DRAFT

REMEDIATION AGREEMENT

PADEP Facility ID #:**[##-#####]** USTIF Claim #:**[####-####(x)]**

This agreement ("Agreement") is entered into as of the _____day of _____**[Insert Year],** by and between **[Insert Owner's Name]** and **[Insert Facility Name]** (Client"), with a principal place of business at **[Insert Address]** and **[Insert Environmental Consulting Firm Name and (Appropriate Acronym)]**, ("Consultant") a **[Insert State Name]** Corporation with its principal place of business at **[Insert Environmental Consultant's Address]** (collectively, the "Parties").

RECITALS

WHEREAS, the Pennsylvania Department of Environmental Protection ("DEP") has determined that corrective action of a petroleum release at a regulated underground storage tank ("UST") site is required ("Remediation").

WHEREAS, the Pennsylvania Underground Storage Tank Indemnification Fund ("Fund") has also determined the Remediation is eligible for reimbursement.

WHEREAS, the Client desires that Consultant perform the scope of work described in Exhibit A to this Agreement (the "Scope of Work") for a total fixed cost (see Exhibit B).

WHEREAS, the Fund is not a party to this Agreement, but agrees to dedicate funds for the payment of reasonable corrective action costs in connection with the Remediation so long as the Fund is provided with reporting and monitoring data in accordance with this Agreement to assure that payment is warranted based upon the conditions of this Agreement.

NOW THEREFORE, in consideration of the obligations, covenants and conditions set forth in this Agreement, the Parties, intending to be legally bound, agree as follows:

1. Recitals Incorporated

The above recitals are hereby incorporated as if fully set forth herein.

2. Responsibilities of Consultant

a) Consultant shall, as an independent contractor to Client, perform the Scope of Work.

b) The Scope of Work shall be performed in accordance with all applicable federal, state, and local rules and regulations, including the requirements of the Storage Tank and Spill Prevention Act (Act 32 of 1989, as amended) and Pa. Code, Title 25, Chapter 245, meeting and demonstrating attainment of the Standard (as defined in Exhibit A) established under the Land Recycling and Environmental Remediation Standards Act (Act 2 of 1995) and Pa. Code, Chapter 250 (Administration of Land Recycling Program). The Scope of Work will be completed consistent with Remedial System Design **[or Insert name of Appropriate Document]**, dated **[Insert Date]** and Response to Telephone Conversation **[or Insert name of Appropriate Document]** of **[Insert Date]** that contained clarifications on the Remedial System Design **[or Insert name of Appropriate Document]** dated **[Insert Date]**. Both documents are included for reference as Exhibit D of this Agreement. Any significant modification to the Scope of

Work will require approval of the Client, Pennsylvania Department of Environmental Protection (PADEP), and the Fund.

c) Consultant shall perform the Scope of Work for a total fixed price ("TFP") of **[Insert Dollar Value]**, subject to all other provisions of this Agreement.

d) Consultant shall attend periodic site meetings with the Fund and Client for site status updates. The Fund will provide Consultant ten (10) days written notice of the meeting.

3. Responsibilities of Client

a. Client shall exclusively retain the services of Consultant to perform the Scope of Work, in accordance with, and subject to, the other provisions of this Agreement.

b. Client shall provide access for Consultant and its subcontractors, to the Site, and shall enter into any other access agreements with other third party property owners, as necessary to complete the performance of the Scope of Work.

c. Client shall, as necessary to complete the Scope of Work: (i) cooperate and assist Consultant with the preparation and submittal of all information and documents including, without limitation, correspondence, notices, reports, data submittals, restrictive covenants, engineering and institutional controls, and the like, and (ii) implement and maintain any engineering or institutional controls.

d. Client shall transmit to Consultant copies of all documentation, correspondence, reports, and the like, sent or received by Client, regarding the environmental conditions at the Site.

4. Period of Performance

This Agreement shall be effective from the date first above written until the Scope of Work is completed by Consultant, subject to the other provisions of this Agreement.

5. Standard of Care

Consultant will perform the Scope of Work and other services with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services under similar conditions in the same or similar locality. The foregoing is in lieu of all other warranties, express or implied, including warranties of marketability or fitness for a particular purpose.

