Voluntary Remediation Agreement
Relating to [Enter VRP Facility Name]
Site #XXXXXXX

This Voluntary Remediation Agreement (the "Agreement"), entered into by and between the Indiana Department of Environmental Management ("IDEM") and **[VRP Applicant Name]** (the "Applicant"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

WHEREAS, IDEM, by its Commissioner or his/her designee (the "Commissioner"), and the Applicant (the "Parties"), hereby enter into this Agreement pursuant to IC 13-25-5-8 for the purposes of remediating the release of hazardous substances or petroleum at [Site name, site address, city, county] County, Indiana by entering into the Voluntary Remediation Program (the "VRP"). The activities conducted by the Applicant under this Agreement are subject to approval by IDEM.

WHEREAS, the Commissioner has determined that the Applicant is eligible to participate in the VRP as established under IC 13-25-5. However, neither this determination nor the entry into this Agreement precludes any determination by the Commissioner at a later date that the Site poses an imminent and substantial threat to human health or the environment within the meaning of IC 13-25-5. The Commissioner may withdraw from this Agreement and terminate the Applicant's participation in the VRP if the Commissioner determines at a later date that the Site poses an imminent and substantial threat to human health or the environment, or that the Applicant withheld or misrepresented information relevant to the Applicant's eligibility, or for any other reason described in paragraph 23 of this Agreement.

1. Duties of Applicant. The Applicant shall provide the following work relative to this Agreement:

In accordance with the attached Exhibit A, *Scope of Work*; Exhibit B, *Schedule for Project Tasks*; and Exhibit C, *Special Conditions*.

2. Term. This Agreement shall become effective on the date of execution by the Commissioner and shall remain in effect until the earlier of: (1) issuance of the Covenant not to Sue, (2) withdrawal from the Agreement by the Commissioner, or (3) withdrawal from the Agreement and/or the VRP by the Applicant.

3. Access to Records. The Applicant shall ensure that all books, documents, papers, accounting records, and other evidence pertaining to the subject matter covered under this Agreement are maintained. The records to be maintained by the Applicant include all records created by any contractors or subcontractors who perform work related to the remediation of the Site which is the subject to this Agreement. The Applicant shall make such materials available during the term of this Agreement and for six (6) years from the date of the termination or satisfaction of this Agreement for inspection by the State or its authorized designees; these materials shall be made available within a reasonable time frame as requested by IDEM at the Applicant's office in Indiana or at IDEM's office. Copies shall be furnished at no cost to the State if requested. After the six (6) year period, the Applicant shall notify IDEM in writing thirty (30) days prior to the destruction of any such documents. At that time, if IDEM request that some or all documents be

preserved for a longer period of time, the Applicant shall provide IDEM with the documents that IDEM wishes to preserve. If the Applicant claims any document is not subject to IDEM's review because it is confidential, then the Applicant shall provide IDEM with: a privilege log describing any document or record that is withheld and the basis of the privilege asserted; the date the document was created; and the document's author(s), recipient(s), and subject matter. Any dispute concerning invocation of privileges shall be resolved pursuant to the dispute resolution provision under this Agreement.

4. Assignment; Successors. This Agreement is binding upon the Applicant's successors and assignees. No change in ownership, corporate, or partnership status of the Applicant shall in any way alter its status or responsibilities under this Agreement unless the Applicant or IDEM withdraws from this Agreement. The Applicant shall provide a copy of this Agreement to the next subsequent owner or successor before ownership rights are transferred.

5. Audits. The Applicant acknowledges that it may be required to submit to an audit to ensure compliance with any of the terms of this Agreement. The Applicant has granted access to IDEM for this purpose as specified in the attached Exhibit C, Special Conditions, *Access*.

6. Authority to Bind Applicant. The signatory for the Applicant represents that he/she has been duly authorized to execute this Agreement on behalf of the Applicant and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Applicant when his/her signature is affixed, and certifies that this Agreement is not subject to further acceptance by the Applicant when accepted by IDEM.

7. Changes in Work. The Applicant shall not commence any additional work or significantly change the scope of the work under this Agreement until notification is provided to IDEM and IDEM has approved the change in work.

8. Compliance with Laws.

A. All work undertaken by the Applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation, Toxic Substances Control Act (TSCA) and Resource Conservation and Recovery Act (RCRA) regulations. In the event of a conflict in the application of federal, state, or local laws, nothing in this Agreement shall be construed as eliminating the Applicant's obligation to comply with the most stringent law.

