.F.R. Subpart 9.4 et. Seq.
5. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and certifies that he/she is fully authorized to legally bind such Party to this Agreement.

V. DEFINITIONS

6. The terms used in this Agreement shall have the same definitions as the terms defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and the NCP, 40 C.F.R. § 300.5
7. Additionally, the following terms used in this Agreement are defined as follows:
 - i. “Agreement” shall mean this Environmental Work Agreement for Site Investigations, Removal Assessments, and Response Actions and shall include all Attachments and Appendices to this document. All such Attachments and Appendices are integral parts of this Agreement and shall be an enforceable part of this Agreement. Deliverables submitted and approved shall be deemed incorporated herein and enforceable hereunder.
 - ii. “Applicable or Relevant and Appropriate Requirement” or “ARAR” shall mean any standard, requirement, criterion, or limitation as provided in Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), and the NCP;
 - iii. “Day” means calendar day unless otherwise noted in this Agreement. Any submittal that, under the terms of this Agreement, would be due on a Saturday, Sunday, or Federal or State holiday shall be due on the following business day;
 - iv. “Deliverable” shall mean the Health and Safety Plan, Work Plans, QA/QC Plan and Schedule, the Response Actions Complete Report, and the documents identified in GSA’s final approved Work Plan, and any subsequent requirements for further Deliverables or modifications to such Deliverables;
 - v. “Effective Date” shall be the date EPA signs this Agreement, after signature by GSA.

- vi. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- vii. "GSA" shall mean the United States General Services Administration and any successor departments or agencies of the United States.
- viii. "MDNR" shall mean the Missouri Department of Natural Resources.
- ix. "Parties" shall mean EPA and GSA, while "Party" shall mean any one of those entities;
- x. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA incurs in reviewing or developing plans, reports, and other items pursuant to this Agreement, verifying the Work, or otherwise implementing and overseeing this Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs. Such costs are only for work above and beyond the funded core mission EPA carries out as Federal regulator for CERCLA, RCRA, TSCA and related programs;
- xi. "Site" shall mean the real properties under GSA ownership, custody, or control within the Bannister Federal Complex as described in the Memorandum of Agreement signed by the General Services Agency, the Department of Energy, and the Corps of Engineers in July 1993. (Attachment 1) The site is also depicted in the map marked as (Attachment 2). The Site specifically excludes those portions of the Bannister Federal Complex either owned or controlled by the United States Department of Energy, National Nuclear Security Administration, its employees, agents, contractors, successors or assigns, as well as those portions of the Bannister Federal Complex for which response actions

currently are being undertaken by the United States Department of Energy, National Nuclear Security Administration, its employees, agents, contractors, successors or assigns;

- xii. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27);
- xiii. "Work" shall mean all activities the GSA is required to perform under this Agreement; and
- xiv. "Work Plan" shall mean a work planning document, prepared specifically under Section IX including a timetable, plan, or schedule that indicates the time and sequence of events.

VI. FINDINGS OF FACT

8. 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, and they shall not be used for any purpose other than determining the jurisdictional basis of this Agreement.

9. The Bannister Federal Complex is located at 1500 East Banister Road, Kansas City, Jackson County, Missouri. The 300 acre federal complex is bordered on the east by the Blue River and Blue River Road, on the south by Bannister Road and Indian Creek, on the west by Troost Avenue, and on the north by a wooded bluff and Legacy Park.

10. In May 2008, GSA completed a preliminary environmental assessment of the GSA managed properties within the federal complex, and the results of that assessment are

documented in the May 2008 Preliminary Assessment and Site Inspection (“PA/SI”) and Addendum 1 to PA/SI (Attachment 3). The PA/SI evaluated numerous areas of potential environmental concern at the GSA managed portion of the federal complex. Based upon the results of the PA/SI, no further investigation or cleanup is needed at a number of areas that were evaluated, including the photo development center, separator basins, and stained areas. Focused further investigation and assessment is needed at limited areas of Buildings 1, 2, 4, 28 and 50, to further assess potential contamination sources due to historic use and handling of solvents, oils, and other materials containing hazardous substances. Potential pathways of exposure for these sources are soil, ground and surface water, and air. GSA is preparing and will submit to EPA a draft Work Plan to investigate these sources and potential sources as identified in the PA/SI. Upon acceptance of the Work Plan by EPA, GSA will complete the aforementioned investigations.

