

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:
SPEEDWAY LLC**

PARTICIPANT

**REGARDING:
FORMER WOODRUFF ELECTRIC CO-OP CORPORATION PROPERTY
3901 NORTH WASHINGTON STREET
FORREST CITY, ST. FRANCIS COUNTY, ARKANSAS
AFIN: 68-00085**

LIS No. -21-014

IMPLEMENTING AGREEMENT

This Implementing Agreement (IA) is made and entered into by and between the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) and Speedway LLC (Participant). This IA is intended to establish remedial requirements and related environmental liability protections for the Participant in connection with Participant's acquisition of an approximately 3.76 acre tract of land located at 3901 North Washington Street, Forrest City, St. Francis County, Arkansas (Property).

This IA is made pursuant to the authority of Ark. Code Ann. § 8-7-201 *et seq.*, Ark. Code Ann. § 8-7-501 *et seq.*, the Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 23, Hazardous Waste Management, (Rule 23), Ark. Code Ann. § 8-7-1101 *et seq.* (Arkansas Brownfield Program), and APC&EC Rule 29, Arkansas Brownfield Redevelopment.

This Agreement is of substantial public benefit and is in the public interest.

I. FINDINGS OF FACT

1. The Property is located at the northeast corner of North Washington Street and Holiday Drive in Forrest City, Arkansas, in an area characterized by undeveloped land and commercial land use. The physical address for the Property is 3901 North Washington Street, Forrest City, St. Francis County, Arkansas. The Property consists of

an approximately 3.76 acre tract of land in Parcel No. 0800-00115-0000. The legal description of the Property, as provided by the Participant is as follows:

Property description of part of the Woodruff Electric Cooperative Corporation property as described in Book 156 Page 288, Book 160 Page 356 and Book 202 Page 61 in the South Half of the Southeast Quarter of Section 16, Township 5 North, Range 3 East in Forrest City, St. Francis County, Arkansas:

Commencing at the recognized and accepted $\frac{1}{4}$ Corner common to Sections 16 and 21, Township 5 North, Range 3 East; thence North 779.19 feet to a point; thence East 50.79 feet to an iron pin found at the intersection of the east line of North Washington Street (Arkansas Highway 1B) (right-of-way varies) with the north line of Holiday Drive (100 foot right-of-way per deeds); thence North 03 degrees 50 minutes 50 seconds West with the east line of North Washington Street a distance of 309.76 feet to a pk nail found at a point on a curve; thence northwestwardly along a curve to the left having a radius of 2939.80 feet with the east line of North Washington Street a distance of 12.32 feet (chord = North 15 degrees 07 minutes 29 seconds West 12.32 feet, delta = 00 degrees 14 minutes 24 seconds) to a nail found in the south line of the Barton GST Trust FRB Frank G. Barton, III property as described in Book 867 Page 483; thence North 89 degrees 43 minutes 56 seconds East with the said south line a distance of 176.07 feet to a pk nail found in a west line of said property; thence North 89 degrees 56 minutes 39 seconds East with said south line a distance of 237.58 feet to a point (found iron pin 0.7 foot north); thence South 02 degrees 55 minutes 43 seconds East a distance of 252.98 feet to an iron pin set in the north line of Holiday Drive; thence South 87 degrees 18 minutes 10 seconds West with the north line of Holiday Drive a distance of 620.45 feet to the point of beginning and containing 169.769 square feet or 3.897 acres.

2. The Property has been commercially developed since approximately 1957. Prior to initial commercial development, it appears the Property may have been undeveloped land. The Property is currently unoccupied, but was previously owned and operated by Woodruff Electric Cooperative Corporation.

3. The Participant submitted the Brownfield Application to DEQ on April 17, 2020. Based on its review of the Brownfield Application, DEQ has determined that the Property and the Participant are eligible to be enrolled in the Arkansas Brownfield Program under APC&EC Rule 29.401- 29.402 and Ark. Code Ann. § 8-7-1104(a).

4. On behalf of the Participant, ATC Group Services, LLC (ATC) performed a Phase I Environmental Site Assessment (ESA) on the Property in January of 2020. The Phase I ESA satisfied American Standard Test Method 1527-13 all Appropriate Inquiries and indicated potential soil and groundwater contamination at the Property related to a former underground storage tank (UST), transformer and wire storage areas, and an open utility pole storage area.

