

**SUNFLOWER EARLY TRANSFER REMEDIATION AGREEMENT  
BETWEEN THE  
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
AND  
UNITED STATES ARMY**

A. Background

1. This Agreement sets forth the United States Army's ("Army") commitment to ensure that all remedial action necessary to protect human health and the environment will be taken with respect to particular parcels of property ("Early Transfer Parcels") located at the Sunflower Army Ammunition Plant ("Sunflower"), title to which is to be transferred prior to completion of all such necessary remedial action. The Early Transfer Parcels identified in Exhibit I are being transferred by the Army to Sunflower Redevelopment, LLC ("Developer") pursuant to the covenant deferral provisions ("CERCLA Section 120") of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") at 42 U.S.C. Section 9620(h)(3)(C).

2. The Army and Developer have entered into the Remediation Services Contract ("Army/Developer Contract") which, among other things, provides that: (i) the Developer will perform all remedial action necessary to protect human health and the environment with respect to any hazardous substances at Sunflower in a manner that will fulfill the Army's environmental remediation obligations on the Early Transfer Parcels and (ii) the Army will fund, in accordance with the terms of the contract, the Developer's services to complete all remedial action necessary to protect human health and the environment at Sunflower. In addition, the Army/Developer Contract requires the Developer to provide environmental insurance coverage ("Insurance Policy").

3. The KDHE and the Developer have entered into a Consent Order which sets forth the terms by which the Developer will fulfill the Army's environmental remedial action obligations under CERCLA, RCRA and other applicable environmental statutes. The Army and KDHE ("Parties") agree that the Developer's successful performance and completion of all Corrective Action under the Consent Order will satisfy the Army's environmental remedial action obligations at Sunflower. In addition, it is the Army and KDHE's intention that the Developer's successful performance and completion of all Corrective Action under the Consent Order will satisfy the Army's remedial action obligations under the Sunflower RCRA Permit ("Sunflower RCRA Permit" or "RCRA Permit").

## B. Legal Authority

1. This Agreement is entered into under authority vested in KDHE by K.S.A. 65 - 3452a *et seq.*, K.S.A. 65 - 3401 *et seq.*, K.S.A. 65 - 3430 *et seq.*, K.S.A. 65 - 3001 *et seq.*, K.S.A. 65 - 159, and K.S.A. 65 - 161 *et seq.*, and the Memorandum of Agreement between KDHE and the Environmental Protection Agency.

2. This Agreement is entered into under authority vested in the Secretary of the Army by CERCLA, 42 U.S.C. Section 9600 *et seq.*; the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. 2701 *et seq.*; and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300 *et seq.*

## C. General Conditions

1. The Army is executing this agreement in furtherance of its obligation to ensure that the property is remediated in accordance with the requirements of CERCLA and other applicable laws. The Army generally recognizes and affirms that it is ultimately responsible for causing the completion of the remediation of hazardous substances contamination at Sunflower which is necessary to provide the covenant required by 42 U.S.C. 9620(h)(3) ("CERCLA Covenant").

2. This Agreement reiterates the Army's commitment, in accordance with the Army/Developer Contract, to fund the Developer's performance of the Army's remediation responsibilities at Sunflower. The Army will take all steps to submit to the Office of Management and Budget the necessary budget requests to allow for timely remediation of Sunflower. Any such funds that are received for the Sunflower remediation will not be used for any other purpose without the prior approval by the Assistant Secretary of the Army for Installations and Environment.

3. This Agreement provides KDHE with adequate assurances and a legal mechanism to ensure the Army's completion of its remedial action obligations as required by CERCLA Section 120 will take place in a timely manner. The Army agrees not to challenge the following: the issuance of this Agreement or the Consent Order; the KDHE's authority to bring, nor the authority of a court of competent jurisdiction, to hear any action to enforce the terms of this Agreement or the Consent Order; or KDHE's authority to bring an action to enforce the Army's obligations under CERCLA Section 120 or the Sunflower RCRA permit. However nothing in this Agreement shall be construed to preclude the United States from removing a suit filed in a state district court to the appropriate federal court should the United States be named as a party or joined in the suit and raising available defenses.

4. As between the parties, the Governor's approval of the Request for Deferral of the CERCLA Covenant for the Early Transfer Parcels shall neither increase, diminish, nor affect in any manner any rights or obligations of the Department of Defense (including any rights or

obligations under Sections 106, 107 and 120 of CERCLA ) existing prior to transfer with respect to the Early Transfer Parcels.

