

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF REMEDIATION
BROWNFIELD VOLUNTARY AGREEMENT

RE: South Waterfront Development: Park and Road Redevelopment Project

SITE NUMBER: ID 47-584

INTRODUCTION

This Brownfield Agreement (hereinafter “AGREEMENT”) is made and entered into as of _____, 2010, by and between the Tennessee Department of Environment and Conservation (hereinafter “Department”), and the City of Knoxville, Tennessee (hereinafter “City”) for the purpose of addressing an approximately 13-acre portion (hereinafter “Redevelopment Site”, shown in Exhibit A), of the above-referenced site which has the real or perceived threat of the presence on the Redevelopment Site of hazardous substances, solid waste, or any other pollutant. The Effective Date of this AGREEMENT is the thirtieth (30th) day after the publication of the notice described in Section F of this Agreement.

James H. Fyke is the duly appointed Commissioner of the Department. Robert A. Binford, Director of the Department’s Remediation Division, has been delegated the authority to enter into these Brownfield Agreements.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into a voluntary agreement with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site or Brownfield Project and who did not generate, transport or release the contamination that is to be addressed at the Redevelopment Site.

REQUIREMENTS

A. REDEVELOPMENT SITE LOCATION

The Redevelopment Site is located in the City of Knoxville, Tennessee, 37920, and is in the eastern portion of the South Knoxville Redevelopment Area. The Redevelopment Site includes portions of 701 Langford Ave, 901 Langford Ave., 939 Langford Ave., 1015 Phillips Ave., 1100 Phillips Ave., 1101 Phillips Ave., and 1200 Island Home Ave. Drawings showing the properties within the project boundary of the Redevelopment Site are attached as Exhibit A.

B. ELIGIBILITY

As required by T.C.A. § 68-212-224, a summary description of all known existing environmental investigations, studies, reports or documents concerning the Redevelopment Site's environmental condition has been submitted to the Department by the City.

On the Effective Date of this AGREEMENT, the Department has determined that the Redevelopment Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency (EPA). By entering into this AGREEMENT, the City certifies to the best of the City's knowledge that the City did not generate, transport or release contamination that is to be addressed at this Redevelopment Site.

C. FINANCIAL REQUIREMENTS

Since the City did not generate, transport, or release contamination that is to be addressed at the Redevelopment Site and will be serving the public welfare by redeveloping portions of properties that are abandoned or underutilized, the participation fee is hereby waived.

The Department further agrees to waive oversight fees for the approximate 13-acre portion of the South Waterfront Development Park and Road Redevelopment Project addressed under this Agreement.

D. IDENTIFICATION AND DOCUMENTATION OF CLEANUP

The environmental conditions on the Redevelopment Site are based on information submitted to the Department by or on behalf of the City, and the Department's own review and investigation of the Redevelopment Site. The Parties agree that the areas to be addressed under this AGREEMENT include the entire Redevelopment site as depicted in Exhibit A.

The following documents have been prepared and relied upon for assessment of the environmental site status and provided to the Voluntary Cleanup, Oversight, and Assistance Program (VOAP):

- MACTEC Engineering and Consulting, Inc., 2009, Soil Management Plan, South Waterfront – River Plain Park. Prepared for the City and presented to the Department December 2009.
- MACTEC Engineering and Consulting, Inc., 2008, Remedial Action/ Environmental Redevelopment Strategy Report, South Waterfront – River Plain Park. Prepared for the City and presented to the Department December 2008.
- Professional Environmental Consulting, Inc., 2008, Report of Phase I Environmental Site Assessment (ESA) – Knoxville South Waterfront Properties, Knoxville, Tennessee (February 2008). Prepared for Knoxville's Community Development Corporation (KCDC) on behalf of the City in March 2008 and shared with the Department April 2008.

- Professional Environmental Consulting, Inc., 2008, Report of Phase II Environmental Site Assessment (ESA) – Knoxville South Waterfront Properties, Knoxville, Tennessee (March 2008). Prepared for Knoxville’s Community Development Corporation (KCDC) on behalf of the City in March 2008 and shared with the Department April 2008.
- Exposure Assessment Report, Chevron Facility #211997 for 701 Langford Ave., Knoxville, Tennessee, TDEC ID #2-470668 (March 2003). Prepared by Pangean Solutions, Inc. for TDEC on behalf of Chevron Products Company. Resulted in No Further Action Letter from Department’s Division of Underground Storage Tanks, August 2003.
- Remedial Action/Environmental Redevelopment Strategy Report and Supplemental Sampling Plan, South Waterfront – River Plain Park. Prepared by MACTEC for the City April 2009. Shared with the Department May 2009.

