STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF: ) DIVISION OF REMEDIATION

(Property Name) )

) SITE NUMBER XX_XXX

CONSENT ORDER

This Consent Order (hereinafter referred to as the “ORDER”) is made and entered into by and between the Tennessee Department of Environment and Conservation (hereinafter referred to as “TDEC” or the "Department") and NAME OF PARTY, for the purpose of addressing the site described herein below, which has the real or perceived threat of the presence on the site of environmental conditions, contaminants, hazardous substances, solid wastes, and/or other pollutants.

PARTIES

I.

Robert J. Martineau, Jr. is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation.
II.

Steve Goins is the duly appointed Director of the Division of Remediation (the “Division”). He has written delegation from the Commissioner to administer and enforce particular aspects of the Tennessee Hazardous Waste Management Act of 1983, Title 68, Chapter 212, Part 2, Tenn. Code Ann. (the "Act").

III

NAME OF PARTY (hereinafter referred to as “XXX” or the “Consenting Party”) is a limited liability company created and existing under the laws of the State of __________.

JURISDICTION

IV.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into a consent order with a party who is willing and able to conduct an investigation and remediation of a hazardous substance site or Brownfields Project.

V.

For the purposes of this ORDER, a Brownfield project may be a site contaminated by hazardous substances, solid waste, or any other pollutant. Pursuant to Tenn. Code Ann. § 68-212-202(a)(3), a "hazardous substance site" means any site or area where hazardous substance disposal has occurred.

VI.

The site subject to this ORDER is owned by XXXX and is located at XXXXX (hereinafter referred to as the “Site”). The Site is approximately XXX-acres in size. A legal description of the Site and a site map are attached hereto as Exhibit A.

ANY ADDITIONAL INFORMATION MAY BE INSERTED
VII.

As required by Tenn. Code Ann. § 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 Consenting Party. A copy of this summary description is attached hereto as Exhibit B. As of the date of entering into this ORDER, the Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency (“EPA”).

REQUIREMENTS

VIII.

A. FINANCIAL REQUIREMENTS

The Consenting Party agrees to pay all costs associated with the Department’s oversight of and assistance in the implementation of this ORDER. Assistance includes, but is not limited to, the Commissioner’s exercise of his authority under Tenn. Code Ann. § 68-212-206(a). 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 participation fee of SEVEN HUNDRED AND FIFTY DOLLARS ($750.00) is appropriate for the Site.

Within ninety (90) days of the effective date of the ORDER, Consenting Party shall pay the Department any past costs identified in association with this Site. This shall include, but not be limited to, oversight completed by the Division of Remediation and Division of ______________ during [e.g., previous investigations or response actions by TDEC]. Oversight costs posted as of [Provided by Department upon Application] equals $___________ [Provided by Department upon Application]. To cover costs incurred to date and the participation fee, the Consenting Party shall submit a check made payable to the State of Tennessee for $___________ [Previous oversight costs + Participation Fee]. This check must accompany this ORDER when it is signed on behalf of the Consenting Party and returned to the Department.

The Consenting Party will be charged the current hourly rate (e.g. seventy-five dollars [$75.00] per hour for FY 2015-2016) per hour of oversight in addition to the fees listed above.
This amount includes the current hourly rate for the Department’s employees actively employed in oversight of work under this ORDER and the current State overhead rate. Additionally, any out-of-pocket expense, mileage, lab expense and costs billed by State contractor(s) who are actively performing oversight directly related to the Site shall be billed to and paid by the Consenting Party.

The Commissioner has set the following schedule of additional financial assessments that apply to all sites working in cooperation with the Department to recover the expense of oversight. These financial assessments are in place of hourly time charges and normal travel costs during the first 150 hours of oversight for the project.

