

**STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES**

**IN THE MATTER OF:**

**AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND THE VILLAGE OF GRAFTON COMMUNITY DEVELOPMENT AUTHORITY TO INVESTIGATE AND CLEAN UP ENVIRONMENTAL CONTAMINATION AT 1020 WASHINGTON STREET, GRAFTON, WISCONSIN, PURSUANT TO WIS. STAT. § 75.106 and Ch. 292.**

WHEREAS, before a judgment is issued under Wis. Stat. § 75.521 or a tax deed is executed under Wis. Stat. § 75.14, Wis. Stat. § 75.106 authorizes the governing body of a county to assign to a person the county's right to take judgment with respect to any parcel that is subject to foreclosure under Wis. Stat. § 75.521 or to take a tax deed with respect to any parcel subject to Wis. Stat. § 75.14, if all of the following apply:

- A. The governing body of the county (or city) provides written notice to the governing body of the city, town or village in which the parcel that is subject to the county's (or city's) foreclosure action is located at least fifteen (15) days before the governing body of the county (or city) meets to consider the approval of the assignment.
- B. The governing body of the county (or city) produces a written assignment that is signed on behalf of the county (or city), the assignee and the city, town or village in which the parcel that is subject to the county's (or city's) foreclosure action is located.
- C. The assignment identifies the parcel for which the judgment is assigned.
- D. The parcel for which a judgment is assigned is a brownfield, as that term is defined in Wis. Stat. § 75.106(1)(a).
- E. The assignment requires an environmental assessment of the parcel and requires that the Department of Natural Resources (the "Department") be provided the results of that assessment before a final judgment under Wis. Stat. § 75.521 or a tax deed under Wis. Stat. § 75.14 related to the parcel is granted to the assignee. The environmental assessment for this site is titled "Site Investigation Work Plan and Preliminary Remedial Action Plan," dated January 10, 2020, and prepared and submitted by Konicek Environmental Consulting, LLC.

- F. The assignment requires that, if the parcel is contaminated by the discharge of a hazardous substance, as determined by the assessment under par. (E), and if the assignee elects to accept the judgment or deed assigned under Wis. Stat. § 75.106(2) regardless of the contamination, the assignee enter into an agreement with the Department, before a final judgment is issued under Wis. Stat. § 75.521 related to the parcel, to clean up the parcel to the extent practicable; to minimize any harmful effects from the hazardous substance pursuant to rules the Department promulgates; and to maintain and monitor the parcel pursuant to rules the Department promulgates.
- G. The assignment and an affidavit from the county treasurer that attests to the county governing body's approval of the assignment are filed with the court that is presiding over the county's foreclosure action under Wis. Stat. § 75.521.

**WHEREAS**, the Village of Grafton Community Development Authority is attempting to acquire real property located in the Village of Grafton, Ozaukee County, Wisconsin, which together consists of property described as: 1020 Washington Street, Grafton, Wisconsin, 53024, Tax Key/Parcel Number 10-096-07-08-000, with the following legal description:

- 0826847 Lot 8 Block 7 Original Plat, Village of Grafton, Northeast ¼ of Section 24, Township 10 North, Range 21 East, Ozaukee County, State of Wisconsin.

The real property identified above, and further identified visually in a map included as Addendum A to this Agreement, is hereinafter known as “the Property.”

**WHEREAS**, the Department has reviewed a Site Investigation Work Plan and Preliminary Remedial Action Plan for the Property, prepared for the Village of Grafton Community Development Authority by Konicek Environmental Consulting, LLC, and dated January 10, 2020; the Report on Modified Phase I Activities for Clark Oil Station #1656, prepared in October 1993 for Clark Oil & Refining Corp., by BT2, Inc.; and all other documents contained in the Department's Bureau for Remediation and Redevelopment Tracking System (BRRTS) database for the site at the Property, which is identified as BRRTS 03-46-003224.

**WHEREAS**, in consideration of, and in exchange for, the promises and mutual understandings contained herein, and intending to be bound legally hereby, the Village of Grafton Community Development Authority and the Department, by their authorized representatives, have agreed to the execution of this Agreement.

