

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY
ALEX BRISCOE, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

VOLUNTARY REMEDIAL ACTION AGREEMENT

This Voluntary Remedial Action Agreement ("Agreement") is between Christopher Porto, Smart Growth, Inc. ("Responsible Party") and the Alameda County Department of Environmental Health (ACDEH) and is effective on the date signed by the Director of ACDEH.

Responsible Party has completed and submitted a request form for ACDEH to provide supervision at the following location (the "Site"):

1125 Mandela Pkwy
Property Address
Oakland
City

The Parties hereby agree as follows:

1. Remedial Action. Responsible Party agrees to:
 - a. Perform the remedial actions identified in Exhibit 1 and other actions as may be requested by ACDEH during the term of this Agreement.
 - b. Perform all the work required by this Agreement including modifications or additions requested by ACDEH.
 - c. Timely reporting, investigation, and cleanup of soil and/or groundwater contamination in compliance with appropriate laws, regulations, and policies.
 - d. Conduct all activities in accordance with applicable regulatory requirements and industry practices.
 - e. Conduct remedial actions that may be necessary to protect human health and the environment.
2. ACDEH Supervision. ACDEH shall review and provide written comments to Responsible Party regarding the proposed remedial work. Regardless of the level of supervision from ACDEH, the Responsible Party is responsible for all actions related to the site. Responsible Party is also responsible for compliance with any new laws or regulations that may be applicable during the term of this Agreement.
3. Documents.
 - a. Responsible Party hereby verifies that it has submitted to ACDEH all background information, environmental assessment reports (including Phase I Environmental Assessment Reports), analytical results, and any other information pertinent to the characterization and cleanup of the site ("Documents").

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- b. Responsible Party hereby verifies that all submitted information and documents are current and accurate to the best of his/her knowledge. Responsible Party understands and agrees that Documents it submits must be prepared by, signed and stamped by environmental professionals who are licensed to perform these activities in California.
 - c. If any additional information becomes available, or Responsible Party becomes aware that information contained in any Document is inaccurate, it shall immediately notify ACDEH in writing.
4. **Dangerous Condition.** Responsible Party shall notify ACDEH immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Responsible Party shall immediately take remedial measures to address any immediate threat or imminent or substantial endangerment.
5. **Termination.** ACDEH may, after giving Responsible Party adequate notice, withdraw from this Agreement at any time after making one of the following findings:
 - a. Responsible Party is not in compliance with this Agreement.
 - b. Appropriate staff resources, technical expertise, or technical capabilities are not available to adequately provide oversight of the remedial action.
 - c. The release of the waste that is the subject of the remedial action is of a sufficiently complex nature or may present such a significant potential hazard to human health or the environment that it should be referred to the Department of Toxic Substances Control (DTSC) or a California Regional Water Quality Control Board (Regional Water Board).
6. **State Enforcement Action.** Entering into this Agreement does not prevent the DTSC, the State Water Resources Control Board (State Water Board), or the Regional Water Board from taking an enforcement action to address the release.
7. **Referral of Case to DTSC or Regional Water Board.** Nothing in this Agreement prevents ACDEH, if it determines it is appropriate, from referring the site to DTSC or Regional Water Board.
8. **Report Submittals.** Responsible Party shall submit reports in electronic form. Detailed instructions for submission of electronic documents to the ACDEH FTP site is available on line at http://www.acgov.org/aceh/lop/upload_instructions.pdf. Submission of reports to the ACDEH FTP site is an addition to existing requirements for electronic submittal of information to the State Water Board GeoTracker website.
9. **Electronic Submittal of Information to GeoTracker.** This case is subject to California regulations for electronic submittal of information for all soil and groundwater cleanup cases in California (Title 23, Division 3, Chapter 30, Articles 1 and 2; Title 27, Division 3, Subdivisions 1 and 2). In order to be considered complete, all required submittals must be uploaded to the State of California GeoTracker database in compliance with State Water Board (GeoTracker) requirements by specified submittal due dates.
10. **Completion of Remedial Action.** Upon completion of remedial action, ACDEH will provide the Responsible Party with a letter stating that actions required by this agreement are complete and no further action is required (i.e. Closure Letter).
11. **Full Compliance.** Responsible Party is required to comply with all legal requirements. Entering into this Agreement with ACDEH does not affect the rights or obligations of any other agency to regulate, inspect, permit, issue violations and issue orders. Responsible Party cannot rely on this Agreement, any directions or assistance from ACDEH to avoid compliance with the law or responding to and fully cooperating with other regulatory agencies.

