

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

RE: Sanitary Laundry – 625 Broadway, Knoxville

SITE NUMBER: 47-545

INTRODUCTION

This Brownfield Voluntary Agreement (hereinafter “AGREEMENT”) is made and entered into as of _____, 201_, by and between [among] the Tennessee Department of Environment and Conservation (hereinafter “Department”), and _____, a _____ [e.g., organized under and existing pursuant to the laws of the State of Tennessee] (hereinafter [collectively] “Voluntary Party”) for the purpose of addressing a 0.4 acre portion of the above-referenced site (hereinafter “Site”), which has the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or any other pollutant.

Robert J. Martineau, Jr. 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 Agreements.

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

REQUIREMENTS

A. SITE LOCATION

The Site is located at 625 Broadway, Knoxville, Knox County, Tennessee and is shown in Exhibit A. The Site is approximately 0.4 acres in size and has a Knox County Parcel

Identification of Parcel 094DP013. A legal description of this tract is contained in Deed Book _____ Page _____ and is attached hereto as Exhibit B.

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 Site’s environmental condition has been submitted to the Department by the Voluntary Party.(A copy of the Summary is attached hereto as Exhibit C). On the date of entering into this AGREEMENT, the Department has determined that the 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 Voluntary Party certifies to the best of the Voluntary Party’s knowledge that the Voluntary Party did not generate, transport or release contamination that is to be addressed at this site.

C. FINANCIAL REQUIREMENTS

Tennessee Code Annotated § 68-212-224 requires consideration of a fee to enroll in the Voluntary Cleanup Oversight and Assistance Program. The Commissioner has determined that a fee of three thousand dollars (\$ 3,000.00) DOLLARS is appropriate for the Site. This payment must accompany this AGREEMENT when it is signed on behalf of the Voluntary Party and returned to the Department. The Commissioner has set the following schedule of additional fees that apply to all sites working in cooperation with the Department to recover the expense of oversight. These fees are in place of hourly time charges and normal travel costs during the first 150 hours of oversight for the project.

Program Entry	\$ 750
Site Characterization	\$ 2,000
Remediation	\$ 2,500
Risk Assessment	\$ 2,000
Site Specific Ground Water Classification	\$ 2,000
Remedy Requirement Institutional Controls	\$ 500
Annual O&M Review	\$ 500

In addition to the fees identified previously, an annual longevity fee of \$3,000 will be charged to the Site on the anniversary of the date the site entered the program until a letter requiring no further action has been issued or this AGREEMENT has been terminated.

Upon reaching 150 hours of oversight, the Site will be charged the current hourly rate (e.g. seventy-five dollars (\$75.00) per hour for FY 2009-2010) per hour of oversight in addition to the fee schedule listed above. This amount includes the current hourly rate and pro rata portion of benefits for the Department's employees actively employed in oversight of work under this AGREEMENT, including preparation for and attendance at meetings, mileage, and the current State overhead rate. Additionally, any out-of-pocket expense, mileage, lab expense and costs including the State's current overhead rate, costs billed by State contractor(s) who are actively performing oversight or other unusual costs to the Department shall be billed to and paid by the Voluntary Party.

Fees must be paid to remain in the Voluntary Cleanup Oversight and Assistance Program and to receive a letter of no further action under Section H of this AGREEMENT.

D. IDENTIFICATION AND DOCUMENTATION OF CLEANUP

Based on the information submitted to the Department by or behalf of the Voluntary Party, and the Department's own review and investigation of the Site, the Parties hereto agree that the following environmental conditions are to be addressed under this AGREEMENT:

Sanitary Laundry and Dry Cleaning Company operated a dry cleaning facility at the site for approximately 60 years in the 1900's. During this time, petroleum products and dry cleaning fluids were stored in aboveground storage tanks, underground storage tanks, and drums. These materials were actively used for dry cleaning, laundry, and delivery vehicle fuel supply during the time of operation.

