

NEW MEXICO ENVIRONMENT DEPARTMENT VOLUNTARY REMEDIATION AGREEMENT

I. Introduction

This Voluntary Remediation Agreement (agreement) is entered into voluntarily by **Santa Fe County** (the Participant) and the Secretary of the New Mexico Environment Department, or his or her designee, pursuant to Section 74-4G-1 et seq. NMSA 1978 and the New Mexico Voluntary Remediation Regulations (20.6.3 NMAC). The purpose of this agreement is to detail the obligations and functions of each party, relevant to the voluntary remediation to be conducted at **Santa Fe County Judicial Complex** (the site), located at 327 Sandoval Street (at the northeast corner of the intersection of Sandoval Street and Montezuma Avenue) in Santa Fe, under the Voluntary Remediation Program (VRP # 53092001).

The activities conducted by the Participant under this agreement are subject to approval by the Department. The activities conducted by the Participant shall be consistent with this agreement, all applicable laws and regulations, and any pertinent guidance documents. The Participant shall employ sound scientific, engineering, and construction practices in its voluntary remediation activities at this site.

II. Statement of Eligibility

The Secretary or his designee has determined that the application submitted by the Participant to the Department on April 29, 2009 as modified through June 17, 2010 is complete, and that the Participant is eligible to enter into this agreement in accordance with Section 74-4G-1 et seq. NMSA 1978 and the New Mexico Voluntary Remediation Regulations (20.6.3.200.A NMAC).

III. Parties Bound

This agreement shall apply to and be binding upon the Participant, its officers, managing agents, directors, principals, partners, employees, receivers, trustees, agents, parents, subsidiaries and affiliates, and upon the Department, its employees, and agents. The Participant has submitted with his/her application a signed Declaration of Ability and Intent as set forth in the Voluntary Remediation Regulations (20.6.3.200.B(2) NMAC). No change in ownership, corporate, or partnership status shall in any way alter the Participant's status or responsibilities under this agreement unless the Participant or Department terminates this agreement in accordance with the Voluntary Remediation Regulations (20.6.3.300.H NMAC).

The Participant shall provide a copy of this agreement to any subsequent owners or successors before ownership rights are transferred. The Participant shall provide a copy of this agreement to all contractors, subcontractors, laboratories, and consultants or other parties, which are retained by the Participant, to conduct any work under this agreement, within 14 days after the effective date of this agreement or within 14 days of the date of retaining their services.

IV. Designated Project Manager

On or before the effective date of this agreement, the Department shall designate a project manager. The Primary Applicant specified on the Voluntary Remediation Program Application will function as the project manager for the Participant. Each project manager shall be responsible for overseeing the implementation of this agreement. The Department project

manager will be the Department-designated representative at the site. To the maximum extent possible, communications between the Participant and Department and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this agreement shall be directed through the project managers. During implementation of this agreement, the project managers shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five (5) days prior to the change.

V. Definitions

“Site” means the area described in the Voluntary Remediation Application. This description is attached and incorporated herein as Exhibit 1. All other terms used are defined in Section 74-4G-3 NMSA 1978, and 20.6.3.7 NMAC.

VI. Addresses for All Correspondence

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this agreement, may be sent by certified mail, first class mail, hand delivery, overnight mail, email, or by courier service to the following addresses or to such addresses as the Participant or Department designates in writing.

Documents to be submitted to the Department should be sent to:

Mailing Address:

Pam Homer, VRP project Manager
Ground Water Quality Bureau
New Mexico Environment Department
PO Box 5469
Santa Fe, NM 87502-5469
E-mail: pamela.homer@state.nm.us
Phone number: 505-827-2242

Physical Address:

Pam Homer, VRP Project Manager
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM

Documents to be submitted to the Participant should be sent to:

Mailing Address:

Katherine Miller, County Manager
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87504
E-mail: managersoffice@co.sante-fe.nm.us

Physical Address:

Same

with a copy to:

Paul M. Olafson, Deputy Director
Projects, Facilities and Open Space Division
Public Works Department
Santa Fe County

949 West Alameda
Santa Fe, NM 87501

PO Box 276
Santa Fe, NM 87504-0276
E-mail: polafson@co.santa-fe.nm.us

and

Gregory Shaffer, County Attorney
Santa Fe County
PO Box 276
Santa Fe, NM 87504-0276
E-mail: gshaffer@santafecountynm.gov