<table>
<thead>
<tr>
<th>Financial Assessment</th>
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<tr>
<td>Program Entry</td>
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<td>Remedy Requirement Institutional Controls</td>
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</tr>
<tr>
<td>Annual O&amp;M Review</td>
<td>$500</td>
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</tbody>
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In addition to the financial assessments identified previously, an annual longevity financial assessment of $3,000 will be charged to the Site on the anniversary of the effective date of this ORDER until a letter requiring no further action has been issued.

Upon reaching 150 hours of oversight, the financial assessments schedule listed above no longer applies and sites will be charged $75 dollars per hour of oversight. This amount includes mileage, the current hourly rate and pro rata portion benefits for the Department’s employees actively employed in oversight of work under this Order, including preparation for and attendance at meetings and the current State overhead rate. Additionally, costs billed by State contractor(s)
who are actively performing oversight, any out-of-pocket expense, lab expense or other unusual costs to the Department shall be billed to and paid by the Consenting Party.

Fees and financial assessments specified in this ORDER must be timely paid to remain in the Voluntary Cleanup Oversight and Assistance Program and to receive a letter of no further action under Section X of this ORDER.

B. LAND USE RESTRICTIONS

The Consenting 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 Tenn. Code Ann. § 68-212-225. Any Party receiving liability protection under this ORDER 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.

FACTS

IX.

Based on the information submitted to the Department by or behalf of the Consenting 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 ORDER include the entire approximately XX acre Site, and that the matters and substances of concern addressed by this Agreement include all those identified in the Summary and such other information, review and investigation, including without limitation the following:

INSERT SITE-SPECIFIC INFORMATION

AGREED ACTIONS TO BE TAKEN

X.
A. REMEDIAL INVESTIGATION, FEASIBILITY STUDY, REMEDIAL DESIGN, AND REMEDIAL ACTION

1. Within thirty (30) days of the effective date of this ORDER, the Consenting Party shall submit to the Department all site information not previously submitted including, but not limited to, results of any additional investigations, studies, bench or pilot tests, corrections to previously submitted information, and other pertinent information required by Tenn. Comp. R & Regs. Ch. 0400-15-01. This submittal shall also include site history, processes, features, and material inventory to accurately identify what activities occurred where on the site.

2. Within ninety (90) days of submitting the site information to the Department, Consenting Party shall develop a Remedial Investigation Work Plan in accordance with Tenn. Comp. R & Regs. Ch 0400-15-01. This work plan shall incorporate results of all previous investigations and sampling performed at the site, and knowledge of site history, processes, features, and material inventory. The Remedial Investigation Work Plan shall also include a proposed schedule for implementing the Remedial Investigation and submitting the Remedial Investigation Report. The Consenting Party shall incorporate any comments provided by the Department and implement the Remedial Investigation as approved by the Department.

3. The Consenting Party shall submit the Remedial Investigation Report to the Department according to a schedule and format specified or approved by the Department. This report shall incorporate results of the Remedial Investigation; all previous investigations and sampling performed at the site; and knowledge of site history, processes, features, and material inventory. The Remedial Action Report shall also include a proposed schedule and format for the Focused Feasibility Study. Consenting Party may propose additional investigation in the Remedial Investigation Report with a proposed schedule and format for the investigation, if Consenting Party identifies data gaps that are needed to make informed remedial decisions or to develop the Focused Feasibility Study.

4. The Department may determine that additional investigation is needed to make informed site decisions or to develop the Focused Feasibility Study following the
review of the Remedial Investigation Report. At that time, the Department will request Consent Party to submit an additional Remedial Investigation Work Plan to develop the additional data or information. Said request shall include a schedule for Consent Party to submit the additional Remedial Investigation Work Plan which Consent Party shall comply. The Remedial Investigation Work Plan shall include a proposed schedule for implementing the additional Remedial Investigation and submitting the Remedial Investigation Report addendum and revised proposed schedule and format for the Focused Feasibility Study. The Consent Party shall incorporate any comments provided by the Department and implement the Remedial Investigation as approved by the Department. This step may occur as many times as necessary to make informed site remedial action decisions.