The contaminants addressed by this AGREEMENT include all those related to the conditions identified in the above reports, including without limitation Volatile Organic Carbons (VOCs – 8260B), polyaromatic hydrocarbons (PAHs – 8270C), Resource Conservation and Recovery Act Metals (RCRA Metals – 6020B), and polychlorinated biphenyls (PCBs) as described in Section 4.0 Proposed Sampling Activities in the Remedial Action/Environmental Redevelopment Strategy Report and Supplemental Sampling Plan, South Waterfront – River Plain Park. The City and the Department agree that no groundwater samples will be taken, except if the site owner proposes residential usage or other closed structures where vapor intrusion or an explosion hazard may pose a potential threat to human health or safety, groundwater samples may be needed to demonstrate whether the site poses an unacceptable threat.

E. AGREED LIABILITY RELIEF

Real or perceived hazardous substances, solid wastes, or other pollutants may be present on this Redevelopment Site to an extent that may or may not have yet been fully characterized. As the current owner or operator, or upon becoming an owner or operator of the Redevelopment Site, the City may occupy the status of a “liable party” pursuant to the definition of that term contained in T.C.A. § 68-212-202(4). Liability may be apportioned pursuant to factors in T.C.A. § 68-212-207 as well as other equitable factors. The Commissioner is authorized to determine an apportionment of liability within this AGREEMENT as authorized by T.C.A. § 68-212-224.

The Commissioner agrees that the City’s implementation of the actions agreed upon in Section H, additional work requested by the Department to be appended to this AGREEMENT under Section H5, operation and maintenance activities, and continued adherence and enforcement with any Notice of Land Use Restrictions imposed pursuant to or as a result of this AGREEMENT will constitute satisfaction of the apportioned liability of the City under all environmental statutes administered by the Department for the contamination identified in Section D of this AGREEMENT. The City, however, remains potentially responsible for any release of hazardous substances or other pollutants that occurs at the Redevelopment Site while it owns or operates the Redevelopment Site.

Following the completion of the activities required in this AGREEMENT and contingent upon the continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this agreement, the City shall bear no liability under any statute administered by the Department, for investigation, remediation, monitoring and/or maintenance of the environmental conditions identified and addressed in this AGREEMENT, (1) during the implementation of the response activities required hereunder, as long as the City is and remains in compliance with the terms and condition of this AGREEMENT, and/or (2) following the completion of such response activities required under this AGREEMENT; provided, however, that to the extent that the City has or maintains an interest in the Redevelopment Site, or possesses and/or controls all or a portion of the Redevelopment Site, its liability protections hereunder are contingent upon the continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this AGREEMENT. This Order also constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the effective date of this Order, resolved their liability, whether potential or actual, to the State of Tennessee for the environmental conditions, hazardous substances, contamination, solid wastes and/or other pollutants identified in and matters addressed by this AGREEMENT. Contingent upon compliance with this Order, to the full extent allowed by law, the Respondents shall bear no liability under CERCLA, 42 U.S.C. § 9613(f)(3)(B). Notwithstanding the foregoing, nothing in this AGREEMENT shall limit the liability of the City for contamination occurring after the date of this AGREEMENT. This liability protection is extended to successors in interest or in title, contractors conducting response actions at the Redevelopment Site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the obligations contained in this AGREEMENT and compliance with any land use restrictions required thereby; however, this liability protection does not apply to liability that arose prior to this AGREEMENT.

F. THIRD PARTY LIABILITY RELIEF

The City shall not be liable to third parties for contribution regarding matters addressed in this AGREEMENT; provided that, the City gave the third party actual or constructive notice of this AGREEMENT, and the third party was given an actual or constructive opportunity to comment upon this AGREEMENT. The City has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this AGREEMENT in the Knoxville News Sentinel and in the South Waterfront Newsletter at least thirty (30) days prior to the Effective Date of this AGREEMENT. Nothing in this Agreement shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by the voluntary agreement.

