

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Commerce 12.9 Acre Site
5710 Smithway
Commerce, California 90040

Proponent:

City of Commerce
2335 Commerce Way
Commerce, California 90040
Attn: Gina Nila

Docket No. HSA VCA 16/17-_____

Voluntary Cleanup Agreement

Health and Safety Code
Section 25355.5(a)(1)(C)

The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Voluntary Cleanup Agreement (Agreement) with the City of Commerce (Proponent) and agree as follows:

1. Site. This Agreement applies to the property located at 5710 Smithway, Commerce, in Los Angeles County, California 90040 (Site). The Site is approximately 12.9 acres in an industrial/commercial area and is identified by Los Angeles County Assessor's Parcel Number: 6336-019-030, 6336-019-031, and 6336-024-018. A Site diagram and a Site location map are attached as Exhibits A and B.

2. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C) which authorizes DTSC to enter into an enforceable agreement to oversee the investigation and/or remediation of a release or threatened release of any hazardous substance at or from the Site.

3. Purpose. The purpose of this Agreement is for DTSC to provide oversight on a Supplemental Site Investigation (SSI) Workplan, Implementation and Report to address data gaps from previous investigations. If appropriate, DTSC will issue a "No Further Action" letter based upon the SSI Report. If warranted, proponent will implement a Removal Action Workplan (RAW) for soil vapor extraction (SVE) under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. Ownership. The Site is owned by CRAIG REALTY GROUP CITADEL, LLC.

5. Substances Found at the Site. Based on the information available to DTSC and Proponent, there have been releases of volatile organic compounds (VOCs),

metals, and total petroleum hydrocarbon (TPH) in soil at the Site. VOCs and metals above the maximum contaminant level (MCL) were detected in groundwater samples.

6. Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. Additional Activities. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1. Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.

10. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed

pursuant to this Agreement. Proponent is not required to make available information that is privileged or otherwise protected from disclosure. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat or Microsoft Word formatted file.

11. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

12. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

13. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

14. Proponent's Consultant and Contractor. All work performed pursuant to this Agreement shall be under the direction and supervision of a professional engineer or professional geologist, licensed in California, with expertise in hazardous substances site cleanup. Proponent's Project Manager, contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the professional engineer or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

15. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions

made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Project Manager or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

16. Payment.

16.1. Proponent agrees to pay 1) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an updated or revised cost estimate as the work progresses. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 60 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

16.2. In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of \$8,500 to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. If the advance payment exceeds DTSC's final costs, DTSC will refund the difference within 120 days after the performance of this Agreement is completed or after this Agreement is terminated pursuant to Paragraph 18 of this Agreement.

16.3. All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site (Site # 301176) and the docket number of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards. Payments by check shall be sent to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

16.4. DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17. Amendments. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

18. Termination for Convenience.

18.1. Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 18.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

18.2. If operation and maintenance activities are required for the final remedy, neither party to this Agreement may terminate the Agreement under Paragraph 18.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent.

19. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

20. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to Proponent under applicable laws..

21. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

22. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

23. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

24. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

25. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

26. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

27. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

28. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

29. Representative Authority. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

30. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Tedd Yargeau, Senior Scientist
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

Date: _____

City of Commerce

Date: _____

EXHIBITS

A - SITE LOCATION MAP

B - SITE DIAGRAM

C - SCOPE OF WORK

D – COST ESTIMATE

E - SCHEDULE

EXHIBIT C SCOPE OF WORK

TASK 1.

Supplemental Site Investigation (SSI)

1.1 SSI Workplan. The Proponent will submit a workplan that describes the activities proposed to address data gaps in soil, soil gas and groundwater. Additional groundwater monitoring wells may necessary to complete the Site characterization activities. The groundwater monitoring wells shall be sampled on a semi-annual basis until further notice. This Workplan shall include a summary of completed activities, including analytical data, proposed in the *Addendum to Workplan for Additional Site Characterization* dated January 31, 2007. This Workplan shall also include the re-installation of groundwater monitoring well UGW-10 abandoned on April 12, 2013 according to the *Second Quarter 2013 Groundwater Monitoring and Sampling Report* dated July 26, 2013 by Block Environmental. Procedures utilized for the abandonment of UGW-10 should be included.