B. The Applicant shall be responsible for obtaining all necessary permits on a timely basis. However, if the Applicant wishes to utilize the permit waiver provisions under IC 13-25-4-26, the Applicant shall identify the specific permit(s) that the Applicant is seeking to have waived. The Applicant agrees to satisfy all requirements that would have been imposed on the Applicant under a permit but for IC 13-25-4-26; these requirements shall be determined by IDEM and set forth in the Remediation Work Plan (RWP). In the event the Applicant does not wish to abide by those requirements, it may withdraw its request or terminate its participation in the VRP. If the Applicant undertakes an activity for which a permit is required without first obtaining a valid permit or approval of a permit

waiver request or the Applicant fails to meet the requirements set forth in the RWP, the Applicant shall be subject to appropriate enforcement action.

C. Nothing in this Agreement relieves the Applicant of its obligations or responsibilities under the Resource Conservation and Recovery Act (RCRA), 42 USC 6901 et seq., including, but not limited to, the duty to meet any permit conditions, financial responsibility, closure, post-closure or corrective action, regardless of whether the RWP addressed the contaminants or property at issue. Nothing in this agreement prohibits the Commissioner from requiring financial assurance for post closure operation and maintenance (O&M). If a determination is made that the cost of such O&M is substantial, that there is a substantial risk of exposure from failure of the remedy, or that the need for eventual replacement of the remedy is substantial, IDEM may request that the Applicant establish and maintain financial assurance to operate and maintain the remedy as a condition of closure. IDEM does not intend to routinely request financial assurance, and will determine the need for such based on the nature of the remedy, and the cost and consequences of its failure.

D. Nothing in the Agreement, the Certificate of Completion, or the Covenant Not To Sue shall be construed to relieve the Applicant of any natural resource damage liability arising from contaminants, even if addressed by the RWP, including under the following authorities: 42 USC 9601 et seq. (CERCLA), 33 USC 2701 et seq., IC 13-25-4-8, or any common law theories of public trust doctrine in Indiana. Applicant agrees that the period from the Effective Date of this Agreement until the Agreement is terminated or satisfied shall toll all statutes of limitations pertaining to any cause of action arising under Title 13 of the Indiana Code and relating to the release or threatened release that is the subject of this Agreement.

9. Administrative Costs.

A. Pursuant to IC 13-25-5-8, the Applicant agrees to reimburse IDEM for all of its Administrative Costs associated with implementation of this Agreement. Administrative Costs may include, but are not limited to, costs for compliance monitoring (such as the collection and analysis of split or duplicate samples, inspection of the Applicant's activities, and Site visits), discussions regarding disputes, review and approval or disapproval of reports, environmental restrictive covenants, the costs of dispute resolution, copying of documents, travel, laboratory or sampling costs, and retention of a qualified person to oversee the work performed under this Agreement. Invoices of IDEM's Administrative Costs shall be sent to the Applicant. Administrative Costs for salary, benefits and indirect costs of IDEM personnel shall be calculated at a rate of $75.00 (seventy-five dollars) per hour or fractional rate thereof. Laboratory costs and the cost of any contractor hired by IDEM to assist it in connection with the remediation of this Site (including, e.g., the evaluation of any proposed RWP, oversight of the work conducted, or implementation of this Agreement) shall be charged at actual cost. As authorized by IC 13-25-5-8(a)(9), IDEM considers this rate to be reasonable and necessary for the effective and efficient implementation of the Voluntary Remediation Program and to ensure that IDEM meets its obligations and all other expenses. IDEM reserves the right to increase the hourly rate for Administrative Costs under this Agreement in accordance with the Consumer Price Index (CPI), per calendar year (effective every February 1st), Midwest Region Urban Zone, in the event IDEM decides to increase the rate in order to effectively and efficiently implement the VRP. (Information about the CPI may be obtained at http://www.bls.gov/cpi/.) Exhibit D contains

an itemized list of estimated Administrative Costs that IDEM expects to incur under this Agreement. This estimate does not bind IDEM to a maximum cost that IDEM is entitled to bill the Applicant under this Agreement.

B. The Applicant shall pay these Administrative Costs within thirty (30) days of the due date of the invoice. In the event that payments are not made within thirty (30) days of the due date of the invoice, the Applicant shall pay interest on the unpaid balance at an annual rate of eight (8) percent pursuant to IC 24-4.6-1. The interest shall begin to accrue on the due date of the invoice and shall continue to accrue until the date of payment. IDEM will not issue the Certificate of Completion nor will the Covenant Not To Sue be issued until IDEM receives full payment of all Administrative Costs invoiced and due. Further, Applicant understands that a full accounting of all Administrative Costs incurred by IDEM cannot be completed before the Certificate of Completion and Covenant Not To Sue have been issued; therefore, Applicant agrees to pay IDEM's Administrative Costs invoiced after the Certificate of Completion and Covenant Not To Sue have been issued.