**NOW, THEREFORE**, based upon the above recitals and the terms and conditions set forth below, the Village of Grafton Community Development Authority and the Department agree as follows:

### **I. PARTIES BOUND**

The Department and the Village of Grafton Community Development Authority each have consented to the following Agreement, entered into pursuant to Wis. Stat. § 75.106.

### **II. WORK TO BE PERFORMED**

All work to be performed by the Village of Grafton Community Development Authority pursuant to this Agreement shall be conducted in accordance with Wis. Stat. Chs. 101, 289, 291, and 292, especially §§ 292.11, 292.12, and 292.31, and the Wis. Admin. Code ch. NR 700 rule series, especially Wis. Admin. Code §§ NR 716, 720, 722, 724, 725, 726 and 727, as well as any other applicable Administrative Rules and Statutes. In addition, all work shall be conducted in compliance with timeframes identified in the Wis. Admin. Ch. NR 700 rule series, which are further outlined in Department publication RR-967 (included as Addendum B) and, as needed, in site-specific correspondence from the Department.

A. The Village of Grafton Community Development Authority agrees to undertake site investigation and remedial actions due to the presence of hazardous substances on or originating from the Property and, accordingly, the Village of Grafton Community Development Authority agrees to restore the environment to the extent practicable and minimize the harmful effects from the discharges of hazardous substances on or originating from the Property consistent with the requirements of all applicable state and federal laws; and

B. The Village of Grafton Community Development Authority, after acquiring the Property, agrees to maintain and monitor the Property as required under all applicable statutes and rules and any contract entered

into under those statutes and rules.

- C. If the Village of Grafton Community Development Authority, or its successors and assigns, fails to perform Wis. Admin. Code ch. NR 700 rule series response actions at the Property in accordance with timelines set forth in this Agreement or applicable statutes and rules, the Department reserves the right to initiate enforcement action against the Village of Grafton Community Development Authority, or its successors and assigns, to compel action. Penalty determinations will be referred to the Wisconsin Department of Justice.

### **III. SUBMISSION OF DOCUMENTS**

Documents, including reports, plans and correspondence, submitted pursuant to this Agreement shall be submitted to the Department or to other applicable governmental agencies in accordance with Wis. Admin. Code § NR 700.11 and the other applicable chapters of Wis. Admin. Code ch. NR 700 rule series.

### **IV. SITE ACCESS**

The employees and authorized representatives of the Department shall have the authority to enter the Property to inspect the project and shall have access to all project records at all reasonable times for any purpose relating to the implementation of this Agreement. These may include but are not limited to: inspecting progress of the site work; conducting environmental testing; verifying data; and reviewing records. The Village of Grafton Community Development Authority shall honor all reasonable requests for such access by the Department or their authorized representatives.

### **V. SCHEDULE OF RESPONSE ACTIONS**

Pursuant to Wis. Stat. § 292.11(7)(d), the Village of Grafton Community Development Authority has provided a schedule for undertaking and completing the non-emergency Response Actions in Addendum C. The Village of Grafton Community Development Authority shall be responsible for taking the Response Actions at the Site consistent with the schedule.

## **VI. FEES**

The Village of Grafton Community Development Authority has paid a \$700 fee to the Department for preparation and review of this Agreement. Additional review fees, as applicable, shall be paid as authorized by Wis. Stat. ch. 292, and as specified in Wis. Admin. Code §§ NR 749-750.

## **VII. EFFECTIVE DATE**

This Agreement shall be executed by the Village of Grafton Community Development Authority prior to being executed by the Department. The effective date of the Agreement shall be the later of the dates on which (1) the Department signs and dates the Agreement or (2) the date the Village of Grafton Community Development Authority acquires the Property. This Agreement supersedes all previous agreements entered into by the Village of Grafton Community Development Authority and the Department with respect to the Property.

## **VIII. CONDITIONS UNDER WHICH AGREEMENT IS VOIDED**

This Agreement shall be null and void and the parties shall not be bound by the terms and conditions of the Agreement if the Village of Grafton Community Development Authority does not take judgment to the Property under Wis. Stat. §§ 75.106 and 75.521 within six (6) months of the effective date of this Agreement.