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12. Access to Site. Responsible Party shall provide ACDEH full access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement this Agreement. Such access shall be provided to ACDEH 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 ACDEH or any other agency may otherwise have by operation of law.
13. Payment of Cost.
- a. Fees. Pursuant to Health and Safety Code § 101490 ACDEH will charge Responsible Party for all costs including ACDEH staff time. Responsible Party agrees to promptly pay all charges
 - b. Hourly Rate. The ACDEH hourly charge rate is \$174 per hour as of July 1, 2015. The hourly charge rate may be adjusted periodically to reflect program costs. For this case, approximately 00 hours have already been worked, and will be debited against deposit/refund account.
 - c. Deposit. Responsible Party shall submit an initial deposit of \$6,000.00 payable to Alameda County Department of Environmental Health with "RA" (the type of project), the ACDEH case number (which can be found on the footer of this Agreement)," and the Site address written on the check. Checks are to be mailed or delivered to the attention of ACDEH Finance Department. This deposit may or may not be sufficient to provide all necessary regulatory oversight. At the request of ACDEH, Responsible Party will submit a further deposit if the funds are depleted. Additional funds, if requested, must be submitted within two (2) weeks of the request.
 - d. Application of Deposit. ACDEH will apply the deposit as work is performed. If the initial fund deposit is insufficient, an additional deposit will be requested. Any unused funds will be refunded to the Responsible Party. If the reasonable and necessary costs have been expended, including staff time, prior to execution of this Agreement, ACDEH will apply the deposit to that amount first.
 - e. Payment of Costs after Termination. In the event that this Agreement is terminated for any reason, the Responsible Party shall still be responsible for payment of ACDEH costs through the effective date of termination.
14. Indemnification. Responsible Party, directly or through the Site property owner, agrees to hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, their officers, agents and employees from and against any and all claims, causes of action, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from or in any way connected with this Agreement except where caused solely by the gross negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Responsible Party of any obligation hereunder.
15. Entire Agreement. This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between Parties relating to the subject matter of this Agreement. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both Parties.

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- 16. **Headings.** Headings are for convenience of reference only and shall in no way affect interpretation of the Agreement.

- 17. **Severability:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

Ronald Browder, Acting Director

Date



Signature (Responsible Party)

Christopher Peto, President,

Printed Name Smart Growth,
INC.

8/17/15

Date

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EXHIBIT 1

SCOPE OF WORK

This Voluntary Remedial Action Agreement applies to ~~[preliminary description of basis for action]~~ ^{unconditional land use closure for 1125 Mandela Pkwy, Oakland, CA 94607}.
ACDEH will provide supervision of ~~[general description of the project]~~ ^{1125 Mandela Pkwy, Oakland, CA 94607}.

Responsible Party shall complete the following tasks:

1. Submittal of Existing Data. Submit to ACDEH all background information, analytical results, environmental assessment reports including Phase I environmental assessment reports, and any other information pertinent to environmental conditions at the site.
2. Site Assessment. Conduct site assessment activities to characterize the nature and extent of contamination and to determine whether the site poses a threat to human health or the environment. Documents which may be required as part of this site could potentially include the following:
 - Work Plans
 - Site Assessment Reports
 - Risk Assessment Reports
 - Sensitive Receptor Survey Reports
 - Conceptual Site Models
3. Remedial Actions. Documents which may be required as part of the remedial actions could potentially include the following:
 - Interim Remedial Action Work Plans
 - Feasibility Study Reports
 - Corrective Action Plans
 - Remedial Action Reports
 - Site Management Plans
4. Additional Actions. Responsible Party understands that as additional information about the waste release, site conditions, and related information becomes available, additional actions will be recommended and/or required. ACDEH will provide the information regarding additional actions through directive letters referencing this Agreement.

VOLUNTARY REMEDIAL ACTION AGREEMENT**REQUEST FOR VOLUNTARY REMEDIAL ACTION AGREEMENT**

The Responsible Party identified below hereby requests that the Alameda County Department of Environmental Health (ACDEH) provide oversight on a voluntary basis at the site identified below.

Date of Request: 8/17/15

SITE INFORMATION		
Site Address: <u>1125 MANDELA PKWY OAKLAND, CA 94607</u>	Site APN: <u>004006300601</u>	
Approximate Size of Site: <u>10,020 sq ft</u>	Current Land Use:	
City: <u>OAKLAND</u>	State: <u>CA</u>	ZIP Code: <u>94607</u>
Type and Extent of Contamination: <i>Identify history of site, substances found at site, and reason site is eligible for the Voluntary Remedial Action Program.</i>		
RESPONSIBLE PARTY ENTERING AGREEMENT		
Name: <u>SMART GROWTH, INC</u>	Type of Entity: <u>Individual</u> Corporation, Trust, etc.	
Contact Name: <u>CHRIS PORTO</u>	Phone: <u>510-250-2499</u>	
Current address: <u>5433 MANILA AVE B</u>	Email: <u>CPORTO@SMARTGROWTH.CO</u>	
City: <u>OAKLAND</u>	State: <u>CA</u>	ZIP Code: <u>94618</u>
Relationship to Property/ Authority: <i>Describe the basis of your authority to request assistance and enter into the agreement.</i>		
CURRENT PROPERTY OWNER		
Name: <u>SHIRLEY THOMPSON TRUST</u>	Type of Entity: <u>Individual, Corporation</u> Trust, etc.	
Current Address:	E-mail:	
City:	State:	ZIP Code:

The Responsible Party shall submit to ACDEH all background information, environmental assessment reports (including Phase I Environmental Assessment Reports), analytical results, and any other information pertinent to the characterization and cleanup of the site. All available information is to be provided to ACDEH by the Responsible Party within 2 working days of any request.

By signing below, Responsible Party represents that they have the authority to make this request and enter into a *Voluntary Remedial Action Agreement* for the Site.

Responsible Party Signature _____

ACDEH is required to notify the California Department of Toxic Substances Control and the appropriate California Regional Water Quality Control Board at least 10 working days prior to entering into a Voluntary Remedial Action Agreement. (Health and Safety Code § 101487)