

**SUNFLOWER  
MEC TRUST AGREEMENT**

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Sunflower MEC Trust Agreement, (the “Agreement,”) entered into as of August 24, 2005 by and between Sunflower Redevelopment, LLC (“Developer”) a Kansas Limited Liability Company with a Federal Tax ID Number of 65-1243839, the United States Army (“Army”) and Commerce Bank, National Association, Kansas City, Missouri, a national banking association duly organized and existing under the laws of the United States, (the “Trustee”).

WHEREAS, Army and Developer have entered into a Remediation Contract dated July 29, 2005, (“Remediation Contract”) in which the Army agrees to provide funding for Explosives Plan related tasks as defined in Section B38(b) of the Remediation Contract (“MEC Work”) and where Developer agrees to complete the MEC Work;

WHEREAS, Developer has purchased a Remediation Cost Cap Insurance Policy (“Policy”) from Quanta Specialty Lines Insurance Company (“Quanta”) which includes Endorsement #8 requiring a review and determination by Quanta concerning the application of certain expenditures toward the Self-Insured Retention under the Policy;

WHEREAS, the Developer has elected to establish a trust to provide all or part of such financial assurance necessary to complete the MEC Work at Sunflower Army Ammunition Plant (“SFAAP”);

WHEREAS, the Developer and Army, acting through its duly authorized officers, have selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

NOW, THEREFORE, the Developer, the Army and the Trustee agree as follows:

*Section 1. Definitions.* As used in this Agreement:

- (a) The term “Developer” means the owner or operator who enters into this Agreement and any successors or assigns of the Developer.
- (b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.
- (c) The term “Application for Payment” means a duly executed document, substantially in the form of the attached Schedule A, which instructs the Trustee to make disbursements from the Fund.

*Section 2. Identification of Facilities and Cost Estimates.* This Agreement pertains to the facilities and cost estimates identified on attached Remediation Contract Section B – Supplies or Services and Prices (Schedule B).

*Section 3. Establishment of Fund.* The Army, Developer and the Trustee hereby establish a trust fund, (the “Fund,”) for the benefit of Army. The Fund shall consist of property initially transferred to the Trustee for deposit into the trust, along with any property subsequently transferred to the Trustee for deposit into the trust, less any payments or distributions made by the Trustee pursuant to this Agreement. The Developer and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of cash or securities acceptable to the Trustee, described in Schedule C attached hereto. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Developer or Army, any payments necessary to discharge any liabilities of the Developer established by Army.

*Section 4. Authorized Payments from the Fund.* The Trustee shall make payments from the Fund as Developer and the Army shall mutually direct by a written and approved Application for Payment. The signed Application for Payment shall be provided by the Developer with a copy furnished to Army. Fund payments will be used to complete the MEC work as defined in Section B38(b) of the Remediation Contract and pay all other MEC related costs that are mutually agreeable to Developer and the Army. For any request for payment that the Developer intends to apply against the Self-Insured Retention, the Application for Payment shall be marked as requiring review by Quanta and shall be sent to Quanta for its review. On an Application for Payment which is marked for review by Quanta, the Trustee shall withhold payment until it receives a copy of the application signed by Quanta indicating its determination. The Trustee agrees to make all payments within Seven (7) business days of receiving a properly executed Application for Payment. The Quanta review and determination shall be limited to designating whether the MEC Costs (including payments to Tetra Tech and Demco) covered by the Application for Payment constitute expenditures towards the Self-Insured Retention (“SIR”) as defined in Quanta’s Remediation Cost Cap Insurance Policy.

*Section 5. Determination of Payment Amounts.* The Fund payments for each individual remediation site will not exceed the amounts set forth in the Remediation Contract Section B – Supplies or Services and Prices (Schedule B). However, there may be multiple milestones and/or deliverables which will be the basis for partial payment based on the successful completion of the milestone as determined by the Developer and Army. All “Profits” will be deposited into the Developer’s Trust Account. The term “Profits” includes the Developer’s Budgeted Markup and any proceeds in excess of the Developer’s remediation costs.