C. Checks shall be made payable to the Voluntary Remediation Fund and be mailed, along with a transmittal letter stating the Site name, number, and address, to the Indiana Department of Environmental Management; Attention: Cashier; 100 North Senate Avenue, Mail Code 50-10C; Indianapolis, Indiana 46204.

D. In the event that this Agreement is terminated for any reason, the Applicant agrees to reimburse IDEM for all of its reasonable Administrative Costs incurred to the time of termination.

10. Confidentiality Claim. The Applicant may assert a confidentiality claim with respect to any or all of the information requested or submitted pursuant to this Agreement, pursuant to applicable laws and rules including IC 13-14-11, IC 5-14-3, and 329 IAC 6.1-3. The Applicant shall adequately substantiate any assertion of confidentiality when the assertion is made. Information determined to be confidential by IDEM shall be disclosed only to the extent permitted by law. If no such confidentiality claim accompanies the information when it is submitted to IDEM, it may be made available to the public by IDEM without further notice to the Applicant. The Applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data.

11. Debarment and Suspension.

A. The Applicant certifies by entering into this Agreement that it will make reasonable efforts to ensure that none of its contractors or principals of its contractors, including subcontractors and any principals of the subcontractor, that are to perform work to satisfy this Agreement are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into a contract to perform work to satisfy this Agreement. The Applicant shall consult with the appropriate licensing boards, including the Indiana Board of Licensure for Professional Geologists and the State Board of Registration for Professional Engineers, at least once every two years in order to demonstrate that it has used reasonable efforts to meet this requirement.

B. The Applicant certifies that it has made reasonable efforts to verify the state and federal suspension and debarment status for all contractors and subcontractors

performing work to satisfy this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor or subcontractor. The Applicant shall immediately notify IDEM if any contractor or subcontractor becomes debarred or suspended, and shall, at IDEM's request, take any steps required by IDEM to terminate its contractual relationship with the contractor or subcontractor for work to be performed under this Agreement.

12. Disputes.

A. Should any disputes arise with respect to this Agreement, the Applicant and IDEM agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Applicant agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should the Applicant fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by IDEM or additional costs incurred by the Applicant as a result of such failure to proceed shall be borne by the Applicant, and the Applicant shall make no claim against IDEM for such costs.

C. The Applicant shall provide IDEM with a written statement specifically invoking dispute resolution, identifying the specific matters in dispute, and providing the legal and technical bases for the Applicant's position. If the Applicant and IDEM are unable to resolve the dispute for a period of fifteen (15) working days following IDEM's receipt of the written statement, the Applicant may pursue its right to administrative review pursuant to the Indiana Administrative Orders and Procedures Act ("AOPA"), IC 4-21.5. All deadlines and time periods for seeking redress or remedy under IC 4-21.5 shall be tolled during the fifteen (15) day informal dispute resolution process. The time periods set forth in this paragraph may only be extended by written agreement signed by duly authorized representatives of the Parties.

13. Force Majeure. In the event the Applicant is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the Applicant shall immediately give notice to IDEM project manager and shall do everything possible to resume performance. Increase of costs shall not be considered a Force Majeure Event. The Applicant shall have the burden of demonstrating that the event is a Force Majeure Event, and the Assistant Commissioner for IDEM's Office of Land Quality shall make the decision of whether an event is a Force Majeure Event subject to the dispute resolution provisions in paragraph 12. If the period of nonperformance exceeds beyond any written extension granted by IDEM, upon giving written notice, IDEM may terminate this Agreement.

14. Governing Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the Office of Environmental Adjudication. Further, the Applicant consents to personal jurisdiction in an Indiana state court and the Office of Environmental Adjudication, agrees to accept service of process in Indiana, and has designated [Insert Name and address of Registered Agent (or Person Accepting Service for non-corporate applicants)] for this purpose. Applicant agrees to always have a registered agent in Indiana (if

Applicant is a corporation) or person accepting service (for non-corporate applicants) and to provide IDEM with notice of any change in its registered agent or designated person within thirty (30) days of such change.

15. Indemnification. The Applicant agrees to indemnify, defend, and hold harmless IDEM, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of IDEM and the Applicant and/or its contractors and subcontractors, if any, in the performance of this Agreement.

16. Key Person(s)/Designated Project Manager.

A. On or before the Effective Date of this Agreement, the Applicant and IDEM shall each designate a Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Agreement. IDEM Project Manager will be the designated IDEM representative at the Site. To the maximum extent possible, communications between the parties and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party has the right to change its respective Project Manager, which party shall notify the other party of the change in writing and in a timely fashion.