This AGREEMENT is intended by the parties to be an approved administrative settlement within the scope of U.S.C. § 9613 (f)(2)&(3).

G. LAND USE RESTRICTIONS

Upon acquiring the Redevelopment Site, the City agrees that said property will be restricted by imposing the following land use restrictions:

1. Installation of groundwater wells for the intended use as a potable water source is prohibited. If groundwater wells for other purposes are proposed, the Site owner must demonstrate to the satisfaction of the Department that such proposed use will not pose a danger to public health, safety, or the environment.
2. Prior to any part of the Site being used for a residence, the Site owner at the time of such action must notify TDEC and must demonstrate to the satisfaction of TDEC that any such proposed use listed above will not pose a danger to public health, safety, or the environment.
3. Identification of any area(s) where soil or other contamination or pollution remains, after completion of activities in this AGREEMENT, that must be managed to protect human health, safety, or the environment and requirements for soil management and/or maintenance of any covers or caps.

The City agrees to record a Notice of Land Use Restrictions containing the above restrictions with the Knox County Register of Deeds, prior to redevelopment of the Redevelopment Site. The City agrees that it will file any land use restriction identified by the Department as necessary for the safe use of the property in accordance with T.C.A. § 68-212-225.

H. AGREED ACTIONS TO BE TAKEN

1. The City agrees to send notification of this AGREEMENT by certified mail to all local governments having jurisdiction over any part of the Redevelopment Site and to all owners of adjoining properties. The City shall provide adequate documentation to demonstrate that public notice has been accomplished.
2. During the installation of subsurface improvements such as utilities, any soil that is excavated can be placed back into the excavation, provided it has not been containerized at any time. To clarify this point, soil can be excavated and placed on the ground surface or on plastic. Any soil placed into a drum, roll-off container, or any other container will be characterized and properly disposed of in accordance with applicable local, state and federal regulations. It is the intent of both parties that the excavated soil be placed back into the original excavation as closely as possible to the point of origin. The City and TDEC may agree to consolidate contaminated soil in mutually agreeable onsite areas to minimize areas requiring future soil management or for other beneficial purposes. The Department recognizes that not all of the excavated soil will be suitable for backfill in the excavation, and therefore some movement of the soil within the Site will be allowed. Placement of the soil into a dump truck for the purpose of transporting it within the Site limits is not considered containerization of the waste.

3. The Department recognizes that the City has completed a review of pertinent Redevelopment Site background information and the results of previous investigations as required by Rule 1200-1-13-.09(2)(a)1. A summary of the findings of this review and the strategy that will guide sampling and remediation at the Redevelopment Site is presented in the “Remedial Action/Environmental Redevelopment Strategy Report, South Waterfront – River Plain Park” (MACTEC, 2008).
4. The City agrees to perform the work set forth in that certain Work Plan and the City shall submit a written report of its findings to TDEC within ninety days of completion of such work.
5. The Department recognizes that the City has completed a soil management plan for construction. A summary of the strategy that will guide the grading process at the Redevelopment Site is presented in the “Soil Management Plan, South Waterfront – River Plain Park” (MACTEC, 2009).
6. The City agrees to perform the work set forth in that certain Soil Management Plan and the City shall submit a written report of its findings to TDEC within ninety days of completion of such work. The report shall include as built drawings and details of any capping or, if necessary, offsite disposal activities including waste manifests. The report shall also identify any areas where soil remains at the Redevelopment Site that must be managed in the future to protect human health, safety, or the environment and requirements for future soil management and/or maintenance of any covers or caps.
7. The City agrees to remove and document the removal of the unauthorized surface discharge pipes(s) identified at 701 Langford Ave. (MACTEC, 2008). The City will notify the Department of these activities so the Department may sample or further document said removal.
8. Upon completion of all construction and demolition activities, the Voluntary Party agrees to file Notice of Land Use Restriction (LUR) that has been approved by the Department with the Knox County Register of Deeds and shall provide adequate documentation to demonstrate that the LUR notice has been accepted.
9. Upon completion of all tasks set forth in this AGREEMENT, the Department shall issue to the City a letter stating the requirements of this AGREEMENT have been fulfilled and no further action is required of the City concerning contamination identified and addressed in this AGREEMENT. Upon the request of the City from time to time, the Department shall issue an interim status letter identifying what specific obligations remain to achieve completion of the work under this AGREEMENT. Issuance of a no further action letter shall not relieve the City of any responsibilities for operation and maintenance activities or continued adherence to and enforcement of land use restrictions, if any, pursuant to T.C.A. § 68-212-225. The Department reserves the right to require additional

