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Application to Enter into a Brownfields Covenant Not to Sue Agreement

Pursuant to M.G.L. c. 21E, s. 3A(j)(3) and 940 CMR 23.00

The execution of Brownfields Covenant Not to Sue Agreements is governed by Section 3A(j)(3) of M.G.L. c. 21E ("Chapter 21E"), and the Attorney General's Brownfields Covenant Regulations, 940 CMR 23.00. Applicants are encouraged to familiarize themselves with the terms of that statutory section and those regulations before completing this application. Any term used in this application that is defined in 940 CMR 23.00 shall have the same meaning as set forth there, and is capitalized in this application.

Applicants must submit this application in hard copy, together with an electronic version in either Microsoft Word or Rich Text File (RTF) format. The filing of an electronic version may be waived for good cause shown. An electronic version of this application may be obtained from the Brownfields Section of the Attorney General's website, www.mass.gov/ago.

The hard copy of the application should be sent to:

Brownfields Unit
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

The electronic version should be sent as an email attachment to Benjamin.Ericson@state.ma.us

In addition to completing this application, an Applicant may be requested to provide further information that the Attorney General deems necessary to complete review of the proposed project.

Applicant: _____

Date: _____

I. BACKGROUND INFORMATION

Applicant: _____

Street address: _____

City: _____ State: _____ Zip: _____

Legal/organizational status of Applicant (e.g., individual, corporation, limited partnership, etc): _____

Contact person for the Applicant: _____

Contact street address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

Name of person completing this application: _____

Name of project (if any): _____

Location of project: _____

Street address: _____

City: _____ State: _____ Zip: _____

II. DEVELOPMENT PLAN

A. The Property:

1.) Describe the property that is the subject of the proposed Agreement in a clear and concise manner sufficient to identify it to the general public (e.g., “a five-acre parcel located at the intersection of Commonwealth Avenue and Main Street in Anytown, Massachusetts, which was formerly the location of Acme Industries”).

2.) Reference the most recent deed or certificate of title, including reference to the book and page number at the relevant Registry of Deeds or the Land Court Registration number.

3.) Describe the Releases at the Site, and list any Release Tracking Number(s) for the Site.

4.) Does the property that is the subject of the proposed Agreement constitute the entire Site? *Yes or No*

If your answer is “no,” provide a short description of the relationship between the property and the Site as a whole.

5.) Have you attached a map of the property that is the subject of the proposed Agreement (and, if different, for the Site as a whole)? *Yes or No*

B. The Project:

1.) Provide a short, concise description of the project that is the subject of the proposed Brownfields Covenant Not to Sue Agreement, including in your description an enumeration of all major uses that will be made of the property (and, if different, of the Site as a whole) after the Proposed Remediation Status has been achieved.

2.) **Describe how the project complies or will comply with applicable zoning and land use permitting requirements.**

3.) Describe the current status of the project and a schedule setting forth specific milestones for bringing the project to fruition.

4.) Describe the current status of the funding for the project and how full funding of the project will be achieved.

5.) Describe the public benefits that the proposed use of the property that is the subject of the proposed Agreement (and, if different, for the Site as a whole) will provide, focusing on how the project will create new, permanent jobs, result in affordable housing benefits, provide historic preservation, create or revitalize open space, or provide some other public benefit to the community in which the Site that includes the project is located. Where possible, provide numbers (e.g., number of jobs created, number of acres of open space secured, etc.) and documentation.

6.) Describe the public outreach that has been done to date, the current level of community support or opposition (with specific references to all local officials, community groups, and abutters who have been contacted), and plans for any future outreach.

C. The Cleanup:

1.) Specify the Proposed Remediation Status for the property that is the subject of the proposed Agreement (*select one*):

Permanent Solution

Remedy Operation Status

Temporary Solution (*available only to Eligible Persons and only if a Permanent Solution is not Feasible*)

2.) If the property that is the subject of the proposed Agreement is less than the entire Site, specify the Proposed Remediation Status for the entire Site.

