Date: 10/30/00

MEMORANDUM OF AGREEMENT
BETWEEN THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
THE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
AND THE
U.S. DEPARTMENT OF **(NAVY, ARMY, AIR FORCE)**

THIS AGREEMENT is entered into this _____ day of _____, by and between the U.S. Environmental Protection Agency ("U.S. EPA"), the Illinois Environmental Protection Agency ("Illinois EPA") and the U.S. Department of the **(Navy, Army or Air Force; Installation Name)** also collectively referred to herein as "the Parties," for the specific purposes hereinafter set forth.

I. BACKGROUND

Environmental investigative activities being undertaken on **(Installation Name**) have revealed and may in the future reveal certain areas of environmental contamination ("Sites") on **(Installation Name).** These Sites include those subject to regulation under either the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 USC 9601 *et. seq*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq*., and/or the provisions of the Illinois Environmental Protection Act, ("the Act") (415 ILCS 5/1 *et. seq*.), where hazardous substances, hazardous wastes or hazardous constituents, or petroleum products or their derivatives were released into the environment as a result of activities conducted over the history of the installation. Such Sites may generally be categorized as follows:

a. Those that have been fully investigated and specific remedy(ies) previously implemented;

b. Those that have been fully investigated and remedy(ies) have been selected but have not yet been implemented;

c. Those that have been fully investigated but final remedy selection decisions have not yet been made; or**,**

d. Those in need of initial or further investigative activities before the appropriate final remedy(ies) can be selected and implemented.

(Installation Name) desires that future site remedy determinations take land use into account in order to facilitate the use of risk-based remediation criteria established by U.S. EPA under CERCLA or Illinois EPA under the Act or its corresponding program rules, as may apply to a given Site. The Parties agree that when land use controls ("LUCs") are necessary to ensure the reliability of land

use assumptions, it is essential that appropriate procedures be put in place to ensure such controls will be maintained for as long as necessary to keep the chosen remedy fully protective of human health and the environment. In addition, the Parties agree that it is imperative to ensure that prospective purchasers of the property are fully informed of the existence of such controls and their responsibility to maintain them.

The Parties also recognize that the General Services Administration maintains that **(Installation Name)** does not have the authority to place land use restrictions in county land records because it would be considered an unauthorized disposal of an interest in federal property (since title is held by the United States and not by **(Installation Name).** Therefore, this Agreement is designed, in part, to ensure that if **(Installation Name)** desires to undertake a risk-based remediation of any Site falling under the program authorities of the Illinois EPA, that it comply with all applicable LUC requirements of the Act and its corresponding rules.

II. APPLICABILITY

This Agreement applies to each Site where **(Installation Name)** is required to undertake investigative and remedial activities in accordance with CERCLA or applicable Illinois EPA remediation program requirements and where **(Installation Name)** desires to utilize either U.S. EPA CERCLA risk-based Site remediation guidance or Illinois EPA's Tiered Approach to Corrective Action Objectives (TACO) regulations (35 Ill. Adm. Code 742) to undertake a risk-based remediation of the Site. Such Sites shall specifically include those falling under the following Illinois EPA programs:

a. Leaking Underground Storage Tank ("LUST") Program (35 Ill. Adm. Code 732);

b. RCRA Part B Permits, corrective action, and Closure Plans (35 Ill. Adm. Code 724 and 725); and,

c. Site Remediation Program ("SRP") (35 Ill. Adm. Code 740).

Due to the unique nature of ownership interests in the real property at active federal facilities and the inability of **(Installation Name)** to comply with the LUC recording requirements of the Act and corresponding rules of the Illinois EPA, compliance with this Agreement will be deemed to fulfill those requirements until such time as any Site with LUCs on **(Installation Name**) that falls under any of the aforementioned Illinois EPA programs is transferred out of federal ownership. At the time of such transfer, all requirements of the Act and corresponding rules of the Illinois EPA as shall apply to that Site must be met.