## **IX. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH SCHEDULE OF RESPONSE ACTIONS**

Pursuant to Wis. Admin. Code § NR 728.07(2), which requires that this Agreement include a provision for stipulated penalties if the response action is not completed in accordance with the Agreement schedule, the Village of Grafton Community Development Authority agrees to the following penalties for failure to complete the non-emergency Response Actions in Addendum C: for failure to complete a scheduled response action by a respective deadline, Village of Grafton Community Development Authority shall forfeit \$100 for each violation. Each day of continued violation is a separate offense.

## **X. AMENDMENT OF THE AGREEMENT**

In addition to the procedures set forth above, this Agreement may be amended by mutual written

agreement of the Department and the Village of Grafton Community Development Authority.

## **XI. DISPUTE RESOLUTION**

- A. Any dispute regarding this Agreement shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is extended by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.
- B. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the Village of Grafton Community Development Authority shall have thirty (30) days after the conclusion of the informal negotiation period to invoke the formal dispute resolution procedures of this section by serving on the State of Wisconsin a written Statement of Position on the matter in dispute, including but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Village of Grafton Community Development Authority.
- C. Within thirty (30) days after receipt of Statement of Position, the Department will serve on the Village of Grafton Community Development Authority its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and all supporting documentation relied upon by the Department. Within thirty (30) days after receipt of the Department's Statement of Position, the Village of Grafton Community Development Authority may submit a Reply.
- D. Following receipt of the Village of Grafton Community Development Authority's Statement of Position, the Secretary of the Department will issue a final decision under Wis. Stat. § 227.47.
- E. The invocation of formal dispute resolution procedures under this section shall not extend, postpone or affect in any way any obligation of the Village of Grafton Community Development Authority under this Agreement, not directly in dispute, unless the Department agrees otherwise.

## **XII. VIOLATIONS**

Pursuant to Wis. Stat. 292.11(7)(e), the Department may refer violations of this Negotiated Agreement to the Wisconsin Department of Justice for enforcement under Wis. Stat. § 299.95.


### **XIII. TERMINATION AND SATISFACTION OF THE AGREEMENT**

The provisions of this Agreement shall be deemed satisfied upon receipt by the Village of Grafton Community Development Authority of written notice of completion from the Department that the Village of Grafton Community Development Authority has demonstrated that the Response Actions, including any modified or additional Response Actions, or amendments, were completed in accordance with applicable local, state and federal statutes and regulations and the terms of this Agreement to the satisfaction of the Department. The termination and satisfaction of this Agreement shall be provided to the Village of Grafton Community Development Authority in writing upon the Department issuing case closure of the entire Site under the appropriate provisions of Wis. Stat. ch. 292 and the Wis. Admin. Code chs. NR 700 through NR 754 rule series.

The written notice of completion and termination and satisfaction of this Agreement may exclude those provisions which, by their express terms, provide rights to the Department or impose obligations on the Village of Grafton Community Development Authority beyond such date. The Village of Grafton Community Development Authority may request a determination from the Department that the Work is complete under Wis. Admin. Code ch. NR 749. Any such request shall contain supporting documentation necessary to support such a determination along with the required fee. If the Department determines that the Work is not complete, the Department shall specify the actions necessary to be undertaken by the Village of Grafton Community Development Authority to complete the Work. A determination by the Department that the Work is not complete shall be subject to the Dispute Resolution provision.

The Department reserves the right to terminate any approval issued under this Agreement in the event the Department determines that the Village of Grafton Community Development Authority obtained the approval by fraud, misrepresentation, or a knowing failure to disclose material information. The Department further reserves the right to terminate this Agreement if the Department determines that the Village of Grafton Community Development Authority failed to make reasonable progress in undertaking the Response Actions required under the terms of this Agreement.


**WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

By: 

Date: 5/1/2020

for Christine Haag, Director  
Remediation and Redevelopment Program  
101 S. Webster Street, PO Box 7921  
Madison WI 53707-7921

**VILLAGE OF GRAFTON COMMUNITY  
DEVELOPMENT AUTHORITY**

By: 

Date: 4/28/2020

James Bergquist, Chairperson