5. On behalf of the Participant, ATC performed a Limited Phase II ESA on the Property in February 2020 and a Comprehensive Site Assessment (CSA) of the Property in October 2020. These reports met the requirements of a CSA and evaluated the nature and extent of existing hazardous substances and contamination on the Property (Existing Contamination) and the human health and ecological risks potentially associated with these contaminant conditions. In a letter dated November 18, 2020, DEQ acknowledged the Limited Phase II ESA and CSA reports and determined that a baseline was established for the Existing Contamination and that sufficient information was provided to meet the Arkansas Brownfield Program requirements.

6. Pursuant to Ark. Code Ann. § 8-7-1104(d)(6), the “intended use” for the Property will be for a fueling station and convenience store.

II. AGREEMENT

As good and valuable consideration for participation in the Arkansas Brownfield Program and redevelopment of the Property, clean-up activities, and liability considerations, DEQ and the Participant hereby voluntarily agree that:

7. The Participant, within ten (10) business days of the effective date of this IA, shall publish public notice of this IA in a newspaper of general circulation that serves the Forrest City, Arkansas area that identifies the Property, the intended future land use of the

Property, and the nature of the activity that the Participant proposes for the Property. The notice shall be subject to the approval of DEQ pursuant to Ark. Code Ann. § 8-7-1104(d)(4). The Participant shall provide proof of publication of the notice in the form of a publisher's affidavit to DEQ within thirty (30) calendar days following the effective date of this IA.

8. After the effective date of this IA, the Participant shall submit to DEQ a Property Development Plan (PDP).

9. DEQ shall issue a Property Development Decision Document (PDDD) to address contamination, subsequent remedial actions, and controls, if any, identified in the PDP.

10. Pursuant to Ark. Code Ann. § 8-7-1104(h)(1), DEQ shall provide public notice of the PDDD in a newspaper of general circulation that serves the Forrest City, Arkansas area. The opportunity for a public hearing shall also be provided regarding the PDDD.

11. Following the public notice of the PDDD, DEQ will issue a final PDDD, considering all comments submitted, if any, pursuant to the public notice referenced in paragraph 10 of this Section II. The PDDD shall address Existing Contamination, remedial actions, and controls, if any, as determined by DEQ. The final PDDD shall become an amendment to this IA.

12. Upon receiving the final PDDD for the Property, the Participant shall initiate and complete the remedial actions and controls, if any, addressed in the final PDDD.

13. Pursuant to Ark. Code Ann. § 8-7-1104(o), within thirty (30) calendar days of the effective date of this IA, the Participant shall file a notice of the IA with the clerk of the Circuit Court in St. Francis County, Arkansas, Real Estate Section. The notice of the IA shall be filed in a manner that establishes the Participant as the Grantor for the notice of

the IA in the property records. A file-marked copy shall be submitted to DEQ within forty-five (45) calendar days of the effective filing date.

14. The Participant shall submit a completion report to DEQ within forty-five (45) calendar days of completion of the remedial work and controls, if any, required as a result of the PDDD. The completion report shall include sufficient information to document that the site has been remediated according to the provisions of the IA and the final PDDD. After DEQ receives this information and determines to its satisfaction that all remedial work and controls have been completed (or, in the absence of any remedial or control requirements in the final PDDD, that the Participant has otherwise complied with the final PDDD), DEQ shall issue a Certificate of Completion to the Participant.

15. The Participant shall provide a copy of this IA to all prospective owners, assigns, or successors in title before the Property is transferred.

16. The Participant shall not permit, authorize, or allow any activity that aggravates or contributes to the Existing Contamination to an extent that would invalidate the conclusions reached in the CSA, including activities that cause any of the Existing Contamination to migrate to air, land, or water (including downward migration of contamination) from its current location on the Property to a degree that would create a condition of substantial risk to ecological or human receptors.

17. The Participant, its assigns, or successors shall not use or redevelop the Property in a manner that is inconsistent with the Intended Use.

18. Pursuant to Ark. Code Ann. § 8-7-1104(j), Participant shall not be responsible for paying any fines or penalties levied against any person responsible for Existing Contamination on the Property prior to the IA with DEQ.

19. Nothing in this IA shall be construed as a waiver of DEQ's ability to enforce this IA, or as modifying Participant's liability for any future releases of contamination on the Property by the Participant, its assigns, its successors, subsequent owners, or third parties occurring after the effective date of this IA.