3.) Describe how you propose the Proposed Remediation Status for the property that is subject to this Agreement (and, if different, for the Site as a whole) will be achieved. Your description need not include a detailed site assessment or cleanup plan, but must at a minimum include a conceptual plan setting forth whom the Applicant proposes to be doing this work and how it would be funded (by the Applicant, by other parties potentially responsible pursuant to Chapter 21E, by the Department of Environmental Protection, by other public or private funding sources, or by some combination of any of the above).

4.) If you are proposing a Permanent Solution, Remedy Operation Status, or Temporary Solution, as applicable, for less than the entire Site, explain why your request for a Brownfields Covenant Not to Sue Agreement is nevertheless appropriate, including in your explanation how the public health, safety and the environment are otherwise to be protected in the unaddressed portions of the Site.

5.) If you are an Eligible Person who is proposing only a Temporary Solution at the Site or portion of the Site that is the subject of the proposed Agreement, have you attached to this application an opinion issued by a Licensed Site Professional pursuant to 310 CMR 40.0860 stating with particularity the basis on which you believe that a Permanent Solution is not Feasible? *Yes or No*

If your answer is “no,” explain why not and when such an opinion will be provided.

6.) If you are an Eligible Person who is proposing a cleanup plan which may, but will not necessarily, include a Temporary Solution, explain, to the degree it is known, when you will be able to determine whether a Permanent Solution is Feasible.

III. LIABILITY PROTECTION SOUGHT

1.) Are you seeking liability relief against third parties? *Yes or No*

If your answer is “yes,” note that you must comply with the notice requirements set forth in 940 CMR 23.06, and you must attach a Notice of Rights of Affected Third Parties on a form prescribed by the Attorney General. (Before completing that form, the Applicant should contact the Office of the Attorney General to confirm that he or she has the most recent version of the form.)

2.) Specify what precise liability relief you are seeking.

3.) Explain why liability relief provided directly by statute is not sufficient.

4.) Explain why you think your request for liability relief is appropriate.

5.) Specify the date or event upon which you request that such liability relief become effective.

6.) If you are seeking liability relief against third parties, are you aware of the existence of third parties who believe that they are entitled to pursue a claim against you for Response Action costs, contribution or property damage? *Yes or No*

If your answer is “yes,” describe the circumstances (include citations to any pending litigation and describe any efforts to settle those claims):

IV. ELIGIBLE PARTY STATUS OF APPLICANT

1.) Do you want your application to be considered as that of an Eligible Person? *Yes or No*

If your answer is “no,” you may skip the remainder of this section. A “no” answer is not an admission that you caused or contributed to the Release at issue or that you otherwise fail to meet the criteria of an Eligible Person, and should not be used as evidence of same in any other proceeding.

2.) Are you a prospective Owner or Operator who does not own or operate, and never has owned or operated, the Site? *Yes or No*

If your answer is “yes,” you may skip the rest of this section.

3.) Were the Releases for which you are seeking liability relief reported to the Department of Environmental Protection prior to your first owning or operating the Site? *Yes or No*

If your answer is “yes,” how can you demonstrate this?

If your answer is “no,” have you attached to this application an Eligible Person Certification on a form prescribed by the Attorney General?

An Eligible Person Certification is intended to be used solely for deciding under what conditions the Attorney General should enter into Brownfields Covenant Not to Sue Agreements, and neither such a certification nor the Attorney General’s use of it shall be considered evidence of whether a Person is an Eligible Person in any other proceeding.

V. OTHER INFORMATION

1.) In order to assist the Attorney General in processing this application, specify the names and phone numbers of any officials at the Executive Office of Energy and Environmental Affairs, the Department of Environmental Protection, the Department of Housing and Economic Development, Massachusetts Development Finance Agency (MassDevelopment), or the City or Town in which the project is proposed that have been contacted with regard to the subject matter of this application.

2.) Attach any other information that you believe would be helpful to the Attorney General in reviewing this application. Please make note of attachments here.