VII. EPA REGULATORY DETERMINATIONS

11. For purposes of this Agreement, the following constitutes a summary of EPA’s Regulatory Determinations upon which this Agreement is based. None of the Regulatory Determinations related herein are admissions nor are they legally binding upon any Party with respect to any unrelated claims of person(s) not a Party to this Agreement.

12. Substances have been identified at the Site which are “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute “any pollutant or contaminant” that may present an imminent and substantial danger to public health or welfare as set forth in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

13. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently at or emanating from the Site, constitute actual and/or threatened “releases” as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

14. GSA is a “person” as defined in Section 101(21) of CERCLA, 42. U.S.C. § 9601(21).

15. The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and GSA is the present owner and/or operator of the facility within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

16. EPA has determined the actions required by this Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a).

VIII. NOTICE TO STATE

17. By providing a copy of this Agreement to MDNR, EPA and GSA are notifying the State of Missouri of this Agreement.

IX. WORK TO BE PERFORMED

18. All work performed under this Agreement shall be under the direction and supervision of, or in consultation with, qualified personnel with expertise in hazardous substances response actions. GSA has contracted with Terracon Consultants Inc. to conduct environmental investigations on their behalf. GSA has also contracted with Tetra Tech Inc. to act as environmental project manager over Terracon on GSA’s behalf. Each contract was competitively bid among multiple vendors and will provide the services necessary to complete all EPA-directed action on the GSA portion of the Bannister Federal Complex. GSA has issued Tetra Tech Inc. a Scope of Work for developing a draft Work Plan for further environmental

investigation. The scope includes all recommendations for further investigation contained in the GSA 2008 PA/SI report. The Work plan shall encompass investigative work to be performed by Terracon Consultants upon acceptance in final form by EPA.

19. GSA shall be responsible for ensuring that activities and Deliverables are performed in accordance with the terms and conditions of this Agreement. All work performed under this Agreement shall be in accordance with the schedules set out in the Work Plan. GSA and their contract representatives will conduct the Site Investigations, Removal Assessments, and Response Actions in accordance with the Work Plan.

20. The Site Investigations, Removal Assessments and any necessary response actions conducted at the Site under this Agreement shall be performed in a manner not inconsistent with CERCLA and with the NCP.

21. GSA shall complete the activities indicated by EPA, identified in the PA/SI and as listed in the task order Statement of Work to Tetra Tech Inc.

22. GSA shall submit to EPA the Draft Work Plan indicated previously, within 60 calendar days of the effective date of this Agreement To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the Work Plan, the Work Plan shall set forth plans for submittal of supplements to the Work Plan, including schedules. All references to and enforcement of the Work Plan shall also be applicable to any Work Plan supplement(s).

23. Within 60 calendar days of GSA's receipt from EPA of written approval on part or all of any Work Plan, GSA shall commence implementation of the parts of the Work Plan, which EPA has approved, and complete implementation in accordance with the portions of the Work Plan, including any schedules, which EPA has approved.

24. All Deliverables required in response to written request by EPA shall be incorporated into and enforceable under this Agreement. In the event that EPA approves a portion of a Deliverable required to be submitted to EPA, the approved portion shall be enforceable under this Agreement. In the event of conflict between this Agreement and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Agreement shall control.

25. This agreement is not intended to address contamination on GSA property that has migrated from off-site properties and is the responsibility of non-parties. Any work to address such contamination from off-site sources will be the subject of separate negotiations between EPA and GSA.

26. In addition to the information and documents otherwise required by this Agreement, GSA shall provide to EPA, upon written request, any and all technical information and documents in its possession, custody or control related to the response action at the Site including, but not limited to, Site geophysical or analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests; information and documents concerning GSA's compliance with Quality Assurance requirements of this Agreement; information and documents relating to GSA's efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of EPA under Federal law.

27. Within 60 calendar days of the date GSA concludes it has completed implementation of all the Work directed by EPA, GSA shall submit a written Response Actions Completion ("RAC") Report signed by GSA's signatory authority to EPA requesting EPA approval of GSA's determination that Work is completed. The RAC Report shall detail the work

undertaken to implement the Work specifically directed by EPA, and any provisions for maintenance at the Site of institutional controls (land use controls). EPA will review the adequacy of GSA's implementation of the Work, as documented by the RAC Report and accomplishment of the items in the Work Plan.