20. This IA, including all rights and clean-up liabilities entered into by DEQ, is transferable in its entirety, upon written notice to DEQ, to all subsequent owners, assigns, and successors of interest to the Property who did not, prior to their acquisition of the Property, by act or omission, cause or contribute to any release or threatened release of hazardous substances constituting Existing Contamination on the Property. Without limiting the generality of, and subject to the limitations of the preceding sentence, this IA may be assigned to successors in title to the Property or successors in interest to the Participant, and all rights and obligations of the Participant pursuant to this IA will, subsequent to such assignment, be available to and binding on such successor.

21. The Participant or any subsequent owner, assign, and successor of interest to the Property may propose to modify the Intended Use, or any other aspect of this IA, by submitting a written proposal to DEQ for review and approval. The written proposal will describe the proposed modification of the Intended Use, or any other modification, and any justification and supporting information for the proposed modification. DEQ will evaluate the protectiveness of remedial activities and controls to determine if the proposed modification would pose a potential unacceptable risk to human health or the environment. After review of the proposed modification, DEQ will provide its decision in writing to the Participant, subsequent owner, assign, and successor of interest to the Property, either granting the proposed modification or denying it.

22. Any deviation from the Intended Use, or any modification to any aspect of this IA, that has not been approved by DEQ will result in any liability assurances, considerations, or provisions contained in this IA and amendments thereto or certificates of completion issued hereunder, to be void and of no effect.

23. Notice of any subsequent amendments to the IA shall also be filed with the clerk of the Circuit Court of St. Francis County, Arkansas within thirty (30) calendar days after their effective dates.

24. The Participant may withdraw its participation in the Arkansas Brownfield Program at any time and without penalty by providing written notification to DEQ. In the event of a withdrawal, Participant shall have no further obligations under this Implementing Agreement.

25. Should DEQ determine that the Participant has failed to complete any material term and condition required by or set forth in this IA, and the Participant has acquired the Property and is considered to be the legal owner of the Property, then DEQ may deliver written notice to the Participant describing such failure, and the Participant shall have five (5) business days from receipt of such written notice to deliver written notice to DEQ indicating whether the Participant elects to cure or dispute the alleged failure. If Participant fails to respond to DEQ within such five (5) business days, the Participant shall be deemed to have elected not to cure such failure. If the Participant elects to cure such failure, the Participant will have thirty (30) calendar days during which to cure, or such longer time as is reasonably necessary in the circumstances as determined by DEQ. If Participant timely notifies DEQ that it disputes the alleged failure, then the parties shall meet and confer in good faith in an effort to resolve the dispute. If Participant fails to

timely cure, elects not to cure, or is deemed to have elected not to cure, Participant shall be in default of this IA. In such event, the Participant will be notified in writing by DEQ that their enrollment in the Arkansas Brownfield Program is terminated.

26. The Participant affirms, declares, and represents that it did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on or from the Property constituting the Existing Contamination; and is not otherwise considered to be a responsible party for the Existing Contamination pursuant to Ark. Code Ann. § 8-7-1104(a)(2).

27. The Participant, its assigns, and successors of interest, shall not transfer the Property to a party that is a responsible party pursuant to Ark. Code Ann. § 8-7-512(a)(2)-(a)(4) for such pollution or contamination constituting the Existing Contamination on the Property. If such transfer is made, this IA and Certificate of Completion issued hereunder shall be void.

28. Any notice required by this IA shall be made in writing and delivered to:

Division of Environmental Quality
Attention: Brownfield Program
5301 Northshore Drive
North Little Rock, AR 72118-5317

Speedway, LLC
Attn: Manager of
Environmental
Remediation, John
Helms
500 Speedway Drive
Enon, OH 45323

29. This IA shall become effective upon the signature of the Director of DEQ.

30. Each party acknowledges and agrees that it has the full legal right, power, authority, and approval required to execute and deliver this IA.

IT IS SO AGREED.

DIVISION OF ENVIRONMENTAL QUALITY:

By: Becky W. Keogh
Becky W. Keogh
Director

Date: 2/3/2021

PARTICIPANT: SPEEDWAY LLC

By: John M. Helms
John M. Helms

Date: 1/11/2021

Title: Manager, of Environmental Remediation

