MEMORANDUM OF AGREEMENT
BETWEEN THE
U.S. DEPARTMENT OF ENERGY
OAK RIDGE OFFICE OF ENVIRONMENTAL MANAGEMENT AND
THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
REGARDING THE RECOVERY OF EXPENSES AS DESCRIBED IN
FEDERAL FACILITY AGREEMENT SECTION XXXV

WHEREAS, the Oak Ridge Site was included by the U.S. Environmental Protection Agency on the Federal Agency Hazardous Waste Compliance Docket established under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Title 42, U.S. Code §9620, at 53 Federal Register 4280 (Feb. 12, 1988); and

WHEREAS, the U.S. Department of Energy (DOE), U.S. Environmental Protection Agency, and the Tennessee Department of Environment and Conservation (TDEC) entered into an Interagency Agreement, known as the Federal Facility Agreement (FFA) for the Oak Ridge Reservation under Section 120 of CERCLA, Title 42, U.S. Code §9620 for the Oak Ridge Site; and WHEREAS, Section XXXV of the FFA addresses Recovery of Expenses for the parties, whereby DOE agrees to reimburse TDEC for costs specifically related to the implementation of the Interagency Agreement that are not inconsistent with the National Contingency Plan (NCP) (Title 40, Code of Federal Regulations, §300 *et seq.*); and

WHEREAS, Section XXXV B. 6. specifically states that "Any dispute arising under this section (e.g., a disputed cost item) is not subject to the process established by Section XXVI (Resolution of Disputes) of this Agreement, but will be resolved under the dispute resolution procedures established in the separate funding agreement between DOE and TDEC"; and

WHEREAS, DOE and TDEC (collectively referred to as "the Parties") are currently finalizing terms and conditions for the renewal of the separate funding agreement contemplated above; and

WHEREAS, since 1991, there has been an Appendix contained in the Tennessee Oversight Agreement listing categories for CERCLA costs and there is an intent to allow these categories to continue to define general areas of funding; and

WHEREAS, these activities are now listed as Attachment 1 to this Agreement.

NOW THEREFORE, in the interest of establishing a framework for the resolution of disputes that arise per Section XXXV B. 6. of the FFA, the Parties agree to the following:

1) Should either party dispute the amount and scope of costs covered by the funding provided by DOE associated with costs incurred by TDEC specifically related to the

implementation of this Agreement at the Oak Ridge Site that are not inconsistent with the NCP, they shall provide a Statement of Position for dispute in writing to the FFA Project Manager (per FFA Section XXVII) that sets forth:

a. The nature of the disputed funding item.

b. The work affected by the disputed funding item.

c. The parties' position relative to the disputed funding item.

d. This Agreement will be called the "Statement of Funding Dispute." Prior to issuing a Statement of Funding Dispute, the party disputing the amount and scope of costs covered by the funding shall have at least one informal discussion with the other party regarding the dispute in an effort to resolve the dispute prior to issuance of a formal Statement of Funding Dispute.

2) Attachment 1 identifies activities that are not inconsistent with the NCP; should TDEC require funding to carry out any of the listed activities in the attachment, there is a presumption that those activities are eligible for funding from DOE.

3) Both Parties' FFA Project Managers, with the assistance of any individuals deemed appropriate for the discussion, will seek to resolve the issue within 30 days of the receipt of the Statement of Funding Dispute. Any resolution shall be captured in a written Statement of Dispute Resolution executed by both Parties within seven days of the stated resolution.

4) Should either party fail to agree, the Statement of Funding Dispute shall be elevated above the FFA Project Managers to the Quality and Mission Support Division Director or Senior Advisor for the DOE Oak Ridge Office of Environmental Management and to the Director of Division of Remediation for TDEC (Funding Dispute Committee). These individuals may identify whomever they feel appropriate to attend the dispute discussions, so long as at least one attending representative is adequately empowered to resolve the dispute.

5) The Funding Dispute Committee shall, within 30 days of receipt of the Statement of Funding Dispute, resolve the issues associated with the Statement of Dispute. Any resolution shall be captured in a written Statement of Dispute Resolution executed by both Parties within seven days of the stated resolution.

6) Should either party fail to agree, TDEC reserves all rights under Federal and State law to recover any expenses or costs incurred in connection with activities on the Oak Ridge Site that are not inconsistent with the NCP.

7) Should either party fail to agree, DOE reserves all rights under Federal and State law to employ all legal and equitable defenses available.