28. Off-Site Shipments

- a. GSA shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notifications of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and EPA's project coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
- b. GSA shall include in the written notification the following information: (i) the name and location of the facility to which the Waste Material is to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of transportation. GSA shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state or to a facility in another state.

29. GSA shall not commence any Work except in conformance with the terms of this Agreement. GSA shall not commence implementation of the Work Plan or part thereof

developed hereunder until receiving written EPA approval of the Work Plan or part thereof pursuant to Section X.

X. SUBMITTAL AND FINALIZATION OF DELIVERABLES

30. GSA shall complete and transmit each final Deliverable to EPA on or before the corresponding deadline indicated in the final, approved Work Plan. Deliverables are initially prepared by GSA in draft, subject to review, comment, modification, or approval by EPA.

31. Review of any Deliverable by EPA may concern all aspects of the Deliverable (including completeness) and may include, but is not limited to, technical evaluation of any aspect of the Deliverable, and consistency with CERCLA, the NCP and any EPA guidance or policy. Comments by EPA will be provided with adequate specificity so that GSA may respond to the comment and make changes to the Deliverable. GSA shall revise the draft Deliverable in accordance with EPA comments. Within 60 days of GSA receipt of EPA's comments, GSA shall transmit to EPA a draft final Deliverable, which shall include GSA's response to all written comments, received within the comment period. Only draft Final Deliverables shall be subject to the Dispute Resolution provisions of the Agreement. All Final Deliverables shall be provided to MDNR.

32. Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Agreement, shall be sent by email or postal mail in electronic format between the EPA and GSA Project Managers designated pursuant to Section XVI. GSA agrees to fully correct all deficiencies, incorporate, and integrate all information in comments supplied by EPA pursuant to Paragraph 33, unless one of the Parties invokes Dispute Resolution.

XI. SUBSEQUENT MODIFICATIONS OF DELIVERABLES

33. Following finalization of any Deliverable pursuant to Section X above, either Party may seek to modify the Deliverable, including seeking additional fieldwork, pilot studies, computer modeling, or other supporting technical work, only as provided in this Section.

34. Either Party may seek to modify a Deliverable after finalization if it determines that, based on new information (i.e., information that became available, or conditions that became known, after the Deliverable was finalized) that the requested modification is necessary or that the modification assists in the evaluation of impacts on the public health or the environment or in protecting human health and/or the environment. A Party may seek such a modification by submitting a concise written request to the Project Manager of the other Party. The request shall specify the nature of the requested modification and the new information.

35. In the event that a written agreement between the Parties is reached, the modification shall be incorporated by reference and become fully enforceable under this Agreement. In the event that an agreement is not reached by the Project Managers on the need for a modification, dispute resolution may be invoked by a Party to determine if such modification shall be made.

36. Nothing in this Section shall alter EPA's ability to request the performance of additional Work at the Site.

XII. NOTIFICATION OF RELEASES

37. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an immediate threat to public health or welfare or the environment, GSA shall immediately take all appropriate action. GSA shall also immediately notify the EPA Project Manager, or in the event of his/her

unavailability, the Region 7 Spill Line at 913-281-0991 of the incident or Site conditions. The EPA is responsible for conducting any emergency Removal Actions because that authority has not been delegated to GSA by Executive Order 12580. In the event that GSA fails to otherwise take appropriate response action as required by this paragraph, and EPA takes such action instead, GSA shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XXIII (Payment of EPA's Response Costs).

38. In addition, in the event of any release of a hazardous substance from the Site, GSA shall immediately notify the National Response Center at 800-424-8802. GSA shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release of endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

39. The following applies to situations other than Emergency Response as discussed in Paragraph 37, above.

- a. In the event that EPA determines that activities conducted pursuant to this Agreement or any other circumstances or activities may create an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or the environment, EPA may determine that GSA should cease further implementation of the Work or any portion of the Work, pursuant to this Agreement for such period of time as needed to abate the danger. GSA will cease implementation of the work until EPA determines that the danger is abated.