5. Consent Party shall use site information and data to develop and submit a Focused Feasibility Study according to a schedule and format approved or specified by the Department. The Focused Feasibility Study Report shall include a proposed schedule for public participation and submitting a Remedial Action Work Plan. Criteria required in Tenn. Code Ann. § 68-212-206(d) shall be used in determining containment and cleanup actions, including monitoring and maintenance options to be followed.

6. Consent Party shall provide comments on the Record of Decision ("ROD") during the time period requested by the Department, before the Department finalizes the ROD. The Consent Party shall provide any support requested by the Department in public participation.

7. Consent Party shall prepare comprehensive Remedial Action Work Plans for the Site detailing all actions required to meet ROD requirements and remediation goals. The Consent Party shall submit the Remedial Action Work Plan according to a schedule and format approved or specified by the Department. Remedial Action Work Plans shall also identify potential impact to the community and shall contain contingency plans in the event of adverse impacts, if any. Said plans shall include provisions for monitoring and assessment of remediation and shall also include a process for initiating additional phases, if necessary, to meet ROD requirements and remediation goals. Said
plan shall also include operation and maintenance or other provisions to assure the long-term effectiveness of the remedies.

8. If Consenting Party determines that additional information or data is necessary to develop the Remedial Action Work Plans or Remedial Action Design, Consenting Party shall notify the Department and propose additional investigation to fill those design needs including a schedule for the data collection and submittal of the Remedial Action Work Plans or Remedial Action Design. Consenting Party shall implement this additional investigation and submit the Remedial Action Design according to a schedule and format approved or specified by the Department.

9. Consenting Party shall implement the Remedial Action Work Plans as approved by the Department. During implementation of said plans if situations or circumstances warrant, the Consenting Party may suspend work on or the Department may withdraw approval for any or all actions or parts of the plans that constitutes an imminent and substantial endangerment to human health or the environment or the creates a significant health or safety risk to workers implementing the plans or to the community.

10. Consenting Party shall provide notice to the Department of the schedule of work performed at the site so that the Department may provide oversight of work performed under this ORDER.

11. During implementation of this ORDER, Consenting Party may request an assessment conference with the Department to discuss current activities, further investigation, remedial action, interim action, and/or long term monitoring and maintenance, or items that arise during implementation of this ORDER. The Department may also initiate an assessment conference with Consenting Party. The Department may schedule an assessment conference that the Consenting Party shall attend. The Consenting Party will be given at least seven (7) days notice prior to this conference. If the Parties mutually agree that the Consenting Party should proceed with any further investigation, remedial action, interim action, and/or long term monitoring and maintenance, this Agreement shall be reduced to writing, shall be signed on behalf of the Department and the Consenting Party, and shall be appended to this ORDER. Any such Agreement shall
become an enforceable part of the ORDER; however, if any term or condition of any such Agreement conflicts with or is repugnant to any term or condition of the main body of this ORDER, the main body of this ORDER shall control and the contradictory or repugnant portions of the Agreement shall be null and void.

B. FINAL OPERATION AND MAINTENANCE ("O&M") PLAN

Within ninety (90) days of completion of construction of the final remedy, Consenting Party shall submit an Operation and Maintenance Plan consistent with Tenn. Comp. R & Regs. Ch 0400-15-01 to the Department. The Consenting Party shall implement the O&M as approved by the Department and shall operate and maintain the final remedy, as necessary to achieve and maintain the ROD required remedy and remediation goals.

C. INTERIM ACTIONS

If it becomes apparent at any point during the development or execution of any remedial activity that an additional interim removal of hazardous substance or other interim action is warranted to abate a potential threat to health, safety, or the environment, the parties will confer on an appropriate response. Prior to performing any agreed interim action or removing or relocating materials, the Consenting Party shall provide notice to the Department to allow scheduling of personnel to observe this or related activities. This ORDER does not limit or otherwise affect the authority of the Commissioner to abate an imminent and substantial danger or to perform other actions to address time critical or dangerous situations. Further, Consenting Party may take action to control an imminent danger and shall notify the Department of any such actions as soon as practical, no later than 24 hours after discovery of the danger. No party shall be obligated to perform any additional interim actions pursuant to this ORDER unless such actions are agreed to in writing by the parties and appended to this ORDER.

