

Prepared By:  
City of Huron  
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STATE OF SOUTH DAKOTA ) SS  
COUNTY OF BEADLE )  
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Shirley Riley  
Register of Deeds  
preparer

### Environmental Covenant Created Pursuant to SDCL §34A-17:

This Agreement creating an Environmental Covenant is made and entered into this 15th day of June, 2009, by and between the City of Huron, a municipal corporation in the State of South Dakota, hereinafter referred to as "City" and the Department of Environment and Natural Resources, an administrative agency of the State of South Dakota, hereinafter referred to as "Agency".

WHEREAS, City is the sole fee simple owner of certain property as hereinafter described in Section Two; and

WHEREAS, the City with the assistance and review of the Agency has completed a Phase I Environmental Site Assessment, and a Sampling and Analysis Report for the Targeted Brownfields Assessment as well as asbestos abatement and groundwater monitoring well closure on the described site and through adopting these documents are notifying all future property owners of the requirements associated with activity on the site; and

WHEREAS, the City and the Agency require the establishment of certain environmental land use controls (environmental covenants) for the subject property;

NOW THEREFORE, and based upon the covenants hereinafter described, the parties do hereby agree as follows:

#### Section One -- Environmental Covenant

This Agreement shall be deemed an Environmental Covenant created pursuant to the provisions of SDCL 34A-17 which shall run with the land and be binding upon heirs, assigns, and subsequent transferees of the subject property. Parties having any right, title or interest in and to the subject property, whether now or in the future, and their heirs, assigns, and successors shall be bound by and must comply with the specific use and activity restrictions set forth in this Environmental Covenant. The term "transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and /or lessees.

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## **Section Two – Real Property**

The real property which is subject to this Environmental Covenant (the subject property) is: Processor's Tract "A" and that part of the NE ¼ located north of the railroad in Section 33 (consisting of approximately 148 acres), all located in Township 111 North, Range 62 West, of the 5<sup>th</sup> Prime Meridian, in Beadle County, South Dakota.

## **Section Three – Background**

The subject property was previously know as the Huron Dressed Beef site and was used as a beef butchering and processing facility including wastewater treatment / holding ponds and livestock pens. The site consists of an estimated 87 acres of potential cropland, 27 acres of lagoons, 11 acres as the building site, and 23 acres of natural wetland, for a total of approximately 148 acres.

The site had a Phase I Environmental Site Assessment conducted in 2007 by GeoTek and a Sampling and Analysis -- Targeted Brownfields Assessment conducted by GeoTek in 2008. By direction of the Agency, an environmental covenant must be imposed to mitigate the risk to the public health, safety and/or the environment because:

1. the general groundwater drinking water standards are exceeded (for total dissolved solids and sulfate concentrations) at six groundwater monitoring well locations (drilled as part of the Targeted Brownfields Assessment) indicating that the shallow groundwater beneath the site is not a viable drinking water source, and
2. the wastewater treatment ponds on site contain relatively high levels of nitrates. Use of the lagoons should be limited /controlled because of the nitrates in the biosolids (sludge) in the bottom of the lagoons.

A copy of the "Sampling and Analysis Report, Targeted Brownfields Assessment, Former Huron Dressed Beef, 20730 – 397<sup>th</sup> Avenue, Huron, South Dakota" is available at the City of Huron, Office of the City Engineer.

## **Section Four -- Use Limitations**

Activity and use limitation constituting an environmental covenant for the subject property in accordance with SDCL 34A-17 are hereby established as follows:

1. Future use of the property shall be limited to:
  - a. Any permitted use listed in the Agricultural Fringe Protection District (AGFP) in the Joint Jurisdictional District Zoning Ordinance with the exception that any residential use is expressly prohibited on the property.
  - b. Industrial uses according to the "I-2" General Industrial uses listed in the Joint Jurisdictional Zoning Ordinance may be considered by the City, County and Agency only if the land is rezoned to "I-2" with the exception that any residential

use is expressly prohibited on the property. Further, "I-2" uses will only be considered if additional assessment and /or cleanup work is performed following approval of the proposed assessment and cleanup work by the City and the Agency. Any additional cleanup work must be approved upon completion of the work by City and Agency prior to any building permits being issued.