B. IDEM shall have the authority to halt, conduct, or direct any work required by this Agreement and/or any response actions or portions thereof if Site conditions present an imminent and substantial threat to human health or the environment. In the event that IDEM Project Manager halts work pursuant to this paragraph, the schedule of work described in the RWP and this Agreement shall be modified accordingly, or IDEM may withdraw its approval of the RWP pursuant to the terms of this Agreement.

C. The absence of either party's Project Manager from the Site shall not be cause for the stoppage of work. The Applicant's Project Manager or his or her supervisor shall reasonably be available by telephone while work is being performed at the Site. The Applicant's Project Manager shall designate a person to be in charge of the work and this person will be available at the Site when work is being performed at the Site.

Each party's Designated Project Manager/Key Person(s) to this Agreement is specified in the attached Exhibit C, Special Conditions, *Notice to Key Person(s)/Designated Project Manager.*

17. Licensing Standards. The Applicant and its contractors and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Applicant pursuant to this Agreement. If any licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken concerning the applicable licensure, certification or accreditation, the Applicant shall notify IDEM within thirty (30) days of Applicant's becoming aware of such action, and IDEM, at its option, may terminate this Agreement.

18. Merger & Modification. This Agreement constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This

Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

19. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, as specified in the attached Exhibit C, Special Conditions, *Notice to Key Person(s)/Designated Project Managers*.

20. Progress Reports. The Applicant shall submit progress reports to IDEM at least annually on the anniversary of the final signature on this Agreement, and shall submit more frequent progress reports upon IDEM's request. Progress reports shall be written, unless otherwise approved by the IDEM. The purpose of progress reports is to assure IDEM that (a) work is progressing in line with the schedule provided in conjunction with the approved RWP pursuant to IC 13-25-5-13(2), and (b) completion can be reasonably assured on the scheduled date.

21. Reservation of Rights.

A. IDEM and the Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

B. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action, or demands, in law or in equity, that the parties may have against any person, firm, partnership, or corporation, not a party to this Agreement, for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered in this Agreement.

C. The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than IDEM found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by the Applicant in connection with the Site.

D. Pursuant to 42 U.S.C. 9607(a)(4)(A), IC 13-25-4-23 and IC 13-25-5-18, the parties agree that this Agreement constitutes an administrative settlement for purposes of 42 U.S.C. 9613(f)(2), under which the Applicant, upon payment of all Administrative Costs due under the Agreement and the issuance of a Covenant Not to Sue, will have resolved liability it may have under CERCLA, to the extent provided in the Covenant Not to Sue, to the State. The parties also agree that this Agreement constitutes an administrative settlement for purposes of 42 U.S.C. 9613(f)(3)(B), under which the Applicant has resolved the CERCLA liability it may have to the State to the extent provided in the Covenant Not to Sue.

E. Pursuant to IC 13-25-5-1(b), participation in the VRP does not affect a person's obligations under RCRA as set forth in 42 U.S.C. 6901 et seq. Persons liable under RCRA due to owning or operating a permitted hazardous waste treatment, storage, or disposal ("TSD") facility, or a TSD facility that should have been permitted, must still achieve closure and corrective action completion determinations through IDEM's

Hazardous Waste Management Program. Applicants who are also liable under RCRA are encouraged to coordinate their VRP activities with the Hazardous Waste Permit Section to avoid any potential duplication of efforts, or disputes at the end of the VRP project.

F. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. The Applicant agrees to waive its rights to administrative and judicial review of the following issues: the binding effect and enforceability of the Agreement and the authority of IDEM to enter into this Agreement.

G. The Applicant agrees not to assert any claim or cause of action under any common law theory or any statute against IDEM and the State of Indiana, its agencies, departments, instrumentalities, authorized officers, employees, contractors or representatives for any action taken by IDEM in connection with this Agreement.

22. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

23. Termination and Satisfaction.

A. At any time, IDEM may reject a RWP, withdraw its approval of a RWP, withdraw from this Agreement, or terminate the Applicant's participation in VRP if:

(1) the person proposing or implementing the work plan fails substantially to comply with the terms and conditions of an approved voluntary remediation investigation plan, an approved RWP, or this Agreement, including but not limited to:

(a) failure to obtain access in accordance with Exhibit C, Part I, or

(b) failure to pay properly documented IDEM Administrative Costs on a timely basis; or

(2) a release of a hazardous substance or petroleum causes an imminent and substantial threat to human health or the environment; or

(3) the Applicant fails to take appropriate and timely action to address the release or threatened release of a hazardous substance or petroleum.