102 Grant Avenue
Santa Fe, NM 87504

VII. Compliance with Applicable Laws

All work undertaken by the Participant pursuant to this agreement shall be performed in compliance with all applicable Federal, State and Local laws, ordinances and regulations, including, but not limited to all Occupational Safety and Health Administration, Department of Transportation, Resource Conservation and Recovery Act, New Mexico Water Quality Control Commission, and New Mexico Environmental Improvement Board Underground Storage Tank regulations. In the event of a conflict between federal, state, or local laws, ordinances, or regulations, the Participant shall comply with the more/most stringent of such laws, ordinances, or regulations, unless provided otherwise in writing by the Department or other appropriate regulatory personnel with jurisdiction over such laws, ordinances, and regulations. Where it is determined that a permit is required under federal, state or local laws, ordinances, or regulations, the Participant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Participant shall be responsible for obtaining all permits that are necessary for the performance of the work hereunder, and for all ongoing or proposed site activities, and for all ongoing or proposed facility operations.

VIII. Performance Standards and Associated Requirements

The Participant submitted with its application to the Department a preliminary work plan describing the proposed voluntary remediation activities as envisioned at the time of submittal, which includes a description of the known and suspected contaminants to be addressed by the proposed voluntary remediation activities. This preliminary work plan, consisting of the Final Petroleum Contaminated Soil (PCS) Excavation Work Plan (April 30, 2010), was prepared pursuant to 20.6.3.200.B NMAC. A copy of the preliminary work plan is available for review from the NMED project manager.

The contamination addressed by this agreement is described as follows:

Benzene, ethyl benzene, toluene, total xylenes, methyl tertiary butyl ether (MTBE), ethylene dichloride (EDC), ethylene dibromide (EDB), and total naphthalenes in a transgressing ground water plume and in soil affected by the ground water plume, and potential vapor intrusion of these contaminants into the indoor air of the Santa Fe Judicial Complex buildings.

Voluntary remediation activities undertaken pursuant to this agreement shall achieve compliance with the following standards or risk-based levels:

- *New Mexico Environment Department Risk Assessment Guidance for Site Investigations and Remediation, Table A-1: NMED Soil Screening Levels (Industrial/Occupational and Construction Worker Soil), June 2012.*

Remediation to these NMED soil screening levels should result in no significant human health risk to on-site workers with direct exposure to the soil.

- *Calculation of Ground Water and Soil Screening Levels due to Vapor Intrusion at the Santa Fe Judicial Complex, prepared by Neptune and Company, Inc., David Brenner, Ph.D., February 23, 2010;*
- *Calculation of Ground Water and Soil Screening Levels due to Vapor Intrusion at the Santa Fe Judicial Complex, prepared by Neptune and Company, Inc., David Brenner, Ph.D., March 24, 2010; and*
- *Addendum to Calculation of Ground Water and Soil Screening Levels due to Vapor Intrusion at the Santa Fe Judicial Complex dated March 24, 2010, Neptune and Company, Inc., Ralph Perona, November 5, 2010.*

The site-specific screening levels calculated by Neptune and Company, Inc. in the three documents referenced above constitute the remedial action levels for ground water and soil beneath the five affected structures at the site: the lower level parking garage, the upper level parking garage, the holding cell area, the first floor and the District Attorney building.

The screening levels were calculated using site specific parameters and the performance of a human health risk-based analysis. The analysis performed for the site indicates that no significant human health risk due to vapor intrusion of sub-surface contaminants should occur if cleanup of soil and ground water to the calculated screening levels is achieved. Abatement and remediation to the lowest of the calculated screening levels shall be achieved by the Participant.

The calculated target indoor air concentrations identified in Table 4 in the above-referenced document dated March 24, 2010 constitute remedial action levels for indoor air in the Judicial Complex and District Attorney buildings.

It is understood that the parties may wish to modify the list of contaminants and the media in which the contaminants are located, as covered by this agreement, as additional information about the site is developed. The Department may approve such changes through approval of work plans and other submittals provided by the Participant during the course of undertaking voluntary remediation activities.