III. DEFINITION

For the purposes of this Agreement, the term "Land Use Control" or "LUC" means any restriction or control arising from the need to protect human health and the environment that limits the use of or exposure to environmentally contaminated media (e.g., soils, surface water, groundwater) at any Site on **(Installation Name).** The term includes controls on access (e.g., engineered barriers, such as caps, and non-engineered mechanisms, such as fences or security guards). Additionally, the term encompasses both affirmative measures to achieve the desired control (e.g., night lighting of an area) and prohibitive directives (e.g., no drilling of drinking water wells). The term also includes "institutional controls." Institutional controls are legal mechanisms for imposing a restriction on land use.

IV. PURPOSE

The Parties intend to accomplish the following specific objectives through execution of this Agreement:

a. To implement a process to ensure appropriate long-term maintenance of those LUCs that may have already or may hereafter be selected as part of the remedy for any Site on **(Installation Name**). It is intended such a process will in turn:

1. Facilitate the application of Federal or State risk-based remediation criteria to Site remediations through consideration of assumed future land usage at those Sites where LUCs will be necessary to make such assumptions reliable;

2. Elevate the general level of awareness amongst **(Installation Name)** personnel as to the need to maintain such controls in order to ensure long-term protection of human health and the environment.

b. To implement a process for **(Installation Name)** to periodically advise U.S.EPA and Illinois EPA representatives of the continued maintenance of any LUCs implemented on the **(Installation Name)** and of any planned changes in land use impacting any Site remediated in accordance with risk-based criteria based on the assumption land usage would be controlled, (e.g., restricted to industrial use);

c. To implement procedures for integrating all Site remedies that include LUCs into the facility land use planning process;

d. To provide, in part through **(Installation Name's**) good faith compliance with this Agreement, reasonable assurances to U.S. EPA and Illinois EPA those specific pathway and exposure assumptions relied upon in applying a risk-based remediation standard to a given Site will remain valid until

such time as the Parties agree, pursuant to the applicable program procedures under which the Site is conducting remediation, that either different Site controls or unrestricted Site usage would be appropriate; and

e. To satisfy **(Installation Name's)** obligation to comply with those LUC requirements to be reflected in any NFR determinations (or their equivalent) issued by U.S. EPA or Illinois EPA until such time as (**Installation Name**) and U.S.EPA or Illinois EPA, whichever agency has program authority, determines that those LUCs are no longer necessary for the protection of human health and the environment.

V. APPENDICES

a. The following Appendices are now or shall hereafter become a part of this Agreement as further specified in paragraphs 1 through 4 below:

1. The attached Site listing (Appendix A) for those presently known Sites covered under the terms of this Agreement. Appendix A will be updated at on a quarterly basis by **(Installation Name**) to reflect any additions or deletions of Sites as may hereafter be agreed to by the Parties. Copies of all quarterly updates must be promptly distributed to U.S. EPA and Illinois EPA. If no Site additions or deletions have been made during a previous quarter, then no Appendix need be prepared or distributed for that period.

2. Individual Land Use Control Implementation Plans ("LUCIPs") (Appendix B) for all known Sites to be covered under the terms of this Agreement. These LUCIPs will be developed by (**Installation Name**) within (**insert "thirty (30)" or" sixty (60)" days**) of execution of this Agreement. Each LUCIP will: (1) identify the Site's location by reference to the facility's land use plan or by other means sufficient to enable the Parties to readily locate the Site; (2) identify both the LUC objective for the Site being addressed as well as those particular LUCs to be relied upon to achieve the objective; (3) specify what must be done in order to implement and maintain the specific LUCs required for the Site; and (4) contain a cross-reference to whatever decision document(s) apply to the Site. As future decisions involving LUCs are made at Sites on **(Installation Name)**, these Sites will become covered under this Agreement and listed in Appendix A, and a new LUCIP appropriate to each such newly covered Site will be added to Appendix B. In conjunction with **(Installation Name**) (**Base Master Plan)**, these plans should serve as a central LUC reference source to assist **(Installation Name)** personnel with completing those periodic Site inspections, review, and certifications required under Paragraph VI of this Agreement.