B. In the event that IDEM withdraws from this Agreement and terminates Applicant's participation in the VRP for any reason, all protection provided under IC 13-25-5-18(g) is extinguished and IDEM may bring any action to enforce any statute or regulation under Title 13 of the Indiana Code, including an action regarding the violations that arose from a release subject to this Agreement, and the Applicant shall remain responsible for administrative costs. Additionally, the Applicant shall remain responsible for all costs related to responding to the release which was the subject of this Agreement. If IDEM rejects a RWP, withdraws approval of a RWP, withdraws from this Agreement, or terminates the Applicant's participation in the VRP, IDEM may bring an action, including an administrative action, against the Applicant.

C. If IDEM terminates the Applicant's participation in the VRP, the Applicant may reapply to the VRP. Any reapplication to the VRP may, in IDEM's discretion, be subject to guidance, rules, or other documents approved or required by VRP at the time of reapplication, including modifications to IDEM's Remediation Closure Guide or changes in default screening levels.

D. The provisions of this Agreement shall be satisfied when IDEM issues a Certificate of Completion to the Applicant. The Parties understand that IDEM will issue the Certificate of Completion to the Applicant only.

E. Nothing in this Agreement shall restrict IDEM 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.

F. After IDEM issues the Certificate of Completion, the Governor's Office shall provide Applicant with a Covenant Not To Sue pursuant to IC 13-25-5-18. The Covenant Not To Sue shall contain a listing of the specific work accomplished and the contaminants remediated. The parties understand that the Governor's Office will issue the Covenant Not To Sue to the Applicant only. The Applicant agrees and understands that the covenant shall be conditioned upon and limited to Site conditions described in the approved RWP, provided that the information submitted by the Applicant was complete and accurate.

G. The Applicant agrees and understands that the obligations found in paragraph 3 (Access to Records) and paragraph 9 (Administrative Costs) of this Agreement shall survive termination or satisfaction of this Agreement.

24. Work Standards. The Applicant shall execute its responsibilities by exercising the professional and technical standard of care that is customary in the field. If IDEM becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, IDEM may request in writing the replacement of any or all such individuals.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Applicant, that he/she has not, nor has any other member, employee, representative, agent or officer of the Applicant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Application other than that which appears upon the face of this Application.

SIGNATURE PAGE FOR VRA
BETWEEN IDEM AND _____ [ENTER APPLICANT NAME]

In Witness Whereof, the Applicant and the State have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

For the Applicant: _____ [PM: ENTER THE VRP ENTITY THAT WILL BE LISTED AS THE APPLICANT ON THE CERTIFICATE OF COMPLETION ON THE LINE ABOVE. THIS SHOULD BE THE APPLICANT AS IT IS LISTED ON THE APPLICATION. FOR EXAMPLE, "SMITH'S GARAGE"]

By _____ Attested By:_____
Printed Name:_____ _____
Title:_____ _____
Date:_____ _____

For the Indiana Department of Environmental Management

_____
Carol S. Comer, Commissioner

Date:_____

Technical Recommendation:

_____
Corey Webb, Section Chief
Voluntary Remediation Program

Date:_____

EXHIBIT A
SCOPE OF WORK

The Applicant shall perform the following tasks and provide the requested information relative to this Agreement for the specific purpose of evaluation and implementation of the RWP for the remediation of the release or threatened release of petroleum or hazardous substances from the Site.

Participation in the Voluntary Remediation Program requires expeditious progress towards Site closure, in accordance with the timelines set forth below. This Agreement is solely between IDEM and the Applicant. Subject to paragraph 13 of this Agreement, in determining whether the Applicant has made progress necessary to maintain its participation in the VRP, IDEM will not excuse delays associated with third parties, such as third-party reviews of required submittals or negotiations between the Applicant and its insurance carriers.

Necessary progress for participation in the VRP is contingent upon a reliable source of funding for site investigation activities and implementation of an approvable remedial strategy, as well as the timely payment of IDEM oversight costs as set forth in paragraph 9 of this Agreement. Delays in payment of IDEM oversight costs caused by third parties, such as insurers, will not excuse any failure by the Applicant to comply with the terms of this Agreement.

Task A: At any time during the evaluation or oversight of a voluntary remediation investigation plan or a RWP, IDEM may request that the Applicant submit additional or corrected information to the department, including information that requires further site investigation. If the Applicant fails to comply with the request, IDEM may withdraw from this Agreement and terminate the Applicant's participation in the VRP.

Task B: Not later than sixty (60) days after the date this Agreement is executed by the Commissioner (or after a longer period if the extension is agreed to by IDEM and the Applicant), the Applicant shall submit a voluntary remediation investigation plan for approval by IDEM. The plan may be for either a proposed or completed investigation.