- b. In the event that GSA determines that Work undertaken in furtherance of this Agreement or any other circumstances or activities at the Site may create an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, GSA may cease implementation of the Work or portions of the Work. GSA shall notify EPA as soon as is possible, but not later than 24 hours after such stoppage of Work, and provide EPA with documentation of its analysis in reaching this determination. If EPA disagrees with GSA's determination, it may require GSA to resume implementation of this Agreement.
- c. If EPA concurs in the work stoppage by GSA, or if EPA requires or orders a Work stoppage, GSA's obligations shall be suspended and the time periods for performance of that Work, as well as the time period for any other Work dependent upon the Work that was stopped, shall be extended pursuant to this Agreement.
- d. Any disagreements pursuant to this Paragraph 39 shall be resolved through the Dispute Resolution procedures of this Agreement by referral directly to the Dispute Resolution Committee.
- e. Upon confirmation by EPA that there is an imminent threat to human health, welfare or the environment, GSA shall take all appropriate action to remove the threat. Within 30 days following the completion of the removal action, GSA shall provide EPA with a report detailing the removal actions taken by GSA.

XIII. PROGRESS REPORTS

40. In addition to the Deliverables set forth in Section IX of this Agreement, GSA shall provide to EPA monthly progress reports by the 10th day of the following month. These progress reports shall: (a) describe the actions which have been taken to comply with this Agreement during that month; (b) include all results of sampling and tests and all other data received by GSA; (c) describe work planned for the next two months with schedules relating such work to the overall project schedule for Work completion; and (d) describe all problems encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

41. Laboratory reports shall be made available for review by the Parties immediately upon completion of laboratory analysis.

XIV. QUALITY ASSURANCE AND SAMPLING

42. All sampling and analyses performed pursuant to this Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain of custody procedures and the Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP). GSA shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. GSA shall follow, as appropriate, “QA/QC Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. GSA shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements

for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

43. Upon request by EPA, GSA shall have such a laboratory analyze samples submitted by EPA for QA monitoring. GSA shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

44. Upon request by EPA, GSA shall allow EPA or its authorized representatives to take split and/or duplicate samples. GSA shall notify EPA not less than 10 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow GSA to take split or duplicate samples it takes as part of its oversight of GSA’s implementation of the Work.

XV. ACCESS

45. Without limitation on any authority conferred on them by law, authorized representatives of the EPA shall have authority to enter the Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing progress of GSA, its contractors, or agents in implementing this Agreement; (3) conducting such tests as any of the Project Managers deem necessary; and (4) verifying the data submitted to EPA by GSA.

46. To the extent that this Agreement requires access to property not owned and controlled by GSA, GSA shall, pursuant to CERCLA § 104, make best efforts to obtain access and to obtain signed access agreements for itself, its contractors, agents, and EPA, and provide

EPA with copies of such agreements. GSA may request the assistance of EPA in obtaining access, and upon such request, EPA may obtain the required access.

47. Nothing in this Agreement shall be construed to limit the discretion of GSA or EPA to exercise the authority of the President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

XVI. PROJECT MANAGERS

48. EPA and GSA shall each designate a Project Manager for the purpose of overseeing the implementation of this Agreement. A Party may change its designated Project Manager by notifying the other Party, in writing, within five days of the change. Communications between the Parties concerning the terms and conditions of the Agreement shall be directed through the Project Managers as set forth in this Agreement. Each Project Manager shall be responsible for assuring that all communications from the other Project Manager are appropriately disseminated and processed by the respective Agencies. The Project Managers shall meet approximately once a month, except as otherwise agreed by the Parties, to review and discuss the progress of Work being performed at the Site and the preparation of Deliverables.

49. To the maximum extent possible, communications between the Parties shall be directed to the Project Manager. Currently identified Project Managers shall be as follows:

a. Three (3) copies of documents submitted to EPA should be sent to :

Ronald Hammerschmidt, Ph.D.
Project Manager
US Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

b. Three (3) copies of documents should be sent to GSA at:

Courtney Springer
Project Manager

General Services Administration
1500 East Bannister Road
Kansas City, Missouri

XVII. RECORD PRESERVATION

50. GSA shall preserve all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors, or attorneys that relate to the presence of hazardous wastes and constituents, hazardous substances, pollutants, and contaminants at the Site or to the implementation of this Agreement. The documents/records shall be retained pursuant to Document Retention Standards as required by applicable law. GSA shall notify EPA at least 45 days prior to destruction or disposal of any such documents or records. Upon request by EPA, GSA shall make available such records or documents, or true copies to EPA. After termination of this Agreement, documents may be converted to permanent electronic or optical media and paper originals disposed of after 45 days notification to EPA, unless otherwise required by law.