IX. Access

To the extent that the site or other areas where work is to be performed hereunder are presently owned or controlled by parties other than those bound by this agreement, the Participant shall obtain or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include, at a minimum, certified letters from the Participant to the present owners of such properties requesting access agreements to permit the Participant, the Department, and their authorized representatives' access to such property. Such agreements shall provide access for

the Department and authorized representatives of the Department, as specified below. In the event that such access agreements are not obtained, the Participant shall so notify the Department, which may then, at its discretion, assist the Participant in gaining access. The Participant shall provide authorized representatives of the Department access to the site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the site pursuant to this agreement and may include, but is not limited to: inspecting and copying of site and facility records; reviewing the progress of the Participant in carrying out the terms of this agreement; conducting such tests, inspections, and sampling as the Department may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and verifying the data submitted to the Department by the Participant hereunder. Prior to conducting remediation activities, the Participant shall provide a minimum of 24 hours advance notice to the Department to allow observation of site activities and to allow the Department's authorized representatives to collect split samples, at the Department's discretion. The Participant shall permit the Department's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this agreement and over which the Participant exercises authority. If the VRP Project Manager authorizes a representative to conduct any activities under this Section IX, the VRP Project Manager shall provide a minimum of 24 hours advance notice to the Participant of the identity of the representative and the activities to be conducted by the representative.

X. Deliverables and Submittal Schedule

The required submittals shall include:

A. Final Voluntary Remediation Work Plan

In accordance with 20.6.3.400 NMAC, the Participant shall submit to the Department a proposed final voluntary remediation work plan, detailing investigative, remedial, and monitoring activities that are proposed and that have been completed to achieve the performance standards described in Section VIII of this agreement. At a minimum, the final work plan must include the elements listed in 20.6.300.B NMAC. The final work plan may incorporate by reference previously submitted documents.

Schedule of submittal by Participant:

The proposed final work plan shall be submitted no later than 30 days after the voluntary remediation agreement has been signed.

Schedule of review by Department:

The Secretary or his designee shall review and approve, approve with conditions, or disapprove the proposed final work plan no later than 45 days following submittal of the final work plan. Written notice shall be made of any conditions or deficiencies. If the Secretary or his designee disapproves the final work plan, the Participant may be granted an opportunity to submit a revised version, as determined by the Secretary or his designee.

Modification of Voluntary Remediation Work Plan:

The approved final voluntary remediation work plan may be modified at the request of the Participant and/or the Department, with both parties' approval, in accordance with 20.6.3.400.D NMAC.

B. Periodic Status Reports

The Participant shall submit semi-annual status reports on the status of final work plan implementation, including a discussion of remedial and monitoring activities completed. The status reports shall be submitted until the Department approves the Voluntary Remediation Completion Report.

C. Voluntary Remediation Completion Report

In accordance with 20.6.3.500.B NMAC, following the completion of site voluntary remediation activities, the Participant shall demonstrate to the Department that site conditions meet the applicable standards specified in Section VIII herein by submitting to the Department a Voluntary Remediation Completion Report. The content of the completion report is detailed in 20.6.3.500.B NMAC. The report shall be submitted to the Department with the legal description of the affected property, and with an Affidavit of Completion of Voluntary Remediation from the Participant that indicates that remediation is complete, in accordance with this agreement and applicable regulations and guidance.

Schedule of submittal by the Participant:

The Voluntary Remediation Completion Report shall be submitted to the Department within 90 days following completion of voluntary remediation activities.

Schedule of review by Department:

The Department shall review and determine the sufficiency of a completion report within 45 days of receipt. If the Secretary or his designee does not approve the completion report, the Secretary or his designee shall either issue a finding that the Participant is not in compliance with the agreement and terminate the agreement, or advise the Participant in writing of data gaps in the report. The Participant shall correct any identified data gaps and resubmit the completion report within 30 days of receipt of notice of data gaps.

XI. Certificate of Completion

If the Secretary or his designee approves the Voluntary Remediation Completion Report, the Secretary or his designee will issue either a Certificate of Completion or a Conditional Certificate of Completion, as appropriate, pursuant to Section 74-4G-7 NMSA 1978 and 20.6.3.500.B NMAC. If a Conditional Certificate of Completion is issued, the Department shall conduct audits to ensure that all engineering controls, remediation systems, post-closure care, and affirmations of future non-residential land use, as applicable, are being maintained appropriately. These audits shall be performed at least every other year for the first ten (10) years following the issuance of the Conditional Certificate of Completion, and every five (5) years thereafter. If, during the course of such an audit, the Department finds that any of the monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmations of future non-residential land use are not being properly maintained such that the

performance standards described in Section VIII of this agreement are no longer being met, the Department may revoke the Conditional Certificate of Completion and initiate an enforcement action.