A proposed voluntary remediation investigation plan or a voluntary remediation investigation plan for a completed investigation must include the following:
(1) Detailed documentation of the investigation conducted by the applicant in preparing the voluntary remediation investigation plan.
(2) A statement of work to determine the nature and extent of the actual or threatened release, including vapor intrusion and off-site migration if applicable, in accordance with guidelines established by IDEM.
(3) Plans concerning the following:
(A) Quality assurance for the implementation of the investigation.
(B) Descriptions of sampling and analysis.
(C) Health and safety considerations.
(D) A schedule concerning the implementation of all tasks set forth in the statement of work.

Task C: IDEM anticipates that the voluntary remediation investigation plan will be subject to review and evaluation by IDEM for approximately one hundred twenty

(120) days after receipt. Should IDEM fail to act on the voluntary remediation investigation plan within that timeframe, its failure to act shall not constitute its acceptance of the voluntary remediation investigation plan. However, if IDEM fails to act on the voluntary remediation investigation plan within one hundred twenty (120) days after receipt, the Applicant's timeframe for completing Task D of this Scope of Work shall automatically be extended by the same number of days by which IDEM's review and evaluation of the voluntary remediation investigation plan exceeds one hundred twenty (120) days. If IDEM approves the voluntary remediation investigation plan, IDEM shall provide the Applicant with written notice of the approval.

Task D: Not later than two (2) years after the date this Agreement is executed by the Commissioner (or after a longer period if the extension is agreed to by IDEM and the Applicant), the Applicant shall fully determine the nature and extent of the actual or threatened release of petroleum or hazardous substances in accordance with a voluntary remediation investigation plan that IDEM has approved in writing. This requirement is subject to the provision in Exhibit C, Part I, General Special Conditions, Access, concerning areas owned or controlled by entities other than the Applicant. The Applicant shall submit an investigation report for review by IDEM.

Task E: Not later than sixty (60) days after IDEM notifies the Applicant in writing that the Applicant has fully determined the nature and extent of the actual or threatened release in accordance with an approved voluntary remediation investigation plan (or after a longer period if the extension is agreed to by IDEM and the Applicant), the Applicant shall submit to IDEM a proposed RWP or a RWP for a completed remediation project. If the Applicant submits a proposed RWP or a RWP for a completed remediation project later than one hundred eighty (180) days after the date this Agreement is signed, an extension of the period set forth in IC 13-25-5-8(a)(8)(A) is agreed to as long as the Applicant complies with the sixty (60) day deadline in the preceding sentence of this Task E. Pursuant to IC 13-25-5-8.5, the RWP must specify the remediation objectives for remediation of hazardous substances or petroleum that are based on background levels or an assessment of risks posed by the hazardous substances and petroleum, taking into consideration the expected future use of the Site and measurable risks to human health, natural resources, or the environment. Risk based objectives shall be based on one of the following: 1) levels of hazardous substances and petroleum calculated by IDEM using standard equations and default values for that particular contaminant; 2) levels of hazardous substances and petroleum calculated using Site specific data for the default values in IDEM's standard equations; or 3) levels of hazardous substances and petroleum developed based on Site specific risk assessments that take into account Site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that: (a) manage risk; and (b) control completed or potential exposure pathways. IDEM shall consider and give effect to restrictive covenants as defined in IC 13-11-2-193.5 (also referred to as "Environmental Restrictive Covenants" or "ERCs") and environmental restrictive ordinances as defined in IC 13-11-2-71.2 ("EROs") in evaluating risk based remediation proposals. The RWP shall specify the land use restrictions assumed in developing the RWP, and identify the institutional, engineering, or other controls to be used to restrict land use at the Site. The RWP, including the format, shall be developed in accordance with guidance documents as specified in the attached Exhibit C, Special Conditions. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations, and appropriate guidance documents as described in the attached Exhibit C, Special Conditions.

A proposed RWP must include the following:
(1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed RWP and a description of the work performed by the applicant to determine the nature and extent of the actual or threatened release.
(2) A proposed statement of work to accomplish the remediation in accordance with guidelines established by IDEM.
(3) Plans concerning the following:

(A) Quality assurance for the implementation of the proposed remediation project.
(B) Descriptions of sampling and analysis.
(C) Health and safety considerations.
(D) Community relations and community comment in planning, cleanup objectives, and implementation processes.
(E) Data management and record keeping.
(F) A proposed schedule concerning the implementation of all tasks set forth in the proposed statement of work.