*Section 6. Trustee Management.* The Trustee shall invest and reinvest the principal of the Fund and keep the Fund invested as a single fund, in accordance with general investment policies and guidelines which the Developer may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. All interest and investment income from the Fund shall be transferred by the Trustee on a monthly basis to the Sunflower Developer Trust Account. The Trustee will automatically complete the transfers within 10 days of each monthly reporting cycle. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

- (i) Securities or other obligations of the Developer, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

*Section 7. Commingling and Investment.* The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.
- (c) Neither (a) nor (b) shall relieve the Trustee of its duty to provide a separate monthly accounting of all property held by the Fund.

*Section 8. Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

*Section 9. Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Developer, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

*Section 10. Trust Statements and Annual Valuation.* Trust Monthly Statement/Annual Valuation. The Trustee shall provide monthly statements detailing all Fund transactions for the month, including the Fund balance at the end of the month. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Developer and to Army a statement

confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Developer to object in writing to the Trustee within 90 days after the statement has been furnished to the Developer and Army shall constitute a conclusively binding assent by the Developer, barring the Developer from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

*Section 11. Advice of Counsel.* The Trustee shall be entitled from time to time to consult with and engage the services of legal counsel of its choice, who may be counsel to the Developer, with respect to any matter pertaining to this Agreement or any action to be taken hereunder and shall be entitled to reimbursement for the reasonable costs and expenses of such legal counsel. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

*Section 12. Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Developer.

*Section 13. Successor Trustee.* The Trustee may resign upon 30 days written notice to Developer and Army or the Developer may replace the Trustee, but such resignation or replacement shall not be effective until the Developer and Army have mutually appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Developer cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Developer and Army, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

*Section 14. Instructions to the Trustee.* All orders, requests, and instructions by the Developer, Army and Quanta (*if Quanta review is required*) to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Developer, Army and Quanta may designate by amendment to Exhibit A. The signed order, request or instructions shall be provided by the Developer with a copy furnished to Quanta, when necessary, and to the Army. The Trustee shall be fully protected in acting without inquiry in accordance with the Developer's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to

act on behalf of the Developer, Army or Quanta hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Developer, Army and Quanta, except as provided for herein.

In accepting any funds, securities or documents delivered hereunder, it is agreed and understood that, in the event of disagreement between the parties to this Agreement, or persons claiming under them, or any of them, Trustee reserves the right to hold all money, securities and property in its possession, and all papers in connection with or concerning the Fund, until mutual agreement has been reached between all of said parties or until delivery is made to court in any interpleader action or until otherwise authorized by final judgment or decree.

*Section 15 intentionally omitted.* If the Remediation Contract<sup>[E01]</sup> is terminated by the Army, the Army will provide written notice to the Trustee and Developer. Upon receipt of the written notice, the Trustee is only authorized to make payments to the Developer with the written approval of the Army. If a Successor Remediation Contractor is selected to perform MEC Work under the Policy, the Agreement will be amended as appropriate to authorize payments to the Successor Remediation Contractor. If the Army assumes responsibility for the Sunflower MEC decontamination, the Trust may be terminated in accordance with Section 17.

*Section 16. Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Developer, the Trustee, and the Army, or by Successor Remediation Contractor, the Trustee and the Army if the Developer ceases to exist or if the Remediation Contract has been terminated by the Army. *Section 17. Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until completion of the MEC Work and the Trust shall be terminated upon the written agreement of the Developer, the Trustee, and the Army. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Sunflower Developer Trust Account. If a Successor Remediation Contractor is selected, the Trust shall be terminable in the manner provided by this Agreement or any amended Trust Agreement. If the Army assumes direct control over the performance of the MEC Work, then the Army shall take control of the Trust Account and may either terminate the Trust, with all remaining trust property, less final trust administration expenses, being delivered to the Army or direct payment of the monies in the Trust to complete the Army's obligations for the MEC Work.