2. Any residential use is expressly prohibited unless additional assessment or cleanup work is performed following approval by the City and the Agency. Any additional cleanup work must be approved upon completion of the work by City and Agency prior to any building permits being issued.
3. Shallow drinking water wells for human consumption shall not be allowed on the site. Use of shallow groundwater or water that may collect in the old lagoons is prohibited for livestock consumption. For the purposes of this covenant, "shallow" is defined as less than 50 feet in depth.
4. Any ground water collection or dewatering systems on the subject property must be approved and permitted by the City and the Agency prior to construction.
5. Accessing shallow groundwater for potable or non-potable purposes is prohibited upon the subject property. Connection in any manner, of an on-site shallow well to a private, municipal or rural water system distribution is prohibited upon the subject property.
6. Underground development designed for human occupancy upon the subject property is prohibited unless there is City and Agency approval of the proposed use and additional monitoring, remediation, or risk-based modeling measures are taken to ensure that future occupants would not be exposed to potential contaminants.
7. The waste water ponds and their contents are considered a regulated solid waste and shall not be disturbed in any way unless the disturbance is justified by additional assessment and approved by the City and the Agency.

The use restrictions presented here do not apply to excavation, drilling, or other activities performed to implement remediation activities that may be required by the Agency.

### **Section Five – Source Documents**

The source documents for the environmental response project are the:

- "Sampling and Analysis Report, Targeted Brownfields Assessment, Former Huron Dressed Beef, 20730 – 397<sup>th</sup> Avenue, Huron, South Dakota" prepared for the SD Department of Environment and Natural Resources Brownfields Program by GeoTek Engineering and Testing Services, Inc., 909 East 50<sup>th</sup> Street North, Sioux Falls, SD 57104 in GeoTek report #07-140 dated July 10, 2008.

- “Phase I Environmental Site Assessment, Targeted Brownfield Assessment, Former Huron Dressed Beef, Latitude N44° 22’ 41” Longitude W98° 16’ 34”, 20730 – 397<sup>th</sup> Avenue, Huron, SD 57350” in GeoTek Report #07-140-3 dated June 26, 2007.
- GeoTek Engineering & Testing Services, Inc., Report of Asbestos Removal at the Huron Dressed Beef Site, GeoTek Report #07-140, dated November 5, 2008.
- GeoTek Engineering & Testing Services, Inc., Report of Monitoring Well Abatement at the Huron Dressed Beef Site, GeoTek Report #07-140, dated November 21, 2008.

The administrative record for this property can be viewed or obtained from the City of Huron, Office of the City Engineer and from the Agency at Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, South Dakota. A copy of this environmental covenant shall be filed with the Beadle County Register of Deeds Office by City and the South Dakota Secretary of State’s Office by Agency.

#### **Section Six – Compliance Enforcement and Access**

Compliance of this environmental covenant may enforced by the Owner, the City, the Agency or any person or entity entitled to enforce compliance under SDCL § 34A-17-11. The City and subsequent transferee grants to the Agency, its agents, and contractors right of access at all reasonable times to the property for enforcement of all provisions of this environmental covenant. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party’s right to take action to enforce any non-compliance.

#### **Section Seven – Amendment or Termination**

This Environmental Covenant may only be amended or terminated by written consent of the current owner (if different than the City) the City and the Agency. The covenant may be amended or terminated only by a written instrument duly executed by the Department Secretary of the South Dakota Department of Environment and Natural Resources (Agency) and the City.

#### **Section Eight – Assignability of Interest**

No holder of an interest in the real property subject to environmental covenant may assign its interest in the real property without the prior written consent of the parties executing this environmental covenant and all parties holding an interest in the real property.

**Section Nine – Governing Law**

This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of South Dakota.

**Section Ten – Severability.**

If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

**City of Huron, SD**

Attest:

By: David McGirr  
David McGirr  
Mayor

Paullyn Carey  
Paullyn Carey, Finance Officer

STATE OF SOUTH DAKOTA )  
  ) ss  
COUNTY OF BEADLE )

On this 22<sup>nd</sup> day of June, 2009, before me, the undersigned officer, personally appeared David McGirr, who acknowledged himself to be the Mayor of the City of Huron, and that he, as Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City by himself as Mayor.

In Witness Whereof, I hereunto set my hand and official seal.

Janet Bockorny  
Notary Public- State of South Dakota

My Commission Expires: 12-7-2013