1.2 The Proponent will begin implementation of the approved workplan in accordance with the approved implementation schedule. DTSC may provide oversight of workplan implementation.

1.3 SSI Report. The Proponent will submit a SSI Report that presents the data, summarizes the findings of the investigation, validates the data, and includes recommendations and conclusions. If appropriate, DTSC will issue a "No Further Action" letter for the Site.

TASK 2. Removal Action Workplan.

If DTSC determines a removal action is appropriate, the Proponent will prepare a Removal Action Workplan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1. The Removal Action Workplan will include:

- (a) a description of the onsite contamination
- (b) the goals to be achieved by the removal action;
- (c) an analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- (d) administrative record list;
- (e) a statement that the RAW serves as an equivalent document to the Engineering Evaluation/Cost Analysis document required by the National Contingency Plan;
- (f) a description of the techniques and methods to be used in the removal action, including any excavation, storage, handling, transportation, treatment, and disposal of material on or offsite site; and
- (g) an implementation schedule.

TASK 3. California Environmental Quality Act (CEQA).

DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents.

TASK 4. Implementation of Final Removal Action Workplan.

Upon DTSC approval of the final Removal Action Workplan (RAW), the Proponent shall implement the removal action, as approved. Within thirty (30) days of completion of field activities, Proponent shall submit an Implementation Report documenting the implementation of the final RAW.

TASK 5. Changes During Implementation of the Final RAW.

During implementation of the final RAW, DTSC may specify such additions, modifications and revisions to the RAW as deemed necessary to protect human health and safety or the environment or to implement the RAW.

TASK 6. Public Participation.

Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7, the DTSC Public Participation Policy and Procedures Manual, and with DTSC's review and approval.

TASK 7. Land Use Covenant. The parties understand that a land use covenant (LUC) pursuant to California Code of Regulations, title 22, section 67391.1 is sometimes necessary to ensure full protection of the environment and human health. DTSC may require such LUC pending the results of the Implementation Report. Should an LUC be necessary, the Proponent agrees to sign and record the LUC approved by DTSC within ten (10) days of receipt of a fully executed original.

EXHIBIT D

COST ESTIMATE WORKSHEET

VOLUNTARY CLEANUP AGREEMENT

Project Name: Commerce 12.9 Acre Site

Title	VCP Coord.	Project Manager		Supervisor		Toxicology	Geology	Industrial Hygiene	HQ Engng	Public Particip	Legal	CEQA	Clerical
Classification	Sr. ES	ES	HSE	EPMI	HSES	Staff Toxicologist	Eng Geol.	Assoc IH	HSE	PPS	Attorney	Env Planner	WPT
TASK:													
Agreement Prep./Negotiation	2												
Review and comment on Summary Report		10			1		15						
General Project Oversight (meetings and communications)		4			1	1	1	2					1
Supplemental Site Characterization													
- Workplan		20			1	15	20						1
- Implementation		8					12						
- Report		32			1	15	25						1
Public Participation		10			1					15			2
CEQA NOE		12			1							15	1
Groundwater Monitoring (semi- annual, 2 events)		40			1		40						
Removal Action Workplan		20			1	8	20		8				1
Implement Removal Action		8					12		4				
Completion Report		24			1	8	20						1
Certification		10			1								1
Deed Restriction		10			1						15		1
Technical/Management meeting		5			2		5						
Total No. Hours/Class	2	213	0	0	13	47	170	2	12	15	4	15	10
Hourly Rate/Class	159	138	203	260	251	187	204	159	204	125	184	131	76
Cost/Class	318	29394	0	0	3263	8789	34680	318	2448	1875	736	1965	760
Grand Total Cost	\$84,546												