A RWP for a completed remediation project must include the following:
(1) Detailed documentation of the investigation conducted by the applicant in preparing the RWP and a description of the work performed by the applicant to determine the nature and extent of the actual or threatened release.
(2) A statement of work performed to accomplish the remediation in accordance with rules or guidelines established by IDEM.
(3) Plans concerning the following:

(A) Quality assurance for the implementation of and, if appropriate, plans for future oversight of the remediation project.
(B) Descriptions of sampling and analysis conducted before and after the remediation is performed.
(C) Health and safety considerations.
(D) Community comment.
(E) Data management and record keeping.
(F) Criteria used to determine remediation levels and remediation methodology.

(4) Other information IDEM determines is necessary to evaluate the work plan and determine if the remediation objectives have been achieved.

Task F: The RWP shall be subject to review and evaluation by IDEM for one hundred twenty (120) days after receipt. Should IDEM fail to act on the RWP within that timeframe, its failure to act shall not constitute its acceptance of the RWP. However, if IDEM fails to act on the RWP within one hundred twenty (120) days after receipt, the VRP Section Chief shall place the Site on a VRP Priority List and shall present that List for review by the Remediation Branch Chief, the Deputy Assistant Commissioner and the Assistant Commissioner for the Office of Land Quality, and the Commissioner of IDEM.

Task G: If the Applicant has submitted a RWP that meets the requirements of IC 13-25-5-7, IDEM will follow the public notice provisions of IC 13-25-5-11 for the RWP, which include: notification to local officials; providing for placement of a copy of the RWP in a local library; publication of a notice requesting comments on the RWP; and at least a 30-day public comment period.

Task H: Following the public comment period, IDEM will approve, modify and approve, or reject the RWP pursuant to IC 13-25-5-10. If IDEM rejects the RWP, IDEM shall notify the Applicant of the rejection and specify all the reasons for the rejection pursuant to IC 13-25-5-12. If IDEM approves, or modifies and approves, the RWP, the Applicant shall be notified of the decision, and IDEM will provide a date that the Applicant may begin implementing the RWP and the date by which the work must be completed pursuant to IC 13-25-5-13. The approval letter may incorporate by reference the timetable set forth in the RWP.

Task I: The Applicant shall notify the IDEM Project Manager within 60 days after the RWP's approval of its intent to proceed with the implementation of the approved RWP, and agree to the start and completion dates approved by IDEM. In addition, prior to starting the work to be performed to remediate the Site, the Applicant shall notify IDEM, in writing, of the name, title, and qualifications of any contractors and/or subcontractors to be used in carrying out the terms of this Agreement. If the contractors or subcontractors to be used to carry out the terms of this Agreement are changed or additional contractors or subcontractors are used, the Applicant shall notify the IDEM Project Manager, and provide the name, title, and qualification of that contractor or subcontractor prior to their involvement in the remediation of the Site.

Task J: IDEM will oversee and review the implementation of the approved RWP and request reports as needed.

Task K: After the remediation work is complete, the Applicant shall submit a Completion Report to IDEM, and shall provide all the necessary information for a determination to be made whether or not the work was conducted pursuant to the approved RWP and this Agreement. If the remedial objectives for the Site were based on an ERC and/or an ERO, then the Applicant shall include a copy of the recorded ERC and/or the ERO (including documentation showing that the ERO was adopted by a municipal corporation or town authorized to do so, and is in effect under IC 36) with the Completion Report. IDEM is not bound to accept any ERC or ERO that was not evaluated by IDEM prior to being recorded or adopted by a municipal corporation.

Task L: After reviewing the Completion Report, IDEM will determine whether or not a Certificate of Completion will be issued. IDEM will not issue the Certificate of Completion until the Applicant has remitted all Administrative Costs pursuant to paragraph 9 of this Agreement. If the Certificate of Completion is issued, the Applicant shall record it on the deed of the property subject to the remediation. The Applicant shall provide a copy of the recorded Certificate of Completion to IDEM for its review to ensure the recording was correct.

Task M: After IDEM receives a copy of the recorded Certificate of Completion and determines it was properly recorded, the IDEM Project Manager will prepare a Covenant Not To Sue packet to forward to the Governor's Office for appropriate signature. When the Covenant Not To Sue is executed by the Governor's Office, IDEM will provide to the Applicant the executed Covenant Not To Sue.

The Contractor shall follow the schedule provided as Exhibit B, Schedule of Project Tasks, attached hereto and incorporated herein.