D. SUBMISSION OF WASTE REMOVAL REPORTS
Prior to August 1\textsuperscript{st} of each year, the Consenting Party shall supply the Department with a report that includes the site name, site number, and the following information for both the previous fiscal year (July 1 to June 30) and project cumulative:

- Name and amount (in kilograms) of each hazardous substance or hazardous substance containing material (e.g. soil) removed from the site;
- Average pre- and post-treatment concentrations for significant treatment activities (if treatment occurs on-site);
- Volume of material treated on-site;
- Cost of implementation of this ORDER with separate breakouts for investigation costs, treatment costs, disposal costs, and lab costs.

E. FINANCIAL ASSURANCE

Within sixty (60) days of the Department’s approval of the Operation and Maintenance Plan, Consenting Party shall advise the Department of their selected method of providing financial assurance for operation and maintenance of the final remedy. The mechanism for financial assurance shall be approved by the Department for the type and term of O&M performed.

Regardless of the financial assurance mechanism chosen, Consenting Party shall continue to provide financial assurance for the remedy and subsequent O&M activities until such time as the Consenting Party demonstrates that operation and maintenance is no longer required.

F. SITE ACCESS

During the effective period of this ORDER, and until certification by the Department of completion of all activities under this ORDER, Consenting Party shall use their best efforts to assure that the Department and its representatives or designees shall have access during normal business hours and, upon reasonable notice, at non-business hours, to all areas of the Site controlled by the Consenting Party. Such access may be for the purpose of monitoring activities; verifying data; conducting investigation; inspecting and copying records, logs or other documents
that are not subject to a legally applicable privilege; and conducting other activities associated with the implementation of this ORDER. The Department shall use its authority to assist Consenting Party in obtaining access to areas of the site that it does not control, if Consenting Party is unable to obtain access after a good faith effort. 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 Consenting Party or their contractor and used by Site personnel for the purpose of protecting life and property. If the safety plans are not included in the applicable Work Plan, they shall be provided to the Department prior to the commencement of Work Plan activities at the Site pursuant to this ORDER.

The Department agrees to employ its powers under state law, including Tenn. Code Ann. § 68-212-216, to assist Consenting Party and their representatives in obtaining access to the Site (as needed). Any delays caused by denial of access shall be grounds for extension of any deadline for performance of activities for which such access is required.

G. ASSESSMENT CONFERENCES

At any time deemed necessary by the Department, the Department may schedule an assessment conference that the Consenting Party or their representatives shall attend. The Consenting Party shall be given notice of any such conference, in writing, at least seven (7) days prior to the meeting. If the Parties mutually agree that the Consenting Party should proceed with further investigation, remedial action, interim action, and/or long term monitoring and maintenance, this ORDER shall be reduced to writing, shall be signed on behalf of the Department and the Consenting Party, and shall be appended to this ORDER. Any such appended Order shall become an enforceable part of this ORDER; however, if any terms or condition of any such appended Order conflicts with or is repugnant to any term or condition of the main body of this ORDER, the main body of this ORDER shall control and the contradictory or repugnant portions of the appended Order shall be null and void.

H. NCP REQUIREMENTS
To the extent practicable, any hazardous substance investigation, identification, containment and cleanup action, including monitoring and maintenance, performed under this ORDER, shall be consistent with the National Contingency Plan ("NCP") promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, (Public Law 96-510).

I. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

Any information, reports, or studies required to be submitted under the terms of this ORDER shall contain the following 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. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury.”