51. GSA may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by applicable law. If GSA asserts such a privilege in lieu of providing documents, GSA shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the contents of the document, record, or information; and (f) the privilege asserted by GSA. However, no documents, reports or other information created or generated pursuant to the requirements of this Agreement shall be withheld from EPA on the grounds that they are privileged.

XVIII. DISPUTE RESOLUTION

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

53. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

54. 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 EPA representative on the DRC is the Director of the Superfund Division of EPA, Region 7, or his/her designate. GSA's designated member is Mary Ruwwe or her designate. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to the other Party. If GSA objects to EPA's decision regarding a draft final Deliverable or to any EPA action taken pursuant to this Agreement, the GSA shall submit to the Dispute Resolution Committee ("DRC") a written statement of dispute setting forth the nature of the dispute, GSA's position with respect to the dispute and the technical, legal and factual information GSA is relying upon to support its position.

55. Following elevation of a dispute to the DRC, the DRC shall have 21 days to resolve the dispute and issue a written decision signed by the Parties. If the DRC is unable to resolve the dispute within this 21-day period, the written statement of dispute shall be forwarded to the Regional Administrator, EPA, Region 7, for resolution, who shall issue a written decision resolving the dispute.

56. The pendency of any dispute under this Section shall not affect GSA'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 shall be extended for a period of time 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 Plans approved by EPA-which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

57. Within 21 days of resolution of a dispute pursuant to the procedures specified in this Section, GSA shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedures and proceed to implement this Agreement and associated work according to the amended plan, schedule, or procedures.

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

XIX. EXTENSIONS

59. A request by GSA for an extension shall be submitted in writing and shall specify:
- a. The timetable and deadline or the schedule that is sought to be extended;
 - b. The length of the extension sought;
 - c. The reasons for the extension; and
 - d. Any related timetable, deadline, or schedule that would be affected if the extension were granted.

60. Within seven days of receipt of a request for an extension, the EPA shall advise GSA in writing of its position on the request. If EPA does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

Within seven days of receipt of a statement of nonconcurrency with the requested extension, the GSA may invoke dispute resolution.

61. If the Parties agree that an extension is warranted, the affected timetable and deadline or schedule shall be extended accordingly.

62. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application of judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be agreed to. 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 timetable, 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 timetable and deadline or schedule as most recently extended.

XX. FORCE MAJEURE

63. GSA agrees to perform all mutually agreed upon requirements brought forth by EPA within the time limits established under this Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of GSA, or of any entity controlled by GSA, including, but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite GSA's best efforts to fulfill the obligation. *Force majeure* does not include increased cost of performance.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, GSA shall first notify EPA orally. Within 7 days thereafter, GSA shall provide to EPA in writing an explanation

and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; GSA's rationale for attributing such delay to a *force majeure* event, if they intend to assert such a claim; and a statement as to whether, in the opinion of GSA, such an event may cause or contribute to an endangerment to public health, welfare or the environment.

65. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify GSA in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify GSA in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XXI. FUNDING

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

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

where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

68. If appropriated funds are not available to fulfill GSA's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any response action permitted by law and Executive Order, which would be appropriate absent this Agreement.

XXII. STIPULATED PENALTIES

69. In the event that GSA fails to submit a Deliverable to EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement, EPA may assess a stipulated penalty against GSA. A stipulated penalty may be assessed in an amount not to exceed \$500 per day for the first 14 days (or part thereof), and \$1,000 per day for each additional day (or part thereof) for which a failure set forth in this Paragraph occurs.

70. Upon determining that GSA has failed in a manner set forth in this Section, EPA shall notify GSA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, GSA shall have 15 days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. GSA shall not be liable for the stipulated penalty assessed by EPA 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 dispute resolution procedures (if invoked) related to the assessment of the stipulated penalty.

71. Stipulated penalties assessed pursuant to this Section shall be payable to the EPA-Hazardous Substances Superfund and mailed to U.S. Environmental Protection Agency, Fines, and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, Missouri 63197-9000. A copy of the payment shall be provided to EPA's Project Manager.

72. Stipulated penalties assessed pursuant to this Section shall be payable to the EPA-Hazardous Substances Superfund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the GSA. In the event the GSA has to pay stipulated penalties under this Agreement, the GSA will seek Congressional approval and authorization to pay such penalties to the Federal Hazardous Substances Superfund. Such payment will not entail expenditures that exceed available appropriations, and nothing in this Agreement may be considered as implying that Congress will, at a later date, appropriate funds sufficient to pay such penalties.

