**AGREEMENT FOR**

**INVESTIGATION AND REMEDIATION ACTIVITIES**

**UNDER W.VA. CODE §22-17 & §22-22B**

1. The West Virginia Department of Environmental Protection (WVDEP), by its Secretary, and [Insert Applicant] (“Applicant”) hereby enter into this Remediation Agreement (“Agreement”) pursuant to the Uniform Environmental Covenant Act, W.Va. Code §22-22B-1 et seq. (“UECA”), for the purpose of investigating and remediating the property located at [Insert Address], [Insert City], [Insert County] County (“the Site”), and is the subject of this Agreement.
2. The parties agree to the following terms and conditions as satisfying the requirements of the Underground Storage Tank Act (§22-17-1 et seq.) for the investigation and remediation of the Site and that the Site shall be remediated to risk-based standards via UECA.
3. The activities conducted by Applicant under this Agreement are subject to approval by WVDEP as provided herein. Applicant shall provide all necessary information for the Site. The activities conducted by Applicant shall be consistent with this Agreement, all applicable laws and regulations, and any appropriate guidance documents.
4. This Agreement shall apply to and be binding upon Applicant, its successors, and assigns. By entering into this Agreement, Applicant neither admits nor denies liability.
5. All work to be performed by Applicant pursuant to this Agreement for remediation to risk-based standards via UECA shall be under the direction and supervision of a licensed remediation specialist, and Applicant has designated [Insert LRS Name] (LRS#[Insert LRS Number]) for the project.
6. Applicant shall submit the following work plans or reports in accordance with the following schedule to complete the investigation and remediation activities:

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| **Document** | **Due** |
| Site Assessment Work Plan (SAWP) | 90 days after Agreement |
| Site Assessment Report (SAR) | 90 days after SAWP approval |
| Human Health & Ecological Risk Assessment (HHERA) | 90 days after SAR approval |
| Remedial Action Work Plan (RAWP) | 90 days after HHERA approval |
| Remedial Action Completion Report (as applicable) | 90 days after RA completion |

1. When additional or modified work plans or reports are necessary as a follow-up to this initial Agreement, Applicant shall submit the subsequent work plans, reports (including final reports), and schedules in accordance with a modification to this Agreement.
2. Upon completion of the work contemplated by all work plans for remediation to risk-based standards via UECA, Applicant shall submit to the WVDEP a final report prepared by a licensed remediation specialist. The final report shall include all information necessary for WVDEP to verify that the Applicant has completed all work contemplated by the work plans and required by the Agreement.
3. Documents, reports, and other correspondence to be submitted under this Agreement may be sent electronically or by U.S. certified mail, return receipt requested, hand delivery, overnight mail, or by courier service.
4. Documents to be submitted to WVDEP should be sent to:

West Virginia Department of Environmental Protection

Division of Land Restoration

601 57th Street SE

Charleston, WV 25304

Phone: (304) 926-0499

Email: DEPOERFileCopy@wv.gov

A copy of all documents should be sent to the WVDEP project manager:

[Insert Project Manager Name]

WVDEP-OER

[Insert Address]

Phone: [Insert Phone Number]

Email: [Insert Email Address]

1. Documents to be submitted to Applicant should be sent to:

Attn: [Insert Applicant Contact Name]

[Insert Applicant]

[Insert Address]

Phone: [Insert Phone Number]

Email: [Insert Email Address]

A copy of all documents should be sent to the LRS:

[Insert LRS Name]

[Insert LRS Company Name]

[Insert Address]

Phone: [Insert Phone Number]

Email: [Insert Email Address]

1. Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan approved for use by WVDEP throughout any work plan sample collection and analysis activities under this Agreement, unless WVDEP agrees otherwise. All UECA sampling and analyses shall incorporate laboratory data validation utilizing standard USEPA protocols (e.g., Contract Laboratory Protocol or SW-846) and conducted in accordance with USEPA Guidance for Labeling Externally Validated Laboratory Analytical Data for Superfund Use (January 2009).
2. Applicant shall provide the WVDEP Project Manager with reasonable advance notice of all sampling and analysis as detailed in the work plan. To provide quality assurance and maintain quality control, Applicant shall:
   1. Use laboratories certified by WVDEP;
   2. Ensure that all sampling and analyses are performed according to USEPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by WVDEP; and
   3. Ensure that any laboratories used by Applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with USEPA guidance documents. As part of such a program, and upon request by WVDEP, such laboratories shall perform analyses of samples provided by WVDEP to demonstrate the quality of analytical data for each such laboratory.
3. At the request of WVDEP, Applicant shall permit an authorized representative of WVDEP to take samples of wastes, soils, air, surface water, and groundwater at the Site. For each sample taken, the authorized representative shall provide Applicant a receipt describing the sample obtained and, if requested, a portion of each sample equal in weight or volume to the portion retained.
4. Upon presentation of proper credentials, authorized representatives of WVDEP shall be provided access by Applicant to the Site and other areas where work is to be performed under this Agreement, at all reasonable times. Nothing herein shall be construed as restricting the inspection or access authority of WVDEP under any law or regulation.
5. WVDEP reserves the right to withdraw its approval of the work plan at any time during the implementation of the work plan if:
   1. WVDEP determines that Applicant has failed to substantially comply with the terms and conditions of this Agreement or the work plan;
   2. Applicant declines to implement the work plan after being notified of its approval by WVDEP; or
   3. WVDEP determines that a hazardous substance or petroleum has become an imminent or substantial threat to human health or the environment.
6. Applicant agrees to reimburse WVDEP for all of its reasonable administrative costs associated with implementation of this Agreement at 3.5 times the hourly rate of the employees assigned to the Site, plus the actual and direct expenses of such employees, as well as contractor costs noted in Paragraph 16 below. WVDEP shall periodically send an accounting of the employees’ time charged to the Site to Applicant, and Applicant shall pay said amount within forty-five (45) days of receipt of the accounting.
7. WVDEP agrees to allow Applicant to review and comment on the scope of work and associated cost estimates for outside contractors prior to WVDEP’s authorization of the said contractor to proceed with the associated work. WVDEP will strive where possible to use cost effective and qualified outside contractor(s). “Outside contractors” are defined as individuals, partnerships, or corporations paid by WVDEP to assist in the oversight of the activities under this Agreement (e.g., risk assessment), but shall not include WVDEP employees. Cost estimates and invoices from outside contractors shall be submitted to Applicant within two (2) weeks from the date WVDEP receives the cost estimate or invoice. Applicant shall raise any and all objections regarding cost estimates or invoiced work to WVDEP within two (2) weeks from the date Applicant receives the forwarded estimate(s)/invoice(s) from WVDEP or within two (2) weeks of the receipt by Applicant of any back-up documentation of the said cost estimate(s)/invoice(s) which is contained in WVDEP files and requested by Applicant, whichever shall last occur.
8. Payment shall be made online at: https://dep.wv.gov/payDEP/Pages/default.aspx. or checks shall be made payable to the West Virginia Department of Environmental Protection for deposit into the Voluntary Remediation Administrative Fund and mailed along with a transmittal letter stating the Site name and address to:

West Virginia Department of Environmental Protection

Office of Environmental Remediation

P.O. Box 681

Charleston, WV 25323

1. Applicant shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure, that is, circumstances beyond its reasonable control which could not have been overcome by due diligence. Applicant shall notify WVDEP by telephone within three (3) working days and by writing no later than seven (7) working days after any event, which Applicant contends is a force majeure. Such notifications shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Applicant to minimize the delay, and the timetable by which these measures will be implemented. Applicant shall have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure shall be made by WVDEP. If a delay is attributable to a force majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.
2. Applicant agrees to indemnify and save and hold the State of West Virginia, its agencies, departments, agents, and employees harmless from and all claims or causes of action arising from, or on account of, acts or omissions of Applicant, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Agreement.
3. The effective date of this Agreement shall be the date on which Applicant receives the notice that this Agreement has been signed by the Secretary of WVDEP.
4. This Agreement may be amended by mutual agreement of WVDEP and Applicant. Amendments shall be in writing and shall be effective when Applicant receives notice that the amendment has been signed by the Secretary of WVDEP.
5. If the Secretary determines that there is an imminent threat to the public, the Secretary may unilaterally modify or amend this Agreement.
6. Nothing in this Agreement shall restrict the State of West Virginia from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.
7. The parties agree that restrictions will be required on the future use of the Site. Once such restrictions have been determined, an appropriate Uniform Environmental Covenant will be prepared and recorded for the Site.
8. This Agreement will be governed by the laws of the State of West Virginia.

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| **Applicant** | | |
|  | [Insert Applicant Name] | |
|  | Printed Name: | [Insert Name] |
|  | Title: | [Insert Title] |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature |  | Date |

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| **West Virginia Department of Environmental Protection** | | |
|  | Printed Name: | Robert Rice |
|  | Title: | Director, Division of Land Restoration |

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| --- | --- | --- |
|  |  |  |
| Signature |  | Date |

[Include if Applicant is not owner of the Site:]

[Insert Owner Name], as owner of the Site referenced in the above Agreement, hereby acknowledges that said Agreement may require the imposition of an environmental land use covenant and, in consideration of the benefits accruing to the Site from said Agreement, I hereby agree to the imposition of such land use covenant and agree to cooperate in the execution and filing of such land use covenant.

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| --- | --- | --- |
|  | Printed Name: | [Insert Name] |

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| --- | --- | --- |
|  |  |  |
| Signature |  | Date |