Investigation in 1993 indicated surface soil and groundwater on the Site were contaminated with hazardous substances including, but not limited to, petroleum hydrocarbons and chlorinated solvents. Impacts were the result of leaks from storage tanks and drums, as well

as, spills resulting from improper material handling. Two underground storage tanks used for petroleum products were subsequently removed in 1993.

The Site was added to the List of Inactive Hazardous Substance Sites by action of the Tennessee Solid Waste Disposal Control Board in 1994 and became Site #47-545, Sanitary Laundry and Dry Cleaners. TDEC initiated an emergency removal action in 1994 that containerized and disposed of the contents of an underground storage tank and two barrels of dry cleaning fluid, one of which was leaking. The underground storage tank contained fluid primarily consisting of water with trace levels of benzene, trichloroethene, and other hydrocarbons. A Notice of a Hazardous Substance Site was filed with the Knox County Register's Office on the Site in 1997. An Imminent, Substantial Danger Memorandum was issued by the Commissioner in 1999 due to the presence of multiple fifty-five (55) gallon drums of hazardous substances on the site. Access at the time was uncontrolled and there existed the potential for explosion and/or fire. TDEC initiated an emergency removal of the drums in October 1999.

The City of Knoxville, through an EPA Brownfields Assessment Grant (BF-95443509-1) completed additional investigation of the Site. The results of this study show there to be a continued presence of hazardous substances in the groundwater, soil, and air that include, but are not limited to, petroleum hydrocarbons and chlorinated solvents. Tetrachloroethylene and trichloroethylene were observed in the soil gas below the building with a maximum concentration of 68,000 $\mu\text{g}/\text{m}^3$ and 10,000 $\mu\text{g}/\text{m}^3$, respectively. These constituents also exceeded the EPA Regional Screening Levels for industrial facilities in the ambient air within the structure; a maximum concentration of tetrachloroethylene in ambient air was observed at 46 $\mu\text{g}/\text{m}^3$ and trichloroethylene at 6.4 $\mu\text{g}/\text{m}^3$.

E. AGREED LIABILITY RELIEF

T.C.A. § 68-212-224(a)(5) provides that, TDEC is authorized to limit the liability of a participant in a voluntary agreement or consent order entered into pursuant to T.C.A. § 68-212-224. Such voluntary agreement or consent order may limit the liability of such participant to the obligations set forth therein and exempt the participant from any further liability under any

statute administered by TDEC for investigation, remediation, monitoring, and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. TDEC may extend this liability protection to successors in interest or in title to the participant, contractors conducting response actions at the Site, developers, future owners, tenants, and lenders, fiduciaries or insurers (collectively "Successor Parties").

In accordance with the above referenced authority, TDEC agrees that other than with respect to the obligations set forth in this AGREEMENT, the Voluntary Party and Successor Parties (as hereinafter defined) shall bear no liability to the State of Tennessee under any statute administered by the Department for investigation, remediation, monitoring, treatment and/or maintenance of contamination identified in and addressed in this AGREEMENT (collectively referred to as the "*Matters Addressed in this Agreement*"); provided, however, that to the extent that the Voluntary Party or Successor Parties (as hereinafter defined) has or maintains an interest in the Site, or possesses and/or controls all or a portion of the Site, its liability protections hereunder are contingent upon its continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this AGREEMENT, adherence to the soil management plan, and vapor mitigation system operation and maintenance described the Section H Agreed Actions to be Taken. Nothing in this AGREEMENT shall be construed as limiting the liability or potential liability of the Voluntary Party for contamination occurring after the effective date of this AGREEMENT. This liability protection and all other benefits conferred by this AGREEMENT are extended to all future "Successor Parties" conditioned upon performance of the obligations contained in this AGREEMENT, compliance with the Land Use Restrictions (hereinafter defined); provided and adherence to the soil management plan, and vapor mitigation system operation and maintenance described the Section H Agreed Actions to be Taken, that such liability protection to other persons does not apply to liability to the extent that such liability arose prior to the effective date of this AGREEMENT.