6. Fees and Payment

a. Consultant shall submit a payment request ("Payment Request") to the Client for approval using the form in Exhibit C, upon the completion of milestones as described in Exhibit B and Exhibit C. The Client approved payment request will then be submitted to the Fund for payment.

b. [Paragraph 6b applies only to performance-based contracts. Delete paragraph 6b if the contract is NOT performance-based.]

If Consultant is able to obtain the final milestone prior to completing the other milestones, all milestones payments are due and payable to Consultant.

c. Client shall use the Fund to satisfy the Payment Request in connection with the performance of the Scopes of Work under the following conditions:

   i. Client shall submit all necessary documentation to effectuate Consultant direct payment from the Fund;

   ii. Should the Fund be temporarily suspended or permanently terminated, Client shall reimburse Consultant for any unpaid Payment Requests and interest, within 30 days of notification by Consultant of such suspension or termination. Interest is calculated as 0.75% per month on outstanding amounts;

   iii. In all cases where Consultant is ultimately paid by the Fund for eligible amounts paid by Client, Consultant will refund to Client such amounts; and

   iv. Should Fund guidelines be substantially changed, either party may terminate this Agreement with or without cause upon a 30 day written notice. Consultant shall be paid any outstanding unclaimed amounts due from Client at the time of such termination within thirty (30) days of notice of termination.

   v. To ensure payment, Consultant will perform the Scope of Work and remedial actions for the TFP and in accordance with PADEP approved RAP and, if necessary, PADEP approved RAP addendum.

7. Insurance

During the performance of this Agreement, Consultant will carry and maintain the following insurance coverage:

a. Workers Compensation Insurance -- at the statutory limits, and Employer's liability with a limit of not less than $1,000,000 each occurrence.

b. Automobile Liability and coverage on all vehicles owned, hired, or used in performance of this Agreement with limits not less than $1,000,000 – Bodily Injury and Property Damage combined single limit and aggregate.

c. Comprehensive General Liability Insurance – as well as coverage on all equipment (other than motor vehicles licensed for highway use) owned, hired, or used in the performance of this Agreement with limits not less than $1,000,000 each occurrence and $2,000,000 in the aggregate.

d. Pollution Liability/Professional Liability at $1,000,000 per occurrence and $2,000,000 in the aggregate.

8. Performance Product and Warranty

[Delete the paragraph below and replace with "Not Applicable." if the contract scope of work cannot reasonably be expected to remediate the site to the selected cleanup standards and the contract scope of work does not include a demonstration of attainment]

Consultant estimates that the demonstration of attainment with the approved PADEP standard for all compounds listed in the Scope of Work will commence following **[Insert number of quarters]** (**Insert number of months**) of operation after the start-up of the Remedial System. If such demonstration of attainment can not be initiated within this defined schedule, Consultant shall conduct the pre-defined Additional Measures (as defined in Exhibit A). If demonstration of attainment cannot be initiated at the end of the Additional Measures, Consultant may, at its option, forgo the remaining milestone payments, terminate this Agreement, and be released from any further obligation.

9. Equipment Loss or Damage

Consultant owned items used for the Agreement that are damaged or destroyed by acts of nature, improper design, installation, maintenance or handling, theft, or vandalism are at the sole expense of the Consultant. All other items shall be replaced at the expense of Client.

10. Non-performance or Lack of Continuous Performance by Remediation Contractor

Except as provided in Section 8, if Consultant fails to meet any specification of the Scope of Work as outlined in this document, the Client or the Fund shall notify Consultant by certified letter of the deficiency(ies). If Consultant does not correct the deficiency(ies) within thirty (30) days, Consultant shall be in breach of contract and the Client may void the Agreement or the Fund may withhold any further payment. Consultant shall be notified by certified letter that the Agreement is void and if any invoices are payable upon review and approval by the Fund. If Consultant corrects the deficiency(ies) within 30 days, the Agreement will continue.

