

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF EDUCATION
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
THE DEPARTMENT OF THE INTERIOR
THE DEPARTMENT OF TRANSPORTATION
AND
THE DEPARTMENT OF DEFENSE
THE DEPARTMENT OF THE ARMY
THE DEPARTMENT OF THE NAVY
THE DEPARTMENT OF THE AIR FORCE

THIS AGREEMENT is made between the Departments of Education, Health and Human Services, Interior, and Transportation (hereinafter collectively referred to as the “Sponsoring Federal Agencies”), and the Department of Defense (hereinafter “DoD”) and the Departments of the Army, Navy, and the Air Force (hereinafter collectively referred to as the “Military Departments”).

WITNESSETH, THAT:

WHEREAS, Sponsoring Federal Agencies will evaluate and approve or disapprove an application from a Public Benefit Recipient for certain real property (the “Property”) on a military installation, and in so doing will rely upon the Military Department’s assessment of the condition of the Property in relation to the specific requirements of the Public Benefit Recipient’s approved program, as described in the application; and

WHEREAS, a Sponsoring Federal Agency, acting as a conduit through which title will ultimately pass from the United States to the Public Benefit Recipient, will request assignment of the Property under the authority provided by the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 484(k), as amended, and regulations promulgated thereunder; and

WHEREAS, the Military Department will assign the Property to a Sponsoring Federal Agency for transfer to a Public Benefit Recipient, in accordance with an appropriate assignment letter, under authority vested in the Administrator of General Services, by the Federal Property and Administrative Services Act, and delegated to the Secretary of Defense under Public Law 101-510, and redelegated to the Secretaries of the Military Departments;

NOW, THEREFORE, the parties agree as follows:

a. The Military Department accepts responsibility for the Property as the Federal “holding agency” under the Federal Property Management Regulations, 41 C.F.R. Part 101-47, and is the “disposal agency” for the Property pursuant to delegations of authority from the Administrator of General Services, required by Public Laws 100-526 and 101-510.

b. The environmental remediation of the contaminated portions of the Property will be the sole responsibility of the Military Department, and will be undertaken in cooperation with the Environmental Protection Agency (“EPA”) and/or the State environmental regulatory authority, as appropriate, and in compliance with any enforceable agreement or order.

c. If hazardous substances were stored for one year or more, known to have been released, or disposed of on the Property, the Military Department will provide the Sponsoring Federal Agency with a copy of the notice required by the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) § 120(h)(1), and the contents of such notice, as required by CERCLA § 120(h)(3)(A)(i), will be included in the transfer document. With respect to such property, and in accordance with CERCLA § 120(h)(3), the Military Department shall ensure that all remedial action necessary to protect human health and the environment has been taken with respect to any hazardous substance remaining on the Property (including EPA's determination that any ongoing remedy has been demonstrated to be operating properly and successfully). In addition, the Military Department will direct the Sponsoring Federal Agency to include in the deed transferring the Property to the Public Benefit Recipient:

(1) a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken;

(2) a covenant warranting that any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States, and

(3) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

d. In accordance with CERCLA § 120(h)(4), if the Military Department determines the Property is uncontaminated, and receives concurrence in this determination from either EPA (for NPL sites) or the appropriate State official (for non-NPL sites), the Military Department will direct the Sponsoring Federal Agency to include in the deed transferring the Property to the Public Benefit Recipient:

(1) a covenant warranting that any response action or corrective action found to be necessary after the date of transfer shall be conducted by the United States; and

(2) a clause granting the United States access to the Property in any case in which a response action or corrective action is found to be necessary on the Property after the date of transfer, or where such access is necessary to carry out a response action or corrective action on adjoining property.

e. The Military Department assumes sole responsibility for the preparation and review of the following documents:

(1) Environmental Baseline Survey

An Environmental Baseline Survey (EBS) of those portions of the military installation for which a Public Benefit Transfer is being considered will be completed and copies will be presented to the Sponsoring Federal Agency and the Public Benefit Recipient at least 60 days prior to assignment. The EBS shall summarize what is presently known of the environmental condition of the property, as required by 40 C.F.R. Part 373.

(2) Finding of Suitability to Transfer

A Finding of Suitability to Transfer (FOST) will be completed in accordance with the "DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Transfer for Property Where Release or Disposal has Occurred" based on the results of the EBS, the Final Environmental Impact Statement, the Disposal and Reuse Record of Decision, and in light of the intended use to be made of the Property. Regulatory agencies shall be provided an opportunity to comment and their comments shall be incorporated where appropriate or attached if unresolved.

f. The Military Department acknowledges that a Public Benefit Recipient may be entitled to indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, as amended (10 U.S.C. § 2687 Note).

g. The Military Department will determine that the Property is environmentally suitable for transfer in accordance with the Public Benefit Recipient's approved purposes, and in accordance with the "DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease" and "DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer." The Sponsoring Federal Agency may rely upon this determination of suitability and is not required to independently inspect the Property prior to transfer.

h. The Military Department shall be solely responsible for, and conduct any necessary remediation (including the requirement to obtain any necessary permits or approvals) of all contamination, whether on-site or off-site, and whether known at the time of transfer or subsequently discovered, attributable to the use, management, storage, release, or disposal of hazardous materials, substances, wastes, or petroleum products during the Military Department's occupancy or use of the Property. This responsibility shall include (to the extent not paid from the Judgment Fund, 31 U.S.C. § 1304) the liability for any costs or claims asserted against the U.S. Government for such use, management, storage, release, or disposal of hazardous materials, substances, waste, or petroleum products, as well as the liability for any necessary environmental remediation. The Military Department shall at all times during its environmental remediation of the property observe, comply with, assume all responsibility for, and pay all costs related to compliance with applicable provisions of Federal, State and local laws, rules, regulations and standards, including, in particular, those provisions concerning the protection and enhancement of environmental quality, pollution control and abatement, the maintenance of safe drinking water, and solid and hazardous waste management.

i. The Military Department acknowledges that, unless mutually agreed to in the context of a particular proposed public benefit transfer, the Sponsoring Federal Agency has no presence on nor has previously used or occupied the Property in a manner that would make the Sponsoring Federal Agency liable for any costs or claims attributable to existing contamination on or emanating from the Property. Accordingly, nothing in this Agreement nor in the public benefit conveyances is to be construed as requiring the Sponsoring Federal Agency to accept responsibility for the payment of any taxes, assessments, public utility charges, or environmental fees becoming due on the Property and attributable to actions taken during the Military Department's use or occupancy of the Property. The Military Department acknowledges that one purpose of this Agreement is to ensure that the Sponsoring Federal Agency does not assume any of the U.S. Government's potential liability or responsibility for contamination nor have any obligation to undertake the U.S. Government's defense of any claim or action, whether in existence now or brought in the future, caused by the use, storage, management, release, or disposal of hazardous materials, substances, wastes, or petroleum products or any contamination thereof (including any use, storage, management, release, or disposal of such that occurs during any subsequent environmental remediation) on any portion of the Property prior to its transfer to a Public Benefit Recipient, including any contamination not presently known but subsequently discovered and determined to be attributable to activities on the Property prior to its transfer to a Public Benefit Recipient.

j. This Agreement is intended principally to govern the allocation of responsibility between the Military Department and the Sponsoring Federal Agency for any contamination determined to be attributable to actions taken on the Property prior to its transfer to a Public Benefit Recipient. Nothing in this Agreement shall be construed to prevent the Military Department from bringing a cost recovery, contribution, or other action against third persons or parties the Military Department reasonably believes may have contributed to the contamination prior to the Public Benefit Transfer. This Agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, or its officers.

k. Except as otherwise expressly provided herein, this Agreement constitutes the entire Agreement between the Military Department and the Sponsoring Federal Agency with respect to matters set forth herein and supersedes any documents prepared before this Agreement to the extent those documents may be inconsistent with this Agreement. Nothing in this Agreement precludes the individual parties to this Agreement from agreeing to amendments that apply only as between such parties in the context of a proposed public benefit transfer.

IN WITNESS WHEREOF, the Sponsoring Federal Agencies, the Military Departments, and DoD have caused this Agreement to be duly executed.