

Brownfields Program
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State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

6/10/03

Here you go, Benne: the SMI
Assignment Agreement (2 of the 3
copies). Sorry it took so long.

Rob



HELMS MULLISS WICKER

-6/3: L dex

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April 16, 2003

Rob Gelblum
Assistant Attorney General
State of North Carolina
Department of Justice
Environmental Division
1646 Mail Service Center
Raleigh, NC 27699-1646

RE: City of Charlotte/SMI Brownfields Agreement -- Assignment to Johnson & Wales
University
Client-Matter No. 4010660.000625

Dear Rob:

On April 2, 2003, the City of Charlotte closed the sale of this Brownfields site to Johnson & Wales University. That transaction contemplated and included the assignment of this Brownfields Agreement from the City to Johnson & Wales.

Paragraph 23 of the Brownfields Agreement requires DENR's consent to such an assignment. To fulfill this requirement, I have enclosed three original Assignment of Brownfields Agreement for execution by DENR. Except for changing the names of the parties, this assignment is identical to the ones you and I have used at other Brownfields sites.

I have also included an original executed Affidavit regarding Responsibility and Compliance as executed by Johnson & Wales.

Please have each of the Assignment of Brownfields Agreement executed, retain one original for your files and return to the other two originals to me. I will distribute them to the parties.

Rob Gelblum
April 16, 2003
Page 2

If you have any questions regarding these matters, please call me.

Sincerely,

HELMS MULLISS & WICKER, PLLC



Benne C. Hutson

Enclosures

cc: Carolyn Minnich (w/encls.)
Wayne Kezirian (w/o encls.)

ASSIGNMENT OF BROWNFIELDS AGREEMENT

THIS ASSIGNMENT OF BROWNFIELDS AGREEMENT (the "Assignment Agreement") is entered into this 2nd day of April, 2003 by and among the City of Charlotte, North Carolina (the "City"); Johnson & Wales University, a Rhode Island non-profit corporation ("JWU"); and the North Carolina Department of Environment and Natural Resources ("DENR"), an agency of the State of North Carolina.

Recitals

A. On March 4, 2002, the City submitted its letter of intent to DENR with respect to the purchase of property located at South Cedar Street and Fourth Street in Charlotte, North Carolina pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, *et seq.* (the "Act"). That property constitutes the "Brownfields Property" that is the subject of this Assignment Agreement.

B. The City and DENR negotiated the terms of a Brownfields Agreement governing the redevelopment of the Brownfields Property, and submitted that agreement for a 60-day public comment period commencing September 16, 2002.

C. The Brownfields Agreement was executed by the City and DENR and became effective on November 15, 2002. The City now desires to assign certain rights and obligations under the Brownfields Agreement to JWU, and DENR consents to such assignment, subject to the terms and conditions of this Assignment Agreement.

NOW THEREFORE, in consideration of the premises and the covenants and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and JWU agree, and DENR consents to that agreement, as follows:

1. **Rights and benefits of the Brownfields Agreement.** As the purchaser of the Brownfields Property, JWU is entitled to the benefits of the liability protection provided in the Brownfields Agreement to the extent provided in the Act, including without limitation the protections in paragraphs 18 and 32 of the Brownfields Agreement (relating to DENR's covenant not to sue and contribution protection). The City retains its rights to and benefits of the liability protection granted under the Brownfields Agreement, including without limitation the protections in paragraphs 18 and 32 thereof.

2. **Assignment of other rights and obligations.** Without limiting the retention of rights and protections pursuant to Paragraph 1, above, the City assigns and transfers its other rights and its obligations under the Brownfields Agreement to JWU to the extent that those rights and obligations relate to requirements, acts or omissions with respect to the Brownfields Property that are required or occur on or after April 2, 2003; provided, however, that the City does not assign or transfer its obligations pursuant to the following paragraphs of the Brownfields Agreement: (i) Paragraph 11.b., (ii) Paragraph 24, to the extent that it relates to DENR's costs of reviewing this Assignment Agreement, and (iii) Paragraphs 33 and 34, to the extent that they relate to claims by or against the City. The City expressly retains its rights and obligations to the

extent that they relate to requirements, acts or omissions with the respect to the Brownfields Property that occurred or relate to the time period prior to April 2, 2003.

3. **JWU's consent to be bound by Brownfields Agreement.** Subject to the City's retention of certain obligations as outlined in Paragraph 2 of this Assignment Agreement, JWU hereby consents to be bound by the terms of the Brownfields Agreement, including without limitation the certification requirement in Section VIII of the Brownfields Agreement. Attached as Exhibit A to this Assignment Agreement is an affidavit signed by JWU's authorized representative, providing the information necessary under the Act to certify that JWU is qualified for the Brownfields Agreement.

4. **Payment of DENR review costs.** The City agrees to pay the reasonable costs incurred by DENR to review this request for its consent to assign or transfer the benefits and obligations under the Brownfields Agreement.