5. Under CERCLA 120, the Army has an obligation to ensure that contamination on the Sunflower property is remediated. The Developer is responsible for fulfilling the Army's obligations for the environmental remediation of the Sunflower property in accordance with the requirements of the Consent Order, RCRA permit and other applicable laws. Army is not released from any obligation under CERCLA Section 120 or the Sunflower RCRA Permit for remediation of hazardous substances attributable to the Army that remains on the Early Transfer Parcels, except to the extent that such obligations are satisfied by the Developer or other third party, pursuant to the Consent Order.

#### D. Agreement

1. KDHE agrees that it will not take any enforcement action against the Army, provided the Developer is faithfully and diligently executing its obligations under the Consent Order and Army Developer Contract. If the Army terminates the Army/Developer Contract due to a Developer default, the following actions will be taken:

a. Insurance Policy. The Army will become the "Named Insured" under the insurance policy and scope of the insurance coverage will remain unchanged. As the Named Insured, the Army, will use all reasonable effort to select a successor remediation contractor to meet the performance standards contained in the Army/Developer Contract and satisfy the timelines contained in the Consent Order.

b. Sunflower Trust Account. The Army will assume control of the Sunflower IAP, MEC, and Developer Trust Accounts and will direct disbursements for the purpose of remediation of Sunflower, contingent upon receipt of any required KDHE approval for environmental remediation sites.

If a successor remediation contractor is not selected, the Army will fulfill its remedial action obligations under CERCLA Section 120 by performing any remaining environmental remediation obligations in accordance with the Sunflower RCRA Permit.

2. If the Developer fails to complete its obligations under the Consent Order and the Insurance Policy is exhausted or otherwise unavailable, the Army shall fulfill its remedial action obligations under CERCLA Section 120 by performing any remaining environmental remediation obligations in accordance with the Sunflower RCRA Permit. In such event, the Army agrees to contact and confer with KDHE within thirty (30) days of receipt of written notice from KDHE of the Developer's failure in order to establish a meeting date to discuss the transition of the remaining environmental remedial obligations to the Army.

3. If the Army is required to fulfill its remedial action obligations under CERCLA

Section 120 and corrective action under the RCRA Permit, the Army will use its best efforts to complete the Sunflower remediation in a timely manner. The Army will take all steps necessary to submit to the Office of Management and Budget, as soon as possible but in no event later than the next budget cycle, any required budget request to allow for timely remediation of Sunflower. Any such funds that are received for the Sunflower remediation will not be used for any other purpose without prior approval of the Assistant Secretary of the Army for Installations and Environment.

4. The Army and KDHE reserve all rights to institute legal and administrative actions for any violation of law, regulation, permit or order regarding existing or potential contamination or related issues. The Army and KDHE reserve all rights to take action to achieve compliance with applicable law, to impose additional requirements necessary to protect human health and the environment. The Parties reserve all rights to fully defend and appeal any such actions. Nothing in this Agreement relieves or limits any applicable obligation to comply with any statute, regulation, permit or order.

#### E. Dispute Resolution

It is the intention of the Parties that all disputes are resolved at the lowest possible level of authority as expeditiously as possible within the framework established under Section IV of the Defense and State Memorandum of Agreement. All timeframes for resolving disputes therein may be lengthened by mutual consent.

#### F. Anti-Deficiency Act/Non-Waiver

The Army's obligation to pay or reimburse any money under this agreement is subject to the availability of funds appropriated for this purpose to the Department of the Army, and nothing in this Agreement shall be interpreted to require obligations or payments in violation of the Anti-Deficiency Act, 31 USC §1341. This provision does not constitute a waiver of any challenges that the State may have regarding applicability of the Anti-Deficiency Act or any other defenses or assertions that KDHE may raise to enforce the Army's responsibilities at Sunflower.

#### G. No Third Party Rights

Nothing in this Agreement shall be construed to create any right in, or grant any cause of action to, any person not a Party to this Agreement.

#### H. Termination and Release

This Agreement shall not apply to those Early Transfer Parcels after the KDHE issuance

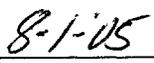
of the no further corrective action determination to the Developer as required under the Consent Order and the issuance by the Army of the deferred CERCLA Covenant for the aforementioned Early Transfer Parcels. This Agreement shall terminate and the Army shall be released therefrom upon the KDHE issuance of the no further corrective action determination to the Developer as required under the Consent Order and the issuance by the Army of the deferred CERCLA Covenant for all of the Early Transfer Parcels.

#### I. Signatories

The undersigned warrant that they are authorized to legally bind their respective principals to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

**UNITED STATES DEPARTMENT OF THE ARMY:**

  
Daphne Kamely  
Acting Deputy Assistant Secretary of the Army  
(Environment, Safety, and Occupational Health)

  
Date

STATE OF KANSAS :



Roderick L. Bremby, Secretary  
Kansas Department of Health and Environment

7-29-05

Date

EXHIBIT 1  
EARLY TRANSFER PARCELS MAP