XII. Covenant Not to Sue

Pursuant to Section 74-4G-8 NMSA 1978 and 20.6.3.600 NMAC, after the Secretary or his designee issues the Certificate of Completion or Conditional Certificate of Completion, the Secretary or his designee shall provide a Covenant Not to Sue to a purchaser or prospective purchaser of the site that did not contribute to the site contamination for any direct liability, including future liability, for claims based upon the contamination covered by the agreement and over which the Department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the Covenant Not to Sue shall not release or otherwise apply to claims by the federal government for claims based on federal law. Except as may be agreed to by another Department or agency of the state, the Covenant Not to Sue shall not release or otherwise apply to claims of any other office, Department, or agency of the state. Except as may be agreed to by a third party, the Covenant Not to Sue shall not release or otherwise affect a person's liability to third parties.

XIII. Dispute Resolution

This section shall apply to any dispute arising under any section of this agreement, unless specifically excepted. Dispute resolution shall be conducted in accordance with Voluntary Remediation Regulations (20.6.3.300.NMAC).

XIV. Reservation of Rights

The Department and Participant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein. The Department expressly reserves the right to take any action, including any enforcement action, to address any release not covered by this agreement, including any release that occurs after issuance of the Certificate of Completion or any release of a contaminant not covered by the voluntary remediation agreement. The Secretary's Covenant Not to Sue shall not apply to any such release.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation not a party to this agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants or pollutants at, to, or from the site. The parties to this agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this agreement, and as to each other for matters not covered hereby.

XV. Enforcement Shield

Pursuant to the provisions of 20.6.3.300.A NMAC, the Secretary will not initiate any enforcement action, including an administrative or judicial action, against a Participant for the contamination or release thereof, or for the activity that results in the contamination or release thereof, if the contamination is the subject of an agreement pursuant to 20.6.3 NMAC. However, this Section shall not be a bar to any enforcement action if the agreement is not finalized, if the

agreement is terminated or rescinded, or if the Participant does not successfully initiate or implement the agreement within a reasonable time under the schedules set forth in the voluntary remediation agreement and approved work plans.

XVI. Oversight Costs

Oversight costs have been waived for this project.

XVII. Notice of Bankruptcy

As soon as Participant has knowledge of its intention to file bankruptcy, or no later than seven days prior to the actual filing of a voluntary bankruptcy petition, Participant shall notify the Department of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, Participant shall give notice to the Department as soon as it acquires knowledge of such petition.

XVIII. Effective Date and Subsequent Modification

The agreement shall become final and effective upon being signed by both the Secretary or his designee and the Participant. The effective date of the agreement shall be the later date of signature by either the Secretary or his designee or the Participant. This agreement may be amended only by mutual agreement of the Department and the Participant. Amendments shall be in writing and shall be effective upon being signed by both the Secretary or his designee and the Participant.

XIX. Termination

As provided for in 20.6.3.300.H NMAC, if an agreement is not reached between an applicant and the Secretary or his designee on or before the thirtieth (30th) calendar day after the Secretary or his designee determines an applicant to be eligible pursuant to the provisions of 20.6.3.200 and 20.6.3.300 NMAC, the applicant or the Secretary or his designee may withdraw from the negotiations. The Participant may terminate the voluntary remediation agreement upon sixty (60) calendar day's written notice via certified mail, return receipt requested to the Department. The Secretary or his designee may terminate this agreement upon finding that the Participant is not in compliance with this agreement. Notice of termination will be made to the Participant via certified mail, return receipt requested, and facts supporting the rationale for termination shall be set forth in the notification.

XX. Complete Agreement

This agreement contains the entire agreement of the parties.

XXI. Applicable Law

This agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

The provisions of this agreement shall be satisfied when the Department gives the Participant written notice in the form of a Certificate of Completion that the Participant has demonstrated to the Secretary's satisfaction that the terms of this agreement have been completed, including the selection and implementation of a remedial action, when appropriate.