73. This Section shall not affect GSA's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Section XIX (Extensions) of this Agreement.

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

XXIII. PAYMENT OF EPA'S RESPONSE COSTS

75. GSA agrees to provide for reimbursement of EPA's response costs, (including oversight costs) incurred at the Site in connection with this Agreement above and beyond EPA's fiduciary responsibility to carry out their core mission under CERCLA, CAA, CWA, RCRA and TSCA regulations. Cost will be reimbursed issuing a separate agency agreement similar to (Attachment 4). EPA will submit quarterly bills to GSA for its actual response costs with an

itemized accounting of such costs. GSA shall make all payments within 30 days of receipt of the bill.

76. GSA shall make all payments required by this Paragraph to “EPA Hazardous Substance Superfund,” referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number A7T4. GSA shall send the payment to: U.S. Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, Missouri 63197-9000.

77. GSA may contest payment of any Response Costs billed under this Paragraph if GSA determines that EPA has made a mathematical error, or if GSA believes EPA incurred excess costs as a direct result of an EPA action that was clearly inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Manager. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, GSA shall within the 30-day period pay all uncontested Response Costs to EPA in the manner described in Paragraph 76. Respondents shall send the EPA Project Manager a copy of the transmittal letter paying the uncontested Response Costs. Simultaneously, GSA shall initiate the Dispute Resolution procedures in Section XVIII. If EPA prevails in the dispute, within 5 days of the resolution of the dispute, GSA shall pay the sums due to EPA in the manner described in Paragraph 76. If GSA prevails concerning any aspect of the contested costs, GSA shall pay that portion of the costs for which they did not prevail in the manner described in Paragraph 76. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding GSA’s obligation to reimburse EPA for its Response Costs.

XXIV. RESERVATIONS OF RIGHTS

78. Nothing in this Agreement shall be construed as a restriction or waiver of any rights that EPA or GSA may have under CERCLA or any other statute.

XXV. OTHER CLAIMS

79. Nothing in this Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity by or against any persons, firm, partnership, or corporation not a signatory to this 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, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

80. EPA shall not be held as a Party to any contract entered into by GSA to implement the requirements of this Agreement and subsequent Work Plan activities.

XXVI. OTHER APPLICABLE LAWS

81. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable state and federal laws and regulations unless an exemption from such requirements is provided in CERCLA or the NCP.

XXVII. EFFECTIVE DATE

82. The effective date of this Agreement shall be the date it has been signed by EPA, after signature by GSA.

XXVIII. MODIFICATION/AMENDMENT OF AGREEMENT

83. Modifications, extensions, and/or actions taken pursuant to Section X (Submittal and Finalization of Deliverables), Section XIV (Quality Assurance and Sampling), and Section XIX (Extensions) may be effected by the agreement of the Project Managers. Any such

modifications or amendments shall be reduced to writing; shall be effective as of the date it is signed by all the Project Managers or signatories, as applicable; and shall be incorporated into and modify, this Agreement.

84. Modifications or amendments not permitted by the preceding Paragraph may be effected only by the written agreement of the Parties or upon completion of Dispute Resolution, as applicable.

XXIX. TERMINATION

85. The provisions of this Agreement shall be deemed satisfied upon written notification from EPA to GSA. Termination of this Agreement shall not terminate GSA's obligations under Section XVII (Record Preservation), Section XXIII (Payment of EPA's Response Costs), and Section XXIV (Reservation of Rights).

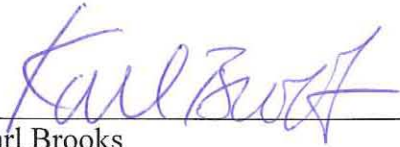
Signature sheet for the foregoing Environmental Work Agreement for Site Investigations, Removal Assessment and Response Actions, GSA Bannister Federal Complex, the U.S. Environmental Protection Agency and the United States General Services Administration.

A handwritten signature in blue ink, appearing to read "Jason Klumb", written over a horizontal line.

30 April 10
Date

Jason Klumb
Regional Administrator
U.S. General Services Administration Heartland Region

Signature sheet for the foregoing Environmental Work Agreement for Site Investigations, Removal Assessment and Response Actions, GSA Bannister Federal Complex, the U.S. Environmental Protection Agency and the United States General Services Administration.



Karl Brooks
Regional Administrator
U.S. EPA Region 7

4/30/10

Date