J. LETTER OF COMPLETION AND NO FURTHER ACTION

Upon completion of all tasks set forth in this ORDER and any amendments, the Department shall issue to Consenting Party a letter stating that the conditions of this ORDER have been fulfilled and no further action of the Consenting Party for contamination identified and addressed in this ORDER is required. The letter of completion shall be conditional upon the payment of Department’s oversight cost and on compliance with other requirements of this ORDER. This letter of Completion does not relieve Consenting Party of the requirement to continue Operation and Maintenance according to an approved Operation and Maintenance Plan (as required), financial assurance, payment of Department’s oversight cost, or continued adherence to and enforcement of land use restrictions pursuant to T.C.A. § 68-212-225. Upon the
request of the Consenting 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 ORDER.

**ADDITIONAL REQUIREMENTS**

**XI.**

**A. REQUESTS FOR TIME EXTENSIONS**

The Consenting Party may request a time extension for any deadline in this ORDER by written submission made prior to the deadline, if practicable. The time extension will be granted for good cause shown, including any events beyond Consenting Party’s reasonable control. Events beyond Consenting Parties reasonable control, include, but are not limited to, any change in or the adoption of any law, judgment or decree; delays related to obtaining permits or other authorization from governmental authorities; acts of God, accidents, fire, explosion, flood, hurricanes; a shortage of labor due to strikes, lockouts or other industrial disturbances, riots or civil commotion; or war, declared or undeclared; shortage or breakdown or other failure of facilities used by Respondent or its suppliers or contractors for manufacture or transportation of necessary equipment and supplies; inability to secure at reasonable prices or inability to secure because of shortages of transportation, power, fuel, materials, labor or supplies needed by Respondent or its contractors to perform its obligations under the ORDER. A time extension for performance of any obligations under this ORDER that are affected by requested extension will be extended for such time as is necessary to complete those obligations. Any mutually agreed extension of a deadline shall be documented in writing and signed on behalf of the Department and the Consenting Party.

**B. ACTIVITIES RESTRICTED TO TERMS OF ORDER**

The Consenting Party agrees not to disturb, move or remove any areas of hazardous substances, solid waste or other pollutant(s) that are subject to liability protection under this ORDER without written approval by the Department unless the activities are being conducted under the terms and
conditions of this ORDER or necessitated by the normal day-to-day activities of any on-going business.

C. PERMITS

As provided in Tenn. Code Ann. § 68-212-222, no state or local permits shall be required for clean-up activities which are conducted entirely on site and in accordance with this part; provided, that such clean-up activities meet the standards that would apply if such permits were required.

RESERVATION OF RIGHTS

XII.

1. This ORDER shall not be construed as waiving any right or authority available to the Commissioner to assess responsible parties other than the Consenting 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 ORDER shall be interpreted as limiting the Consenting Party’s right to preserve the confidentiality of attorney work product or client-attorney communication. Tenn. Code Ann. § 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 ORDER 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 ORDER may be used by the Department for all purposes set forth in Tenn. Code Ann. § 68-212-201 et seq.

3. The Consenting Party may terminate this ORDER 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 Consenting 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 Tenn. Code Ann. § 68-212-225; provided, that both Parties shall have and retain all authority, rights and defenses as if this ORDER had never existed.
4. The Department may terminate this ORDER by written notice to the Consenting Party in the event that the Department receives timely comments from third-party contribution claim holders pursuant to the notice sent under Section D of this ORDER, if any, and such comments disclose facts or considerations that indicate that this ORDER is inappropriate, improper or inadequate; provided, however, absent fraud or intentional misconduct, that in such event the Consenting Party may elect to waive the protections set forth in Section D hereunder and the remainder of the terms and conditions of this ORDER 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 D. The Consenting Party’s waiver notice must be made within fifteen (15) days after receipt of the Department’s termination notice.

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

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

**ACKNOWLEDGMENT**

The individual signing below on behalf of the Consenting Party represents that he is a duly authorized agent, capable of entering into a Consent Order on behalf of the Consenting Party.

AGREED to by the parties.

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<thead>
<tr>
<th>Date</th>
<th>Steve Goins</th>
<th>Date</th>
<th>[Signatory’s Name]</th>
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<td></td>
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