Continuous progress is expected. Continuous progress is defined as persistent and effective action on the part of the Consultant done in furtherance of attaining the site closure specified in Exhibit A. If the Client determines that continuous progress is not being made toward site closure, the Client may provide a written First Notice of Deficiency to the Consultant and the Fund detailing the reasons for this determination. After ninety (90) days from receipt of the First Notice of Deficiency, the Client may provide a written Second Notice of Deficiency to the Consultant and the Fund, providing details regarding the ongoing lack of continuous progress. The Client may notify Consultant in writing with a copy sent to the Fund, ninety (90) days after the Second Notice of Deficiency is received, that the Agreement will be void in thirty (30) days. All referenced written notices are to be sent via Certified Mail Return Receipt Requested and U.S. First Class Mail.

11. Cancellation

a. The TFP shall not be increased except upon the occurrence of a “New Condition” as defined in this section.

b. A “New Condition” exists when one or more the following events occur and, as the result of such event, Consultant has demonstrated that the cost and/or period of time necessary to accomplish the Scope of Work is increased:

   i. The discovery of New Contamination (defined as any presence or release, or any portion of a presence or release, of any regulated substance including, without limitation, petroleum that impacts soil, sediments, surface water and/or groundwater

and did not exist or was not identified in the Baseline Conditions). Without limiting the definition of New Contamination, New Contamination includes:

- a documented tank, line and/or dispenser failure, or surface spill, that impacts soil, sediments, surface water and/or groundwater;
- the discovery of unknown or abandoned underground storage tanks and/or lines and associated equipment that demonstrate that they have caused a release of oil or hazardous material to the environment and this release causes a substantial increase in the scope of work and costs;
- the detection of any dissolved regulated substances not previously detected at the site; and
- increases in dissolved regulated substance(s) greater than 100 times the maximum concentration of such regulated substance(s) measured during the two years prior to the execution of this agreement for more than two consecutive quarters, provided that this increase is not attributed directly to the remedial actions being conducted or the deactivation of the remedial actions;

ii. Construction or reconfiguration of the Site, to the extent that it interferes with the Scope of Work;

iii. Promulgation of new, or change in interpretation of existing, federal, state, or local law, regulation, ordinance or written policy;

iv. Limitation of access to the Site or adjacent properties, changes in access, significant changes in access agreements, access that requires the institution of administrative or legal action, or access that requires unreasonable or uncustomary monetary expenditures;

v. Demands, claims or lawsuits, and the like, that impact the progress of the remediation or requires additional effort not accounted for in the Scope of Work; or

vi. Non-payment or continuous late payment of Consultant invoices. Continuous late payment is defined as at least two payments not received for more than 60 days after submittal of associated Payment Requests within a calendar year.

vii. One or more of site specific assumptions provided in Exhibit A no longer remain true and accurate.

c. Upon the discovery or occurrence of any New Condition,

i. Consultant shall notify Client in writing, describing the details of such New Condition; and

ii. Consultant shall provide an additional scope of work and associated cost estimate to account for such New Condition ("Out of Scope Work") for Client's approval and authorization. Upon Client approval, Consultant shall continue with the original Scope of Work and perform the Out of Scope Work, with the Out of Scope Work performed on a time and materials, unit cost or lump sum basis as Consultant and Client shall agree; or

iii. If Consultant and Client are unable to agree as provided above as to the value of the Out of Scope Work, Consultant, in it sole discretion, may terminate this Agreement.

Upon such termination, Consultant shall be paid for all incurred and outstanding costs, fees and expenses as of the date of termination and all reasonable demobilization costs and Consultant shall have no further obligations under this Agreement. If Consultant is released from this Agreement, all environmental remediation and monitoring equipment and material purchased solely for the execution of this Scope of Work shall remain onsite and in usable state/condition.

12. Indemnity

Consultant shall indemnify and hold Client harmless from and against any liabilities, losses, claims, orders, damages, fines and penalties (collectively, "Claims") arising out of or related to negligent acts or omissions of Consultant in the performance of the Scopes of Work. Client shall indemnify and hold Consultant harmless from and against any Claims arising out of or related to (i) the negligent acts or omissions, or violations of Law, of Client and (ii) regulated substances, including petroleum, that are present at, released to or from, treated at, or removed from, the site.