Nothing in this agreement shall restrict the State of New Mexico from seeking other appropriate relief to protect human health or the environment from contamination at or from this site if not remediated in accordance with this agreement.

Signatures

Participant:

By: _____

(Signature of authorized representative)

Name: _____

(Print or type)

Date: _____

New Mexico Environment Department:

By: _____

(Secretary or designee)

Name: _____

(Print or type)

Date: _____

Attachments: Exhibit 1: Legal Description of Property

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney

NEW MEXICO ENVIRONMENT DEPARTMENT
VOLUNTARY REMEDIATION AGREEMENT

EXHIBIT 1

Legal Description of Property

Santa Fe County Judicial Complex
VRP #53092001

I. Tract of Land Comprising Site.

The Site is a 2.35 acre tract, more or less, of the Santa Fe County Judicial Complex redevelopment project located at 327 Sandoval Street (NE corner of the intersection of Sandoval Street and Montezuma Avenue) in Santa Fe, Santa Fe County, New Mexico. Said 2.35 acre voluntary remediation site is more particularly described as follows:

Legal Description for the Santa Fe First Judicial District Courthouse:

A tract of land within projection Section 24, Township 17 North, Range 9 East of the New Mexico Principle Meridian, Town of Santa Fe Grant, City of Santa Fe, Santa Fe County, New Mexico, more particularly described as follows:

Beginning at the Southwest Corner of the tract described, and the southwest corner of Tract A-B, Lands of Monteval Holdings, Inc. filed in Book 415, Page 035 of the County Records, the corner being marked with a rebar and cap;

Thence, proceeding along the easterly sideline of Sandoval Street, North 17°56' 56" East a distance of 54.05 feet to a concrete nail with a brass washer set in the sidewalk;

Thence, North 75°08'00" West a distance of 0.55 feet to a concrete nail with a brass washer set in the sidewalk;

Thence, North 17°52'56" East a distance of 67.41 feet to a concrete nail with a brass washer set in the sidewalk;

Thence, South 73°35'10" East a distance of 0.55 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855";

Thence, North 17°47'29 East a distance of 50.25 feet to a "PK" nail at the rim of a manhole;

Thence, North 17°46'00 East a distance of 14.20 feet to an "X" chiseled in sidewalk;

Thence, along a curve to the right, a distance of 159.99 feet, said curve having a radius of 497.33 feet, a central angle of 18°25'54", and a chord of North 27°03'30" East 159.30 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855", the proceeding seven courses being in the sideline of Sandoval Street;

Thence, South 67°50'00" East a distance of 273.82 feet along the southerly line of Tract A, Replat of Block 6, De Vargas Urban Renewal Area, to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855".

Thence, South 21°45'00" West a distance of 78.89 feet to a point;

Thence, South 24°27'30" West a distance of 47.64 feet to a point;

Thence, South 23°37'00" West a distance of 25.42 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855";

Thence, South 63°21'15" East a distance of 82.69 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855"

Thence, South 26°16'43" West a distance of 140.90 feet to a point marked with a 5/8 inch rebar with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855"

Thence, continuing along the North sideline of Montezuma Street: North 75°29'42" West a distance of 69.47 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855"

Thence, North 75°03'46" West a distance of 49.18 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855"

Thence, North 75°20'28" West a distance of 99.46 feet to a point marked with a 5/8 inch rebar with a yellow plastic cap stamped "W.F. Brewster PS 10855"

Thence, North 75°08'00" West a distance of 127.56 feet to the Point of Beginning.

The tract contains an area of 102,665 square feet, 2.357 acres, more or less.

The tract herein described is shown on the following plans:

"The Kennedy Building and Territorial Plaza Addition" by Guy D. Hayden, NMLS #4070, filed in Book 145 Page 035, Office of County Clerk, Santa Fe County, Santa Fe, New Mexico; and "Boundary Survey Plat of Parcel 1 & 2 lying and being situate at 225 Montezuma Avenue, within projected Section 24, T17N, R9E, within the Santa Fe Grant, NMPM, City of Santa Fe, Santa Fe County, New Mexico, prepared by Dean L. Shrader NMLS #12451, dated April 27 1999 filed in the Office of the County Clerk, County of Santa Fe, Santa Fe, New Mexico in Book 415 Page 12.