5. **Mutual indemnities of JWU and the City.** JWU and the City each agree to indemnify, defend and hold harmless the other and their respective officers, directors, members, employees, agents, successors and assigns from and against any claims, suits, demands, notices, damages, assessments, costs or expenses (including without limitation reasonable attorney's and consultant's fees) arising out of their respective failure to carry out the obligations assigned to or retained by them, as the case may be, under this Assignment Agreement. The parties' indemnity obligations shall survive indefinitely.

6. **DENR Consent.** DENR hereby consents to the assignment of certain rights and obligations under the Brownfields Agreement from the City to JWU as set forth herein.

7. **Authority to enter into this assignment.** Each signatory to this Assignment Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Assignment Agreement and to legally bind such party, and in the case of JWU to legally bind JWU to the terms and conditions of the Brownfields Agreement to the extent set forth herein.

8. **Modification of the Brownfields Agreement.** In keeping with the requirements of paragraph 25 of the Brownfields Agreement, this Assignment Agreement shall be considered a modification of the Brownfields Agreement to the extent provided herein. All other provisions, rights and obligations of the Brownfields Agreement are ratified hereby and remain in full force and effect.

9. **Successors and assigns.** This Assignment Agreement shall apply to and be binding on DENR, and on JWU, the City and their respective officers, directors, members, managers, employees and agents.

10. **Severability.** The severability, invalidity or unenforceability of any provision or portion of this Assignment Agreement shall not affect the validity or enforceability of any other provision or portion hereof.

11. **Applicable law.** This Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina, without regard to its conflicts of laws rules.

12. **Amendment and Modification.** This Assignment Agreement may be amended or modified in whole or in part only upon the written agreement of the City, JWU and DENR.

13. **Captions.** Paragraph titles and captions contained in this Assignment Agreement are inserted only as a matter of convenience and as reference and in no way define, limit, extend or describe the scope of this Assignment Agreement or the intent of any of its provisions.

14. **Entire Agreement.** This Assignment Agreement constitutes the entire agreement of the parties with respect to the matters contemplated by this Assignment Agreement, and supersedes any and all prior written or oral agreements between the parties.

15. **Counterparts.** This Assignment Agreement may be executed in two or more counterparts, each of which together shall constitute one instrument.

16. **Recitals.** The recitals are incorporated by reference.

WHEREFORE, the parties have executed this Assignment Agreement as of the date first above written.

JOHNSON & WALES UNIVERSITY

By: Thomas L G Dwyer

Its: Chief Financial Officer

CITY OF CHARLOTTE, NORTH CAROLINA

By: Ronald R. Koble

Its: Asst. City Mgr.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

By: Laura A. Matta

Its: Director

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**

**IN THE MATTER OF: City of Charlotte/
Johnson and Wales University**

**AFFIDAVIT RE:
RESPONSIBILITY AND
COMPLIANCE**

**UNDER THE AUTHORITY OF
NORTH CAROLINA GENERAL
STATUTES 130A-310.30, et. seq.**

Thomas L. G. Dwyer, being duly sworn, hereby deposes and says:

1. I am the Chief Financial Officer of Johnson & Wales University, a Rhode Island non-profit corporation ("JWU").

2. The City of Charlotte has previously entered into a Brownfields Agreement with the North Carolina Department of Environment and Natural Resources, pursuant to N.C.G.S. 130A, Article 9, Part 5 (Brownfields Act), in relation to the following parcels in the City of Charlotte, Mecklenburg County, North Carolina: the former Smith Metal & Iron site, consisting of Parcels "B" (approximately 2.1 acres) and "C" (approximately 4 acres), and 0.23 acres that the City of Charlotte previously acquired from Ms. Margie Williams (collectively the "Site"). JWU, the current owner of the Site, now wishes to have the Brownfields Agreement assigned to it and has authorized me to submit this affidavit in support of that assignment request.

3. I hereby certify, under the pains and penalties of perjury and of the Brownfields Act, that JWU, and any parent, subsidiary or other affiliate meets the eligibility requirements of N.C.G.S. 130A-310.31(b)(10), in that it did not cause or contribute to the contamination at the parcel cited in the preceding paragraph.

4. I hereby certify, under the pains and penalties of perjury and of the Brownfields Act, that JWU meets the eligibility requirement of N.C.G.S. 130A-310.32(a)(1) in that it and any parent, subsidiary or other affiliate have substantially complied with:

- a. the terms of any Brownfields or similar agreement to which it or any parent, subsidiary or other affiliate has been a party;
- b. the requirement applicable to any remediation in which it or any parent, subsidiary or other affiliate has previously engaged; and

c. federal and state laws, regulations and rules for the protection of the environment.

Affiant further saith not.

Thomas L G Dwyer
Signature

THOMAS L G DWYER
Printed Name

2/28/03
Date

Sworn to and subscribed before me

this 28th day of February, 2003.

Darlene Yandle

Notary Public

My commission expires: 8-13-05

(SEAL)