F. ADMINISTRATIVE SETTLEMENT; THIRD PARTY LIABILITY (include first sentence below for inactive hazardous substance sites (including hazardous waste sites) only)

This AGREEMENT also constitutes an administrative settlement for purposes of Section 113(f) of CERCLA, 42 U.S.C. §9613(f), pursuant to which the Voluntary Party and Successor

Parties (as hereinafter defined) have, as of the effective date of this AGREEMENT, resolved their liability to the State of Tennessee for *Matters Addressed in this Agreement*.

The Voluntary Party shall not be liable to third parties for contribution regarding *Matters Addressed in this Agreement*; provided that, the Voluntary Party 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 Voluntary Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this AGREEMENT in the Knox News Sentinel 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.

G. LAND USE RESTRICTIONS

Upon acquiring the Site, the Voluntary Party agrees that said property will be restricted as follows:

1. Prior to any part of the Property being used for a residence, domicile, daycare, school, or church, the Grantor, its successors, and/or assigns must notify TDEC Division of Remediation and must demonstrate to the satisfaction of TDEC Division of Remediation that any such proposed use listed above will not pose a danger to public health, safety, or the environment.
2. Prior to the removal of soil from the Property, the Grantor, its successors, and/or assigns must notify TDEC Division of Remediation and must demonstrate to the satisfaction of TDEC Division of Remediation that any such proposed soil removal will not pose a danger to public health, safety, or the environment.
3. The Grantor, its successors, and/or assigns must notify TDEC Division of Remediation prior to any invasive activity on the Property including soil borings or potable groundwater wells. The Grantor, its successors, and/or assigns must demonstrate to the satisfaction of TDEC Division of Remediation, through sampling

and analysis approved by TDEC Division of Remediation, that any invasive activity will not pose a danger to public health, safety, or the environment.

4. Any new building construction on the property shall incorporate an engineered vapor mitigation system designed to prevent subsurface vapor phase contamination from migrating into the structure at concentrations greater than applicable screening levels. Said vapor mitigation system plans shall be developed and certified by a professional engineer and provided to the TDEC Division of Remediation for review prior to construction. After installation, the professional engineer shall submit a written report to the TDEC Division of Remediation documenting how the system was installed, any deviations from the plans the engineer provided to TDEC Division of Remediation, as-built drawings stamped by a professional engineer, and an Operation and Maintenance Plan identifying continued care, and operation, and maintenance activities to be conducted to ensure the venting system is effective in preventing subsurface vapor phase contamination from migrating into the structure at concentrations greater than applicable screening levels. .
5. The Grantor, its successors, and/or assigns shall be responsible for continued care, operation, and maintenance of the remedy. The Grantor, its successors, and/or assigns shall notify TDEC Division of Remediation in writing if the integrity of the remedy is compromised and take any steps necessary to eliminate the threat or potential threat to public health, safety, or the environment posed by the hazardous substance(s).

The Voluntary Party 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. Any Party receiving liability protection under this AGREEMENT that seeks approval for restricted uses or seeks to cancel or make a Restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification. Upon filing, a copy of this notice shall be mailed to all local governments having jurisdiction over any part of the subject property.

H. AGREED ACTIONS TO BE TAKEN

1. The Voluntary Party agrees to send notification of this AGREEMENT by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. The Voluntary Party shall provide adequate documentation to demonstrate that public notice has been accomplished.
2. The Voluntary Party agrees that criteria required in TCA 68-212-206(d) shall be used in determining containment and cleanup actions, including monitoring and maintenance options, to be followed under this Agreement.
3. The Voluntary Party agrees to equip all building structures with an engineered vapor mitigation system designed to prevent subsurface vapor phase contamination from migrating into the structure at concentrations greater than applicable screening levels. The Voluntary Party will provide plans certified by a professional engineer for the vapor mitigation system to the Department for review prior to construction. Within 90 days following completion of the system, the Voluntary Party shall submit a written report documenting that the system was installed. The report shall include as-built drawings stamped by a professional engineer and an Operation and Maintenance Plan identifying activities that must be conducted to ensure the venting system is operated in an effective manner consistent with its design specifications.
4. The Voluntary Party agrees to prepare a Soil Management Plan for Department approval prior to the commencement of construction activities. The soil management plan will include, but not be limited to, characterization of any excavated materials, handling procedures to ensure that any offsite disposal of impacted media meets all State and Federal requirements, and, if needed, installation of a barrier or engineered cap. A Health and Safety Plan shall be submitted to the Department for review and comment.
5. The Voluntary Party agrees to perform the work set forth in the Soil Management Plan and the Voluntary Party shall submit a written report of its findings to the Department within 90 days of completion of such work. The report shall include, but not be limited to, as-built drawings, details of any capping, and waste manifests for