13. Closure

[Delete the paragraph below and replace with "Not Applicable." if the contract scope of work does not include a demonstration of attainment and RACR]

The Consultant shall remove all associated remediation equipment and materials including utilities and from the site within sixty (60) days of receipt of DEP approval of its Remedial Action Completion Report. The Consultant shall abandon all wells (including preexisting wells from the site characterization), borings, trenches, and piping/utility runs installed by the Consultant as part of corrective action in accordance with all applicable requirements within 60 days of receipt of DEP approval of its Remedial Action Completion Report. Disruption of the Client's normal business shall be kept to a minimum. The Consultant shall return the site to the condition prior to initiation of the Scope of Work. Conditions prior to initiation of the Scope of Work will be established by preparing detailed site plans and photographic documentation.

14. Governing Law and Assignment

This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania and it may not be assigned without the prior written consent of the other party.

15. Modification

No modification to or waiver of any term of this Agreement shall be valid unless it is in writing and signed by both parties.

16. Integration

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings (whether written or oral) between the parties.

17. Order of Precedence

In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply:

A. This Agreement
B. The Scope of Work (Exhibit A)
C. Schedule of Fixed Prices (Exhibit B)
D. Consultant Bid Response [**or Proposal**] Document dated **[Insert Date of Bid Response]**
E. The Request for Bid Document dated **[Insert Date of RFB Document]**
F. Task Orders (if applicable)
G. Other Contract Documents

18. Notice

Any notice, request, demand or communication which is or may be required to be given hereunder shall be deemed given when sent by registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Client: **[Insert Facility Name]**
Attn: **[Insert Point of Contact]**
[Insert Street Address]
[Insert Township Name], Pennsylvania **[Insert Zip Code]**

If to Consultant: **[Insert Environmental Consulting Firm Name or Acronym]**
Attn: **[Insert Point of Contact]**
[Insert Point of Contact Job Title]
[Insert Street Address]
[Insert Township Name], Pennsylvania **[Insert Zip Code]**

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by its duly authorized representative in two identical counterparts on the day and year first above written.

For: **[Insert Facility Name]**

By: _____
Date

Name: _____

Title: _____

For: **[Insert Environmental Consulting Firm Name or Acronym]**

By: _____
Date

Name: _____

Title: _____

EXHIBIT A
SCOPE OF WORK

(Scope of Work is defined here as described in Section 2b)

Location: [Insert Facility Address]

Goals:

[Delete the following paragraphs and substitute contract-specific goals if the contract scope of work cannot reasonably be expected to remediate the site to the selected cleanup standards and the contract scope of work does not include a demonstration of attainment]

The goal of this project is to cost effectively clean up the site in a reasonable timeframe to obtain a PADEP Relief of Liability under Act 2 by achieving the remediation standard(s) specified for soil and groundwater in a PADEP-approved RAP.

Obtain Pennsylvania Department of Environmental Protection (PADEP) approval of Final Remediation Completion Report using a PADEP approved standard for benzene, toluene, ethylbenzene, xylenes, methyl-tert-butyl ether (MTBE), isopropylbenzene, and naphthalene (the compounds of concern or COCs) (the "Standard"), associated with the documented releases of **[Insert name of released product]** on **[Insert Date]** and **[Insert Additional Dates, if necessary]** which are referenced as PADEP Facility Identification Number **[Insert Facility ID Number]**.

Strategy/Scope of Work:

The Strategy/Scope of Work is described in the Bid Response Document dated **[Insert Date]** and the Request for Bid Document dated **[Insert Date of RFB Document]**, with the following exceptions:

- [Insert Site Specific Information or "None"]

Site Specific Assumptions:

The Site Specific Assumptions are described in the Bid Response Document dated **[Insert Date]** and the Request for Bid Document dated **[Insert Date of RFB Document]**, with the following exceptions:

- [Insert Site Specific Assumptions or "None"]

EXHIBIT B
Schedule of Fixed Prices
{INSERT SITE-SPECIFIC INFORMATION}

Milestones:

ID	Milestones Sub-Milestones	Estimated Schedule to Complete	Amount (dollars $)
A	Remedial Action Plan Final Design, specifications, procurement, purchase of equipment and groundwater monitoring	1 quarter Q1	$Insert Amount
B1	Remedial System Installation: Trenching & piping and groundwater monitoring	1 quarter Q2	$ Insert Amount
B2	Remedial System Installation: Equipment Installation, Start-up of System, 1st quarter of Remedial System O&M and groundwater monitoring	1 quarter Q3	$ Insert Amount
C1	Remedial System O&M & Groundwater Monitoring	1 quarter Q4	$ Insert Amount
C2	Remedial System O&M & Groundwater Monitoring	1 quarter Q5	$ Insert Amount
C3	Remedial System O&M & Groundwater Monitoring	1 quarter Q6	$ Insert Amount
C4	Remedial System O&M & Groundwater Monitoring	1 quarter Q7	$ Insert Amount
C5	Remedial System O&M & Groundwater Monitoring	1 quarter Q8	$ Insert Amount
C6	Remedial System O&M & Groundwater Monitoring	1 quarter Q9	$ Insert Amount
C7	Remedial System O&M & Groundwater Monitoring	1 quarter Q10	$ Insert Amount
C8	Remedial System O&M & Groundwater Monitoring	1 quarter Q11	$ Insert Amount
C9	Remedial System O&M & Groundwater Monitoring	1 quarter Q12	$ Insert Amount
C10	Remedial System O&M & Groundwater Monitoring	1 quarter Q13	$ Insert Amount
C11	Remedial System O&M & Groundwater Monitoring	1 quarter Q14	$ Insert Amount
D1	Attainment Sampling: Soil & Groundwater	1 quarter Q15	$ Insert Amount
D2	Attainment Sampling: Groundwater	1quarter Q16	$ Insert Amount
D3	Attainment Sampling: Groundwater	1quarter Q17	$ Insert Amount
D4	Attainment Sampling: Groundwater	1quarter Q18	$ Insert Amount
D5	Attainment Sampling: Groundwater	1quarter Q19	$ Insert Amount
D6	Attainment Sampling: Groundwater	1quarter Q20	$ Insert Amount
D7	Attainment Sampling: Groundwater	1quarter Q21	$ Insert Amount
D8	Attainment Sampling: Groundwater	1quarter	$ Insert

		Q22	Amount
F	DEP Approval of the Final Remediation Completion Report and Post Remediation Activities/Site Restoration	2 quarters Q24	$ Insert Amount
	TOTAL CONTRACT CEILING	Q24	$Insert Total Amount

Additional Measures:

[Delete the paragraph below and replace with "Not Applicable." if Section 8 also contains the words "Not Applicable"]

If demonstration of attainment of the Standard can not be initiated within this defined schedule, Consultant shall conduct the following additional measures ("Additional Measures"):

- Perform four (4) quarters (12 months) of Remedial System O&M and Groundwater Monitoring.

EXHIBIT C
PAYMENT REQUEST SCHEDULE

{INSERT SITE-SPECIFIC INFORMATION INTO THIS TABLE}

Milestone Identification		Supporting Documentation	Completion Date (months)	Payment Request Amount ($)
A	Remedial Action Plan Final Design, specifications, procurement, purchase of equipment and groundwater monitoring	▪ RAP Final Design & Specifications ▪ DEP approval letter of RAP ▪ Groundwater Sampling Report		
B1	Remedial System Installation: Trenching & piping and groundwater monitoring	▪ Design Specifications ▪ Vendor Invoices ▪ Groundwater Sampling Report ▪ Photo Documentation		
B2	Remedial System Installation (in accordance with this Agreement Section 2b): Equipment Installation, Start-up of System, 1st quarter of Remedial System O&M and groundwater monitoring	▪ Remediation Status Progress Report with groundwater sampling results and remedial system performance data (hours in operation, gallons extracted and treated, extraction wells operating, repairs and notes) ▪ Photo Documentation		
C1-11	Remedial System O&M & Groundwater Monitoring	▪ Remediation Status Progress Report with Groundwater Sampling results		
D1	Attainment Sampling: Soil & Groundwater	▪ Soil & Groundwater Attainment Sampling Report		
D2-8	Attainment Sampling: Groundwater	▪ Groundwater Attainment Sampling Report		
F	DEP Approval of Remedial Completion Report, and Post Remediation Activities/Site Restoration	▪ DEP Approval Letter of Remedial Action Completion Report ▪ Letter report verifying well abandonment by Licensed Driller and PG ▪ Photo Documentation		

EXHIBIT D
SUPPORTING DOCUMENTS