*Section 18. Immunity and Indemnification.* The Trustee shall be liable as a depository only, with its duties being only those specifically provided herein, which are ministerial in nature and not discretionary. Trustee shall not be liable for any mistake of fact or error in judgment, or for any acts or failure to act of any kind taken in good faith and believed by it to be authorized or within the rights or powers conferred by this Agreement, or in carrying out any directions by the

Developer, the Army or Quanta issued in accordance with this Agreement, unless there be shown willful misconduct or gross negligence. The Trustee shall be indemnified and saved harmless by the Developer or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct arising out of this Agreement, including, but not limited to, any costs, damages, liabilities and expenses that may be incurred as a result of claims or actions by third parties. Expenses shall include, but not be limited to all expenses reasonably incurred in its defense in the event the Developer fails to provide such defense.

*Section 19. Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of Kansas.

*Section 20. Notifications.* Whenever payments, instructions, notices releases or any other documents are required to be given by or to the parties hereto, they shall be sent by Overnight Delivery, recipient signature required, to the following addresses, which may be changed from time to time by written notice to the parties:

Trustee:

Commerce Bank, N.A.  
Attn: Corporate Trust Department  
1000 Walnut Street, 6<sup>th</sup> Floor  
Kansas City, MO 64106

Developer:

Sunflower Redevelopment, LLC  
Attention: John R. Jackson  
7991 Shaffer Parkway, Suite 100  
Littleton, CO 80120  
Phone: (303) 972-6633

With a copy to:

Polsinelli Shalton Welte Suelthaus PC  
700 West 47<sup>th</sup> Street  
Suite 1000  
Kansas City, MO 64112  
Attn: Scott A. Young  
Phone: (816) 360-4160

Army:

U.S. Army BRACD  
Rock Island Field Office  
Attn: DIAM-BD-O  
1 Rock Island Arsenal  
Rock Island, IL 61299-7050  
Phone: (309) 782-1384

With a copy to:

Sunflower Army Ammunition Plant  
Contracting Officers Representative  
P.O. Box 640  
DeSoto, KS 66018-0640

Quanta:

Quanta Specialty Lines Insurance Company  
Attn: Reynolds B. Renshaw  
10 Rockefeller Plaza  
New York, NY 10020

*Section 21. Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

*Signature page follows.....*

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

**TRUSTEE:**

**Commerce Bank National Association**

By its \_\_\_\_\_

\_\_\_\_\_  
Name

**DEVELOPER:**

**Sunflower Redevelopment, LLC "Developer"**

By its Managing Member

IRG Sunflower, LLC

\_\_\_\_\_  
John R. Jackson, CFO of IRG Sunflower, LLC

**ARMY:**

**United States Army**

By its Sunflower Program Manager

\_\_\_\_\_  
James C. Scott

**Exhibit A: Authorized Signers for Developer, Army, and Quanta:**

**DEVELOPER:**

**Sunflower Redevelopment, LLC “Developer”**  
By its Managing Member  
IRG Sunflower, LLC

\_\_\_\_\_  
John R. Jackson, CFO of IRG Sunflower, LLC

**ARMY:**

**United States Army**  
By its Contracting Officer’s Representative

\_\_\_\_\_  
Tony E. Spaar

**QUANTA**

**Quanta Specialty Lines Insurance Company**  
By its \_\_\_\_\_

\_\_\_\_\_  
Name

**Schedule A: Form of Application for Payment**

**SUNFLOWER MEC TRUST ACCOUNT  
APPLICATION FOR PAYMENT**

To: Commerce Bank National Association as Trustee for the  
Sunflower MEC Trust Account

Payment Application Number: \_\_\_\_\_.

Payment Application Date: \_\_\_\_\_.

This Application for Payment is submitted under the Terms of the Remediation Contract,  
Consent Order and the Sunflower MEC Trust Agreement.