offsite disposal. The report shall also identify any areas where soil remains at the Site that must be managed in the future to protect human health, safety, or the environment and requirements for future soil management and maintenance of any covers or caps.

6. Upon completion of all tasks set forth in this AGREEMENT, the Department shall issue to the Voluntary Party a letter stating the requirements of this AGREEMENT have been fulfilled and no further action is required of the Voluntary Party concerning contamination identified and addressed in this AGREEMENT. Upon the request of the Voluntary Party 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 Voluntary Party 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 Voluntary Party occurring after the date of this AGREEMENT or for contamination not identified and addressed under this AGREEMENT, if any. Each Voluntary Party or successor in title to the Site shall be responsible for compliance with the requirements of this AGREEMENT during the period in which such person owns an interest in the Site, or possesses and/or controls all or a portion of the Site.

I. ADDITIONAL REQUIREMENTS

1. The Voluntary Party 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 Voluntary Party shall be responsible for the following obligations during periods when it owns the Site:

- (a) Comply with land use restrictions;
- (b) Do not impede effectiveness or integrity of institutional controls;
- (c) Provide cooperation, assistance and access;

- (d) Whether or not permits are required for onsite cleanup activities, such activities shall meet the standards that would apply if such permits were required.

J. 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 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 shall comply with all reasonable health and safety plans published by the Voluntary Party or its contractor and used by Site personnel for the purpose of protecting life and property.

K. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

Any information, reports, or studies submitted under the terms of this AGREEMENT shall contain the following notarized statement:

“I certify under penalty of law, including but not limited to penalties for perjury, that the information contained in this document and on any attachment is true, accurate and complete to the best of my knowledge, information and belief. I am 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 responsible parties other than the Voluntary Party 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 Voluntary

Party'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 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. Voluntary Parties or Successor Parties may terminate this AGREEMENT as it pertains to them at any time upon written notice to the Department during the time period that they own the site and/or conduct operations at the site. Upon such termination, the Voluntary Party shall have no further obligations hereunder other than payment of oversight costs accrued to the date of notice of termination and 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 Voluntary Party 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 Voluntary Party 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 Voluntary Party's waiver notice must be made within fifteen (15) days after receipt of the Department's termination notice.
5. The Department reserves the right to terminate this agreement if the Voluntary

Party fails to timely pay fees and other financial requirements specified in Section C Financial Requirements. For the purpose of this AGREEMENT, timely payment means the Department receiving payment from the Voluntary Party within 120 days of the first billing of a financial requirement or according to a payment plan agreed in writing between Voluntary Party and the Department.

- 6. If any provision of this AGREEMENT is held to be invalid or enforceable by a court of competent jurisdiction, then the remaining provisions of this AGREEMENT will remain in full force and effect.

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

The individual(s) signing below on behalf of the Voluntary Party **[represent that they have the authority or are]** [represents that he is a] duly authorized agent(s), capable of entering into a binding AGREEMENT on behalf of the Voluntary Party. By entering into this AGREEMENT, **[these individuals certify]** [this individual certifies] that the Voluntary Party did not generate or did not cause to generate, transport or release contamination that is to be addressed at this site.

The Effective Date of this AGREEMENT is the thirtieth (30th) day after the publication of the notice described in Section F of this AGREEMENT.

Date	Robert A. Binford Program Administrator Division of Remediation	Date	Voluntary Party: