

US EPA ARCHIVE DOCUMENT

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") dated July 29, 2000 between THE CITY OF Lynn (the "City"), acting through its Economical Development & Industrial Corp. of Lynn and the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION, having an address at One Winter Street, Boston, MA 02108 (the "Department");

### RECITALS

Whereas, the United States Environmental Protection Agency ("EPA") administers a program known as the Brownfields Cleanup Revolving Loan Fund Program under which non-federal political entities over-see non-time critical removal actions of certain environmental hazards pursuant to the Comprehensive Environmental Response Compensation Liability Act ("CERCLA") and the National Contingency Plan ("NCP");

Whereas the City has been named as the cooperative agreement recipient and lead agency ("Lead Agency") pursuant to a Cooperative Agreement entered into with the EPA for a Brownfields Clean-Up Revolving Loan ("BCRL") awarded in the amount of \$500,000 for the remediation of environmental contamination on selected brownfields sites;

Whereas the City, acting as Lead Agency, is required to designate a qualified government environmental specialist as brownfields site manager ("Site Manager") who shall assume on-scene coordinator responsibilities pursuant to 40 CFR 300; and the City does not have an officer or employee who is qualified as a Brownfields Site Manager and has therefore sought the assistance of the Department, which has agreed to serve as the Brownfields Site Manager;

Whereas, the Department, acting as Brownfields Site Manager, will oversee the environmental cleanup under CERCLA and the NCP of properties to be selected by the City;

Whereas, the removal actions conducted pursuant to this Agreement are CERCLA removal actions and do not constitute interim or final actions under M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP");

Whereas, in order to manage the funding between the EPA and the Site Manager to provide the Site Manager with a consistent and regular work load, the City may initiate activities at one property every six months for Site Manager oversight, provided however, that if the City would like to select more than one property it may propose such to the Site Manager who has sole discretion whether to accept an extra site in a given six month period;

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

**1. Statement of Purpose**

The purpose of this Agreement is to outline the roles and responsibilities of the Department, acting as Site Manager and the City, acting as Lead Agency pursuant to CERCLA and the NCP.

**2. Responsibilities of the Lead Agency**

The City as Lead Agency, is responsible for complying with the terms and conditions of: the above-identified Cooperative Agreement; the requirements of the BCRLF Administrative Manual (draft May 19, 1998), as amended to date; and such other documents related to or executed in connection with the Cooperative Agreement. The Lead Agency has legal responsibility to comply with all applicable federal, state and local laws in the administration of the Cooperative Agreement, all management and reporting requirements to the USEPA and the Department, and all environmental response actions undertaken. The Lead Agency agrees to provide all available data required by the Department associated with its duties as Site Manager. The Lead Agency will incorporate the terms of this Agreement into any agreement with a borrower.

The Lead Agency understands and acknowledges that additional response action under M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") may be required.

**3. Responsibilities of Site Manager**

The Department as Site Manager, through its Bureau of Waste Site Cleanup, shall serve as the on-scene coordinator with responsibilities described in the Scope of Work attached hereto as Appendix A. The City shall ensure that the work conducted at selected sites is conducted in accordance with CERCLA and the NCP. The Department shall assist the City with its role as Lead Agency by conducting those tasks described in Appendix A.

**4. Brownfields Sites**

The Lead Agency has 4 number of sites that are subject to this Agreement, as identified in its application to EPA. The Lead Agency shall identify one site every six months from this list on which to initiate work under this Agreement. In the event that the City has more than one property every six months on which it would like to initiate work, it may submit a written request to the Site Manager for consideration. The Site Manager has sole discretion in determining whether to accept an additional site in a given year, based in part on the volume of work already underway. Once response actions have commenced at a site, the City can not replace that site with any other, unless requested in writing and agreed to by the Site Manager.

## **5. Legal Requirements**

The Lead Agency is responsible for determining if a response action at a particular Brownfields Site is authorized under federal law, including CERCLA, and is consistent with the NCP. The removal actions conducted pursuant to this Agreement are CERCLA removal actions and do not constitute interim or final actions under M.G.L. c. 21E and the MCP. In instances where a cleanup is conducted pursuant to M.G.L. c. 21E and the MCP that meets the substantive and procedural non-time critical requirements of CERCLA and the NCP and all terms and conditions of the BCRLF Administrative Manual are met, the Loan Fund may be used for such cleanups.

## **6. Dispute Resolution**

To the maximum extent possible, disputes under or disagreements in the interpretation of this Agreement between the parties will be resolved informally between the contacts identified in paragraph 8 of the Agreement. If the Lead Agency contact and the Brownfields Site Manager contact can not resolve the dispute, the Lead Agency may make a written request to the Department's Waste Site Cleanup Assistant Commissioner ("Assistant Commissioner") which sets forth the Lead Agency's position regarding the dispute, including supporting documentation. The Brownfields Site Manager contact will also have an opportunity to submit a written description of his position regarding the dispute. The Assistant Commissioner, at her discretion, may conduct one or more informal meeting(s) to aid in her evaluation of the merits of the dispute and/or to obtain additional relevant information. The Assistant Commissioner, before making a final determination on the dispute, may forward appropriate issues for mediation before Massachusetts Office of Dispute Resolution ("MODR") or to another independent third party, provided the Lead Agency contact agrees. The Assistant Commissioner will make a final determination on all disputes that are not resolved by the Lead Agency contact and the Brownfields Site Manager contacts, with or without mediation by MODR or another third party. The Assistant Commissioner's final resolution of all disputes pursuant to this paragraph shall be binding upon the parties.

## **7. Termination**

The City reserves the right to relieve the Site Manager of its responsibilities under this Agreement and the Site Manager reserves the right to withdraw from or terminate its participation under this Agreement. The Site Manager cannot withdraw from an active Brownfields project and must see a project through to its completion, once started, unless the borrower is in noncompliance with CERCLA and the NCP or with M.G.L. c. 21E and the MCP that actually results in an enforcement action by the Department. Termination by either party must be preceded by sixty (60) days notice.

The Site Manager can decline involvement in a new project. Denial of involvement in a new project must be provided by written notice within twenty-one (21) days of the initial request from the City.

## **8. Notices**

All notices required to be delivered hereunder shall be in writing and shall be delivered by first-class mail, return receipt requested, or by overnight mail or courier service addressed to the other party at the address given below or at such other address identified in writing to the other party.

If to the Lead Agency:

Harold McGaughey/Peter DeVeau  
Economic Development & Industrial Corp. of Lynn  
City of Lynn  
37 Central Square, 3<sup>rd</sup> floor  
Lynn, MA 01901

If to the Site Manager:

Jay Naparstek  
Massachusetts Department of Environmental  
Protection  
Bureau of Waste Site Cleanup  
One Winter Street  
Boston, MA 02108

## **9. Term and Duration**

This Agreement shall be effective on the date of the last signature set forth below. Each undersigned representative hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party on whose behalf such representative signs. This Agreement shall continue until the Cooperative Agreement or Loan Fund expires or is terminated or until the Site Manager withdraws or discontinues its responsibilities under this Agreement, whichever first occurs.

**10. Extent of Agreement and Amendments**

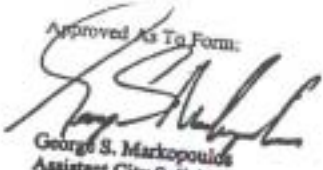
This Agreement supersedes all prior negotiations or agreements, written or oral, pertinent to the Cooperative Agreement and Department duties as Site Manager. This Agreement may be amended at any time by written amendment duly executed by both the Department and the City.

**CITY OF Lynn**

By: \_\_\_\_\_

Patrick J. McManus, Mayor

Approved As To Form:

  
George S. Markopoulos  
Assistant City Solicitor

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

By: \_\_\_\_\_

Deirdre C. Menoyo,  
Assistant Commissioner of Waste Site Cleanup