3. The attached Sample Record of Decision ("ROD") or Decision Document ("DD") language (Appendix C) containing a specific reference to this Agreement; and

4. The attached listing (Appendix D) of the appropriate agency and facility Points of Contact ("POCs").

b. Appendix E will contain all future NFR determinations (or their equivalent) as issued by U.S. EPA or Illinois EPA that pertain to Sites covered by this Agreement.

VI. SITE INSPECTION/REVIEW/CERTIFICATION

Within thirty (30) days of finalizing the LUCIP appendices mentioned above or sixty (60) days after execution of this Agreement, whichever occurs first, (**Installation Name**) shall initiate the following specific actions:

a. Conduct **(insert - quarterly, semi-annual, or annual as negotiated by the Parties)** visual inspections of all Sites where LUCs have previously or may hereafter be implemented at such Sites identified in Appendix A to this Agreement. These inspections will be for the purposes of verifying all necessary LUCs have been implemented and are being properly maintained. The **(Installation Name)** (**Environmental Program Manager)** will be responsible for: (1) ensuring all required inspections are performed; (2) providing U.S. EPA and Illinois EPA with thirty (30) days advance notice of, and opportunity to participate in, **(insert "one quarterly," one semi-annual" or "the annual")** inspection conducted each calendar year; (3) notifying U.S. EPA and Illinois EPA of any deficiencies noted within thirty (30) days, and; (4***)*** ensuring that corrective measures are undertaken as soon as practicable to correct any such deficiency(ies) with timely notification to U.S. EPA and Illinois EPA detailing corrective actions taken or providing a timetable outlining future remediation activities. If the agency that has program authority for the program under which remediation is taking place declines to concur, then such agency and (**Installation Name**) shall work together to resolve how the noted deficiencies will be corrected.

b. If **(Installation Name)** has, or hereafter establishes, an environmental compliance board or similar body charged with coordinating and overseeing environmental compliance on the installation, such body shall conduct quarterly reviews to assess the **(Installation Name's)** status in complying with all previously implemented LUCs. Any non-compliance issues will be appropriately resolved with U.S. EPA or Illinois EPA, whichever has program authority over the Site(s) where deficiencies were found.

c. Prepare and forward an annual report **(insert due date)** to U.S. EPA and Illinois EPA signed by the **(Installation Name) (Commanding Officer)** certifying the continued retention of all implemented LUCs associated with those Sites identified in Appendix A to this Agreement (as last updated).

VII. AGENCY COORDINATION

Effective upon execution of this Agreement, **(Installation Name)** agrees to implement the following agency notification and concurrence procedures:

a. Except under circumstances reasonably determined by the **(Installation Name)** to be an emergency, the **(Installation Name)** shall provide at least sixty (60) days notice prior to implementation of any Land Use Change (as defined in Section VII.d.) at any Site subject to LUCs. The **(Installation Name)** will provide notification of any such change to U.S. EPA and Illinois EPA. Such notification must be provided for the purpose of obtaining either U.S. EPA or Illinois EPA concurrence (whichever shall have program authority over the affected Site(s)) with the **(Installation Name)** determination as to whether the contemplated change will or will not necessitate the need for re-evaluation of the selected remedy or implementation of specific measures to ensure continued protection of human health and the environment.

b. Except in the case of an emergency where **(Installation Name)** personnel reasonably believe it is not practicable to wait for U.S. EPA or Illinois EPA concurrence, no Land Use Change should be implemented until U.S. EPA or Illinois EPA concurrence is obtained, consistent with the timeliness requirements set forth in subparagraph (c) below. For Land Use Change(s) affecting LUST or RCRA closure or corrective action Sites over which the State has program authority, although such notifications will be sent to both U.S. EPA and Illinois EPA, the **(Installation Name)** need only obtain Illinois EPA's concurrence with the proposed change. Each notification or request for concurrence must include:

1. An evaluation of whether the anticipated Land Use Change will pose unacceptable risks to human health and the environment or negatively impact the effectiveness of the selected Site remedy;

2. An evaluation of the need for any additional remedial action or LUCs resulting from implementation of the anticipated Land Use Change; and,

3. A proposal for any necessary changes in the selected Site remedy.

c. Upon being notified by **(Installation Name)** of an anticipated Land Use Change at a Site, U.S. EPA or Illinois EPA or both shall evaluate the information provided pursuant to paragraph (b) above, and respond in a timely fashion prior to such land use change.

d. The Parties agree that any of the following will constitute a Land Use Change:

1. Any change in land use (e.g. from industrial to residential) inconsistent with any land use contained in those specific exposure assumptions in the human health or ecological risk assessments that served as the basis for the LUCs implemented at the Site;

2. Any Site activity disrupting the effectiveness of the implemented LUC. Examples include, but are not limited to: excavation at a landfill; groundwater pumping impacting a groundwater pump and treat system; a construction project impacting ecological habitat protected by the remedy; removal of a fence; unlocking of a gate; or removal of warning signs; or,

3. Any Site activity intended to alter or negate the need for the specific LUC(s) implemented at the Site.

e. The **(Installation Name)** also agrees to immediately notify U.S. EPA and Illinois EPA if, despite its best efforts to ensure compliance with paragraphs (a) and (b) above, any Land Use Change at any Site with an implemented LUC is discovered not having been previously reviewed and concurred in by U.S. EPA or Illinois EPA in accordance with paragraph (a). Such notifications will provide all pertinent information as to the nature and extent of the change and describe any measures implemented or to be implemented (to include a timetable for future completion) to reduce or prevent human health or ecological impacts.

VIII. MOA INTEGRATION

The Parties agree when Site-specific LUCs are to be implemented, an adequate description of the same along with conditions for their use will be included in whatever decision document reflects the selected remedy for a Site as well as in the associated LUCIP. Additionally, Appendix C contains standard language for inclusion in such documents as CERCLA RODs or DDs, Remedial Action Plans (RAPs), closure or post closure plans for RCRA regulated units or formal modifications to a facility's RCRA/HSWA permit, or in separate approval or No Further Remediation (NFR) letters issued by U.S. EPA or Illinois EPA, whichever has oversight authority over the Site in question.

IX. FUTURE PROPERTY CONVEYANCE

Should the decision later be made to transfer to any other agency, private person or entity, either title to, or some lesser form of property interest (e.g., an easement or right of way) in any Site on **(Installation Name)** with an existing LUC(s), then **(Installation Name)** shall ensure:

a. U.S. EPA and Illinois EPA are provided with notice at least sixty (60) days prior to any such intended conveyance. Such notice must: (1) indicate the mechanism(s) intended to be used to reasonably ensure any LUC(s) needing to remain in place after interest conveyance will be maintained; and (2) include an assurance that (**Installation Name**) has fully advised the property disposal agent who shall prepare the deed(s) or other instruments that will be used to convey the property of the need to include those LUCs that must remain on the property in those documents.

b. All existing "NFR" determinations (or their equivalent) issued by U.S.EPA or Illinois EPA, have been appended to this Agreement and that a copy of the same is provided to the property disposal agent who will handle the conveyance of any Site with LUCs still in place.

c. Each LUC is reviewed and incorporated into those property disposal documents (e.g., **Environmental Baseline Survey for Transfer ("EBST") and Finding of Suitability for Transfer ("FOST"))** to meet CERCLA and 40 CFR 373 notice requirements and that copies of the following documents are made available by the property disposal agent to the intended transferee(s) for recordation as may be required by applicable federal or State law:

    1) All No-Further-Remediation (NFR) letter(s) or determinations (or their equivalent) issued by U.S.EPA or Illinois EPA as pertain to the property; and,

    2) All RODs or similar Site decision documents as pertain to the property.

d. Each transferee is given adequate notice of existing Site condition(s) and informed of the responsibility that they will be assuming for maintaining any LUCs previously implemented on the property. The notice will indicate that if the LUCs are not maintained, any NFR determination based on the LUCs may no longer be valid.

It is understood the planned conveyance of any Site with LUCs may prompt U.S. EPA or Illinois EPA to re-evaluate the continued appropriateness of any previously agreed upon LUC(s) based upon the level of assurance provided that all necessary LUCs will be adequately maintained.

X. CHANGE IN APPLICABLE STANDARDS

Nothing herein should be construed to preclude **(Installation Name)** from proposing at any time or from the Parties otherwise agreeing to effect the deletion of any Site from coverage under the terms of this Agreement on account of either: (i) a post-remedy implementation change to applicable Federal or State risk-based cleanup standards, or (ii) a change in previously documented contaminant concentration levels allowing for unrestricted use solely as a result of the effects of man induced or naturally occurring bioremediation/attenuation.

XI. FUTURE COMMUNICATIONS

Upon execution of this Agreement each Party shall notify the other Parties as to the name(s), address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of their respective representative(s) who should receive all correspondence and communications on behalf of the Party pertaining to all matters falling under the terms of this Agreement. The listing of agency POCs, which is attached hereto as Appendix D, will be updated by the Parties as appropriate.

XII. SITE ACCESS

(Installation Name) herein agrees to provide U.S. EPA and Illinois EPA representatives, contractors or consultants access to all Sites to be covered by this Agreement at all reasonable times consistent with military mission, national security and health/safety requirements upon presentation of proper credentials. The installation's (**Environmental Program manager)** or his/her designee will coordinate access and escort the regulatory personnel to restricted or controlled access areas, arrange for base passes and coordinate any other access requests that arise. Nothing in this Agreement is intended to be construed to limit in any way the right of entry or inspection, either U.S. EPA or Illinois EPA, may otherwise have by operation of law. U.S. EPA and Illinois EPA representatives will have the authority to enter and move freely around any Site at all reasonable times for purposes including, but not limited to, reviewing the efforts performed by **(Installation Name)** in complying with the terms of this Agreement; conducting such tests as these agencies may deem necessary and verifying all information/data submitted by **(Installation Name)** personnel pursuant to this Agreement.

XIII. DISPUTES

All Parties agree to engage in a good-faith effort to resolve any and all disputes, hereafter arising with regard to the (**Station's)** substantial good-faith compliance with the terms of this Agreement or other matters relating to the Sites addressed hereunder.

XIV. RESERVATION OF RIGHTS

It is agreed and understood U.S. EPA and Illinois EPA reserve all rights and authorities each agency may currently have or hereafter acquire by law to require **(Installation Name)** to comply with those federal and state laws and regulations applicable to the investigation, cleanup and long term maintenance of those Sites to be covered by this Agreement. Moreover, Illinois EPA specifically reserves the right to rescind any NFR letter or determination issued in connection with any Site covered under this Agreement if the LUC(s) associated with that Site(s) are not properly maintained. It is also understood the (**Commanding Officer), (Installation Name)** herein reserves those rights and authorities granted to the Department of Defense (DoD) by federal or state law, regulation, or executive order including, but not limited to, CERCLA, Executive Order 12580 (Superfund Implementation), and the National Contingency Plan (40 CFR Part 300). On behalf of the **Department of** the **(Navy, Army, Air Force), (the Commanding Officer) (Installation Name)** further reserves the right to put all property under his cognizance to those uses deemed necessary in his discretion for mission accomplishment or otherwise deemed necessary by appropriate military authority to meet the needs of the DoD.

XV. ANTI-DEFICIENCY ACT

Nothing in this Agreement will be construed as obligating the **(Navy, Army, Air Force)** or U.S. EPA, their officers, employees, or agents to expend any funds in excess of appropriations authorized for such purposes in violation of the federal Anti-Deficiency Act (31 U.S.C. Section 1341).

XVI. AMENDMENT

Any amendments to this Agreement shall be in writing**,** executed by the undersigned signatories or their duly authorized designees or successors and attached to this original Agreement.

XVII. TERMINATION

This Agreement will terminate at such time as the undersigned representatives of the Parties or their successors, mutually concur the aforesaid objectives of the Parties have been fulfilled and the need for such an Agreement no longer exists. Alternatively, any Party may unilaterally withdraw from this Agreement upon sixty (60) days written notice to the other Parties but only after reasonable efforts have first been made by all Parties to resolve the dispute(s) leading to the taking of such action. If any Party decides to unilaterally withdraw, the Parties shall nonetheless work towards resolving any outstanding issues as may exist between them. It is understood should the **(Navy, Army, Air Force)** choose to unilaterally withdraw from this Agreement, U.S. EPA and Illinois EPA may choose to

reconsider any remedy(ies) associated with any Site with a LUC still in place at the time of such withdrawal.

XVIII. REPRESENTATIVE AUTHORITY

Each undersigned representative of the Parties to this Agreement certifies she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute the same so as to effectively bind each Party to its terms.

XIX. EXECUTION

This Agreement shall become effective on the date the last of the authorized representatives of the Parties signs.

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:_____ Title:_____

Date: _____

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5

By:_____ Title:_____

Date: _____

FOR THE **DEPARTMENT OF THE (NAVY, ARMY, AIR FORCE**)

By:_____ Title:_____

Date: _____

APPENDIX A

LAND USE CONTROL
SITE LISTING

Date last updated: _____

Site:	LUCIP #:
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

APPENDIX B

LAND USE CONTROL
IMPLEMENTATION PLAN
FOR SITE _____

1. Site Description: (e.g., former fire fighting training area, approx. size 150' x 200' and contaminants of concern)

2. Site Location: (e.g., northeast corner of the Station between buildings 250 and 260 as reflected on BMP page _____/GIS index under IR Site or GPS information provided in decimal degrees to the nearest sixth digit).

3. LUC Objectives(s): (e.g., to restrict public access to an area for recreational use).

4. LUC(s) Implemented to Achieve Objective(s): (e.g., installation of a fence, warning signs, etc. . ., or BMP notations restricting residential or recreational usage).

5. Decision Document: (e.g., RoD/DD dated _____ or No Further Remediation (NFR) letter dated _____).

6. Other Pertinent Information:

APPENDIX C

SAMPLE ROD/DD
MOA INCORPORATION LANGUAGE

(Insert the following language in those RODs/DDs providing for the use of LUC(s).

By separate Memorandum of Agreement ("MOA") dated _____, with U.S. Environmental Protection Agency ("U.S. EPA"), the Illinois Environmental Protection Agency ("Illinois EPA"), and **(Installation Name**), on behalf of the **Department of the (Navy, Army, Air Force**), agreed to implement base-wide, certain periodic Site inspection, condition certification and agency notification procedure designed to ensure the maintenance by **(Installation Name**) personnel of any Site-specific Land Use Controls ("LUCs") deemed necessary for present and future protection of human health and the environment. A fundamental premise underlying execution of this agreement was through the **(Branch of Services**) substantial good-faith compliance with the procedures called for therein, reasonable assurances would be provided to U.S. EPA and Illinois EPA as to the permanency of those remedies that included the use of specific LUCs.

It is understood that the terms and conditions of the MOA are not specifically incorporated or made enforceable herein by reference. Should compliance with the MOA not occur or should the MOA be terminated, it is understood the protectiveness of the remedy concurred in may be reconsidered and additional measures may need to be taken to adequately ensure necessary future protection of human health and the environment.

APPENDIX D

AGENCY AND FACILITY POINTS OF CONTACT

ILLINOIS EPA

Name:

Address:

Phone:

U.S.EPA, REGION 5

Name:

Address:

Phone:

(INSTALLATION NAME)

Name:

Address:

Phone:

APPENDIX E

SITE NFR DETERMINATIONS