8) This Agreement may be modified by the Parties. Any modification shall be reduced to writing, signed by both Parties, and shall be effective on the date of the signature of the authorized representative of the latter of the two Parties to the Agreement. This Agreement is linked to the FFA and as such, the Parties intend that this Agreement in principle will continue at least until termination of the FFA. The Parties agree to revisit this Agreement at least every five years, and after reviewing the terms and conditions, extending or modifying the Agreement as appropriate. This Agreement shall be incorporated by reference into the grant instrument used to deliver funding to TDEC; the Parties agree that, should the dispute resolution procedures required by Federal Regulation for Federal financial assistance distinguish from or disagree with the terms and conditions of this Agreement, then the dispute resolution procedures required by Federal Regulation for Federal financial assistance will be complied with.

Attachment:
Federal Facility Agreement Mutual Expectations for Grant #DE-EM-0001621

APPROVED:

John A. Mullis II, Manager
U.S. Department of Energy
Oak Ridge Office of Environmental Management

12/6/2017
Date

Robert J. Martineau, Jr., Commissioner
State of Tennessee Department of Environment
and Conservation

11-30-17
Date

ATTACHMENT 1

FEDERAL FACILITY AGREEMENT
MUTUAL EXPECTATIONS
FOR GRANT #DE-EM-0001621

The purpose of this attachment to the funding dispute procedures pursuant to Federal Facility Agreement (FFA) Section XXXV, *Amendment of Agreement*, is to identify categories of activities which the parties presumptively agree are consistent with National Contingency Plan as allowable costs. This attachment also includes certain U.S. Department of Energy (DOE) actions to which the parties agree that are important elements to meet mutual expectations for implementation of the FFA. This document shall not be construed to limit the authority of the State of Tennessee (State) to seek funding for any costs that associated with carrying out necessary work under the FFA and not inconsistent with the National Contingency Plan as allowed under Section XXXV.

I. The State is committed to: (1) participate in the planning, selection, and implementation of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial actions, and (2) make reports of State FFA and FFA-related oversight activities and associated results available to local governments and the public.

a. Multimedia Personnel

i. The State understands that the use of funds authorized by this Agreement are for services, personnel, and equipment that are directly related to FFA activities. The State shall not use FFA funds to support activities not related to the FFA Grant. To the extent that personnel, equipment, or services are used for both FFA and non-FFA activities, the State shall allocate its costs and charge to the FFA Grant only that portion of the cost of the personnel, equipment, or services that is used to support FFA program activities.

b. Natural Resources Damage Assessment

i. The Tennessee Department of Environment and Conservation (TDEC) Division of Remediation – Oak Ridge (DoR-OR) personnel, along with other Tennessee TDEC personnel, as required, will be involved in the Natural Resources Damage Assessment Program for the Oak Ridge Reservation. TDEC has historically and will continue to supply the State's representatives to the National Resources Damage Assessment Trustee Council for the Oak Ridge National Priorities List site.

c. Interagency Working Groups

i. TDEC DoR-OR personnel, along with other TDEC personnel, as appropriate, will participate in working groups formed under DOE's Agreements with other agencies (U.S. Environmental Protection Agency, Tennessee Valley

Authority, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Tennessee Wildlife Resources Agency, etc.) for FFA-related activities.

ii. TDEC DoR-OR will serve as a working member of the Watts Bar Interagency Working Group, which was formed by DOE, Tennessee Valley Authority, U.S. Army Corps of Engineers, and the State to monitor, evaluate, and make recommendations relative to potential sediment disturbance activities within the Watts Bar Reservoir downstream of the DOE facilities at Oak Ridge.

iii. TDEC DoR-OR and other TDEC personnel, as necessary, will participate in developing and initiating activities involving environmental policies and procedures related to the FFA. These activities could involve coordination between DOE and the public on both a local and national level, as well as participation in organizations such as the Association of State and Territorial Solid Waste Management Officials, the Interstate Technology and Regulatory Council, National Governors Association Federal Facilities Task Force, and the Environmental Council of the States.

d. Independent Verification

i. TDEC DoR-OR personnel will conduct independent environmental monitoring to support FFA work. The State's evaluation of environmental monitoring programs of DOE for the FFA may include, as appropriate, review of the following activities or systems relating to the FFA: monitoring protocol; system design; construction; operation and maintenance; sampling methodology; locations; frequency; procedures and parameters; quality assurance and quality control methodology; plans and implementation; data collection; verification and management systems; chain-of-custody procedures and implementation; and reporting methods.

e. Footprint Reduction

i. TDEC DoR-OR and other TDEC personnel, as necessary, shall participate in the review and oversight of Removal and Remedial Site Evaluation Surveys, including the review consistent with the FFA of all subsequent documentation. TDEC DoR-OR and other TDEC personnel will work with DOE to facilitate the transfer of DOE property, including document reviews and field oversight activities for Clean Parcel Determinations and Covenant Deferral Requests.

f. Comprehensive Monitoring Plans

i. TDEC DoR-OR and other TDEC personnel, as necessary, will participate in the review, evaluation and approval of the Comprehensive Monitoring Plans consistent with the FFA. The additional scope of work will include review and

approval of revisions to Comprehensive Monitoring Plans containing substantive Resource Conservation and Recovery Act (RCRA) requirements for the post-closure permitted units to be implemented through the CERCLA Land Use Controls program and integration of RCRA groundwater monitoring program with the CERCLA environmental monitoring program.

g. Oak Ridge Reservation Stakeholders and public information activities

i. TDEC DoR-OR and other TDEC personnel, as necessary, will participate with the DOE, EPA, and Oak Ridge Reservation (ORR) Stakeholders in public information activities related to FFA obligations, including but not limited to, legacy contamination investigations, and document reviews related to ORR future land use and land reuse activities.

ii. This will include participation as a TDEC liaison to the Oak Ridge Site Specific Advisory Board, TDEC liaison to the Oak Ridge Reservation Communities Alliance, hosting public information sessions, and responding to the local governments' and community's concerns, specific to FFA and Environmental Management activities.

h. Special Projects

i. TDEC DoR-OR and other TDEC personnel, as necessary, will perform special project activities in order to accomplish the goals of the FFA for the ORR. These projects may include additional field investigations, independent monitoring, and/or administrative support.

i. Land Use/Stewardship

i. TDEC DoR-OR and other TDEC personnel, as necessary, will assist DOE with the development of long-term stewardship of the ORR consistent with the FFA, including reviewing activities and documents, and providing comments and suggestions for improvements. It is anticipated that these activities will involve coordination between DOE and the public on both a local and national level.

j. FFA Waste Disposal Activities

i. TDEC DoR-OR and other TDEC personnel, as necessary, will perform document reviews and field oversight activities for the ORR Environmental Management Waste Management Facility. This activity is intended to assure that the DOE-operated facility adheres to compliance with the approved FFA plans.

ii. TDEC DoR-OR and other TDEC personnel, as necessary, will perform document reviews and field oversight activities for the DOE-proposed Environmental Management Disposal Facility.

k. Safety

i. TDEC DoR-OR personnel will maintain the necessary programs, equipment, training, and procedures to conduct grant activities in a safe manner.

l. Assessment of Activities

i. TDEC DoR-OR and other TDEC personnel, as necessary, will assess or audit activities performed by DOE and their contractors to determine if the activities are consistent with the FFA.

m. Regulatory Integration

i. TDEC DoR-OR and other TDEC personnel, as necessary, will continue to identify areas where integrations between CERCLA, RCRA, and/or other regulatory requirements are needed and recommend appropriate actions necessary to resolve the issues.

n. Public Health Advisories

i. The Tennessee Department of Health will work closely with TDEC and local stakeholders on public health issues related to the FFA. If TDEC suspects public exposure to pollutants, supporting environmental sampling data will be provided to Tennessee Department of Health for evaluation. TDEC DoR-OR personnel, along with other TDEC personnel, as necessary, will conduct surveys and actions in support of public health advisories on waterways in and adjacent to the ORR.

o. Staff Activities

i. All of these activities will require significant TDEC involvement, both management and staff level. Examples of managerial activities will include FFA prioritization, milestone scheduling, modifications, budget reviews, finalization of decision documents and routine FFA administrative oversight. Examples of administrative functions will include implementation of grant requirements and the preparation and submittal of reports on activities, including but not limited to, preparation of grant applications, reporting, and compliance monitoring.

ii. Staff activities will involve intensive reviews of CERCLA documentation, comment preparation and resolution, as well as field activities to audit remedial actions to insure compliance with Tennessee State law applicable or relevant and appropriate requirements. Field activities have the potential of significantly intensifying, dependent upon actual concurrent remedial actions.

iii. TDEC DoR-OR personnel will provide administrative support to the TDEC in the strategic planning and the development of annual work plans, as they pertain to ORR cleanup. TDEC DoR-OR personnel will be involved in providing public reports, presentations, and information; the development of environmental policy; review of National Environmental Policy Act documentation; preparation of reports for legislative committees; as well as reviewing and analyzing proposed environmental legislation potentially affecting DOE ORR.

II. DOE is committed to conduct environmental restoration work to protect the public health and the environment consistent with the CERCLA, DOE orders and the FFA. DOE will continue to support open communications with TDEC on environmental issues, including the following important elements that assist in meeting the parties' mutual expectations for implementing the FFA:

a. Monitoring and Surveillance Data

i. Upon request, the DOE will furnish data and analytical results associated with the Oak Ridge Office of Environmental Management integrated environmental restoration sampling, as well as DOE's ORR environmental surveillance program to the State.

ii. DOE will provide sufficient resources to the State to support the State's evaluation of the DOE Surveillance and Maintenance program for facilities listed in the FFA Appendix C as contained in the associated Grant. Funding from the Oak Ridge Office of Environmental Management will support TDEC in utilizing and integrating its oversight and monitoring programs to support environmental restoration activities including funding for office space and personnel.

b. Oak Ridge Reservation Access

i. DOE will continue to use its best efforts to expedite the review and approval of access authorization applications for the State and its contractors' employees, in numbers appropriate and necessary to carry out the terms and conditions of this Agreement and related financial assistance agreements.

ii. Per the authority of DOE under Executive Order 12968, State representatives with the necessary security clearance will be granted access to ORR restricted areas to perform functions set forth in this Agreement. Access will be granted, provided applicable safety and security requirements are not compromised. DOE will issue appropriate picture badges to State representatives with the necessary security clearance. State representatives will contact DOE/Contractor personnel before entering a restricted area. Consistent with applicable classification requirements, DOE will make available (or provide access) to the State upon request DOE documents or reviews that are within the scope of this Agreement. Routine "need-to-know" restrictions and requirements for periodic security briefings will apply to State representatives. While it is not expected that any classified information will be generated by activities under this Grant, it is expected that

from time to time, the State may have access to classified information at certain DOE sites. In the event that there is access to classified information, Grantee agrees to properly safeguard the information, agrees not to disclose any classified information (as well as Unclassified Controlled Nuclear Information, Official Use Only, Business Sensitive, Proprietary and Personally Identifiable Information), and agrees to conform to all security regulations and requirements of DOE. As requested by the State, DOE will clarify and provide written explanation to the State of the "need-to-know" security information requirements specified in DOE and other Federal security requirements governing classified and sensitive unclassified information (e.g., Title 10, Code of Federal Regulations, Parts 1016 and 1017, Executive Order 12356, and DOE Order 5635.1A) that apply to access to certain types of information or areas on the ORR.

iii. DOE will provide access to the State to all FFA-related data, consistent with the terms below. In carrying out the provisions of this Agreement, the parties will comply with applicable security laws and regulations, Privacy Act and Freedom of Information Act requirements, and trade secret, patent and related confidentiality requirements. Information designated by DOE as "classified" in accordance with applicable laws, regulations or Executive Orders or which otherwise is entitled to confidentiality under applicable laws, regulations or orders shall not be released by the State unless authorized by DOE pursuant to applicable laws, regulations or Executive Orders. Documents provided by either party under this Agreement shall be, unless otherwise agreed by the parties and consistent with applicable laws and regulations. These agency documents represent the parties' considered position on the issues addressed therein. Where the DOE has determined, pursuant to applicable laws and regulations, that information or documents are entitled to confidentiality, the State will have "View Only" access to such information or documents until it provides DOE with written assurance that the State will maintain the confidentiality of such information or documents, at which time copies will be provided to the State. Nothing in this Agreement shall affect the rights either party may have under the Freedom of Information Act or other applicable laws and regulations.

c. Financial and Technical Assistance

i. DOE will provide funding for the State to participate in the planning, selection, and implementation of CERCLA remedial actions, including but not be limited to, review and comment on all applicable data collected under the FFA, as well as studies, reports, action plans, and applicable or relevant and appropriate requirements. This will also include assistance for joint and independent monitoring and oversight of FFA-related activities.

ii. DOE will support periodic split sampling with the State and/or State performance of independent environmental surveillance and monitoring as necessary to verify the effectiveness of DOE's FFA remedies, as well as delineation of an extent of legacy contamination.

iii. All funds provided to the State under this Agreement are Federal funds to be administered by the State, consistent with the terms and conditions of the Grant and DOE Financial Assistance Rules set forth in Title 10, Code of Federal Regulations, Subchapter H, Part 600. DOE will provide technical support and training, if requested by the State, to support the intent of this Agreement and associated Grant as appropriate.