In accordance with the terms of Section 14 of the Sunflower MEC Trust Agreement,  
Developer hereby applies to the Fund for the following payment:

*(Describe payment being sought, including description of the completed milestone, the  
authorized payment amount and the payee for each amount requested)*

<b>Milestone / Task Description</b>	<b>Requested Amount</b>	<b>Payable To</b>	<b>Notes</b>
	\$		
<b>GRAND TOTAL</b>	\$		

Payments from the Fund should be directed to:

*(Provide remittance information for all Payees included in this Application for Payment)*

Make Check Payable to: *Payee Company Name*

Point of Contact: *Payee Contact Person*

Remit to Address: *street address; city, state, zip*

Contact Telephone Number: *Payee Contact Person Telephone Number*

Contact E-Mail Address: *Payee Contact Person Telephone Number*

Submitted by:

**Sunflower Redevelopment, LLC “Developer”**

By its Managing Member

IRG Sunflower, LLC

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John R. Jackson, CFO of IRG Sunflower, LLC

## Approval of Developer's Application for Payment

To: Commerce Bankshares National Association "Trustee"

From: Sunflower Redevelopment, LLC      Date: \_\_\_\_\_

The following parties hereby APPROVE the Developer's Application for Payment Number \_\_\_\_\_ dated \_\_\_\_\_ and authorize the submission of this Application for Payment to Quanta Specialty Lines Insurance Company "Quanta" for review and determination pursuant to Endorsement 8 of the Remediation Cost Cap Policy # \_\_\_\_\_ dated \_\_\_\_\_.

This Application for Payment:

\_\_\_\_\_ **DOES** require Quanta review prior to submission to the Trustee for payment from the Fund. **IF CHECKED, QUANTA MUST REVIEW BEFORE SUBMISSION TO THE TRUSTEE.**

**The following pay items DO require Quanta review and determination:**

- MEC Costs payable to DEMCO
- Any other costs that constitute expenditures towards the Self-Insured Retention ("SIR") as defined in Quanta's Remediation Cost Cap Insurance Policy

\_\_\_\_\_ **DOES NOT** require Quanta review prior to submission to the Trustee for payment from the Fund.

**The following pay items do NOT require Quanta review or determination:**

- IRG Program Management Fees
- Developer "Profit"
- Insurance Deductibles
- Any other costs that DO NOT constitute expenditures towards the SIR as defined in Quanta's Remediation Cost Cap Insurance Policy

*Signature page follows.....*

AGREED AND ACCEPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_.

**United States Army**

By its Contracting Officer's Representative

\_\_\_\_\_  
Tony E. Spaar

**If Quanta Review is Required:**

Quanta Specialty Insurance "Quanta" hereby AGREES that Payment Application Number \_\_\_\_\_ dated \_\_\_\_\_ and related backup documentation meets the requirements set forth in Remediation Cost Cap Policy Number \_\_\_\_\_. Pursuant to Endorsement 8, Quanta AGREES that Payment Application \_\_\_\_\_ includes only Approved Amounts which are expenditures applicable to the Self-Insured Retention.

AGREED AND ACCEPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_.

**Quanta Specialty Lines Insurance Company "Quanta"**

By its \_\_\_\_\_

\_\_\_\_\_  
Name

**Schedule B: Facilities & Cost Estimates**

1. MEC Scope of Work (DEMCO Contract) -- \$24,259,704
2. IRG Program Management -- \$827,137
3. Developer "Budgeted Markup" -- \$2,545,700
  
4. Estimated Interest Income during Term of MEC Trust Agreement -- \$969,89    5.  
The following represents the breakdown regarding MEC work to be performed by year.

YEAR BURNS	SEWERS	FOUNDATIONS	BUILDING
Yr 1 (8-12/05)	27,100 LF	325,288 SF	16 Accounts
Yr 2 (1-12/06)	54,100 LF	650,580 SF	32 Accounts
Yr 3 (1-12/07)	54,100 LF	650,580 SF	32 Accounts
Yr 4 (1-12/08)	54,100 LF	650,580 SF	32 Accounts
TOTALS	189,400 LF	2,277,028 SF	112 Accounts

**Schedule C: Proceeds to be Deposited in to the Fund**

At Closing:	\$10,600,000
On or before January 31, 2006:	\$10,600,000
On or before January 31, 2007:	\$6,665,868
<b>GRAND TOTAL:</b>	<b>\$27,865,868</b>