action for contamination caused by the City occurring after the date of this AGREEMENT or for contamination not identified and addressed under this AGREEMENT, if any.

I. ADDITIONAL REQUIREMENTS

- 1) The City may request a time extension for any deadline included in this AGREEMENT prior to the deadline. The time extension may be granted through mutual consent for good cause shown.
- 2) The City agrees not to disturb, move or remove any areas of hazardous substances, solid waste or other pollutant(s) that are subject to liability protection under this AGREEMENT without written approval by the Department unless the activities are being conducted under the terms and conditions of this AGREEMENT or necessitated by the normal day-to-day activities of any on-going business.

J. REDEVELOPMENT SITE ACCESS

During the effective period of this AGREEMENT, and until certification by the Department of completion of all activities under this AGREEMENT, the Department and its representatives or designees shall have access during normal business hours to the Redevelopment Site. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation or permit. The Department and its representative(s) shall comply with all reasonable health and safety plans published by the City or its contractor and used by Redevelopment Site personnel for the purpose of protecting life and property.

K. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

The person signing on behalf of the City certifies under penalty of law, including but not limited to penalties for perjury, that the information contained in all submissions is true, accurate and complete to the best of their knowledge, information and belief. The City is aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violation.

L. RESERVATION OF RIGHTS

1. This AGREEMENT shall not be construed as waiving any right or authority available to the Commissioner to assess liable and/or responsible parties other than the City for liability for civil penalties or damages incurred by the State, including any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of CERCLA or any other statute, rule, regulation or common law.
2. Nothing in this AGREEMENT shall be interpreted as limiting the City's right to preserve the confidentiality of attorney work product or client-attorney communication. T.C.A. § 68-212-202 et seq. contains no provisions for

confidentiality or proprietary information. Therefore, records, reports, test results, or other information submitted to the Department under this AGREEMENT shall be subject to public review. Any and all records, reports, test results or other information relating to a hazardous substance site or the possible hazardous substance at the Redevelopment Site submitted under this AGREEMENT may be used by the Department for all purposes set forth in T.C.A. § 68-212-201 et seq.

- 3. The City may terminate this AGREEMENT at any time upon written notice to the Department. Upon such termination, the City shall have no further obligations hereunder other than adherence to any notice of land use controls filed under TCA 68-212-225; provided, that both Parties shall have and retain all authority, rights and defenses as if this AGREEMENT had never existed.

- 4. The Department may terminate this AGREEMENT by written notice to the City in the event that the Department receives timely comments from third-party contribution claim holders pursuant to the notice sent under Section F of this AGREEMENT, if any, and such comments disclose facts or considerations that indicate that this AGREEMENT is inappropriate, improper or inadequate; provided, however, absent fraud or intentional misconduct, that in such event the City may elect to waive the protections set forth in Section F hereunder and the remainder of the terms and conditions of this AGREEMENT shall continue to be in full force and effect. The Department’s notice of termination must be made within thirty (30) days of the end of the 30-day notice period required by Section F. The City’s waiver notice must be made within fifteen (15) days after receipt of the Department’s termination notice.

- 5. Nothing in this AGREEMENT shall be interpreted as limiting the liability for the improper management and/or disposal of contaminated material removed from the Redevelopment Site.

The individual(s) signing below on behalf of the City represents that he is a duly authorized agent, capable of entering into a binding AGREEMENT on behalf of the City. By entering into this AGREEMENT, this individual certifies that the City did not generate or did not cause to generate, transport or release contamination that is to be addressed at this Redevelopment Site.

AGREED to by the parties as of the day and year first above written.

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| Date | Robert A. Binford Director Division of Remediation | Date | City of Knoxville By: Bill Haslam Title: Mayor |