EXHIBIT B
SCHEDULE OF PROJECT TASKS

The tasks and the associated time periods necessary for the project are as follows:

TIME PERIOD	TASK
At any time during the evaluation or oversight of a voluntary remediation investigation plan or a RWP	• Task A
Not later than sixty (60) days after the date this Agreement is executed by the Commissioner	• Task B
For a period of approximately one hundred twenty (120) days following IDEM's receipt of the voluntary remediation investigation plan	• Task C
Not later than two (2) years after the date this Agreement is executed by the Commissioner	• Task D
Not later than sixty (60) days after IDEM notifies the Applicant in writing that the Applicant has fully determined the nature and extent of the actual or threatened release in accordance with an approved voluntary remediation investigation plan	• Task E
For a period of one hundred twenty (120) days following IDEM's receipt of the RWP	• Task F
Upon conclusion of IDEM's review of the RWP and any additional information submitted at IDEM's request	• Task G
Following the expiration of the 30-day public comment period on the RWP	• Task H
Within 60 days after IDEM's approval of the RWP	• Tasks I & J

Following the completion of the remediation work performed pursuant to the RWP	• Tasks K & L
After IDEM receives and reviews the recorded Certificate of Completion	• Task M

EXHIBIT C
SPECIAL CONDITIONS

In addition to the terms and conditions set forth herein, the parties agree to abide by the following Special Conditions:

Part I
General Special Conditions

Access.
To the extent that the Site or other areas where work is to be performed hereunder are presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain access agreements from the present owners. Such agreements shall provide access for the Applicant and IDEM and authorized representatives of IDEM, as specified below. In the event that access to the Site is not obtained, the Applicant shall so notify IDEM, which may at its discretion assist the Applicant in gaining access. The IDEM Nonrule Policy Document entitled "Procedures for Gaining Access to Third Party Properties by Responsible Parties Performing Remediation," available online at http://www.in.gov/idem/files/npd-waste-0065.pdf, describes the adequate steps to be taken and documentation to be provided by a responsible party or program participant who is attempting to access third party properties for the investigation and/or remediation of contamination in soil, ground water, surface water, sediment and/or indoor air.

IDEM may terminate or modify this Agreement should the Applicant's inability to gain access to the Site or other areas affect the Applicant's ability to perform the work required herein. The Applicant shall provide authorized representatives of IDEM access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as IDEM may deem necessary; using a camera, sound recording, or other documentary equipment for field activities; and, verifying the data submitted to IDEM by the Applicant hereunder. The Applicant shall permit IDEM's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Applicant exercises control. All persons with access to the Site pursuant to this Agreement shall comply with the approved Health and Safety Plan and established health and safety protocols.

Nothing herein shall be construed as restricting the inspection or access authority of IDEM under any law or regulation. Furthermore, nothing herein shall be construed as restricting the authority of IDEM to abate any pollution or contamination at the Site.

Community Relations.
In addition to performing the requirements specified in the Community Relations Plan in the Applicant's RWP, the Applicant shall cooperate with IDEM in providing information about the RWP to the public. The Parties will give to each other reasonable advance notice of any such public meetings they may hold, and will work together to agree upon the time and location of any public meeting. IDEM may require the Applicant or its agent

to attend any public meeting held by the agency. Before the Commissioner may approve or disapprove the RWP, the Commissioner shall provide thirty (30) days for public comment pursuant to IC 13-25-5-11.

IDEM shall maintain a public information file containing the RWP during the thirty (30) day Public Comment period at a public repository near the Site. The Applicant shall provide the location of a suitable public repository in accordance with applicable guidance.

Extensions of Time Periods–Generally.
Any written response shall be deemed timely performed if hand delivered or postmarked by the last day of any time period prescribed herein. Whenever a Party has the right or an obligation to do some act or make some response within a prescribed period after the service of a notice by mail, three (3) days shall be added to the prescribed period.

Whenever any Party is called upon to respond or otherwise act in a certain number of days, and the final day occurs on a Saturday, Sunday or legal holiday (whether state or national), such time limitation shall automatically extend to the next business day after such Saturday, Sunday or legal holiday.

Any time periods specified in this Agreement may be extended only by written agreement of the Parties.

Extensions of Time Periods for Tasks B, D, and E (see Exhibit A, Scope of Work).
For Tasks B, D, and E (see Exhibit A, Scope of Work), the Applicant may receive an initial extension of time for no longer than ninety (90) days if requested in writing and if IDEM determines that good cause exists for requesting the extension. The Applicant may receive a second extension for no longer than ninety (90) days if requested in writing and if IDEM determines that good cause exists for requesting the second extension. In no event shall more than two ninety (90) day extensions be granted for a single Task.

Notice of Bankruptcy or Death.
As soon as the Applicant has knowledge of its intention to file bankruptcy and no later than seven (7) days after the actual filing of a voluntary or involuntary bankruptcy petition, the Applicant shall notify IDEM of the filing of a bankruptcy petition. If an Applicant dies, as soon as a personal representative of a deceased Applicant's estate becomes aware of this VRP project, the personal representative shall notify IDEM of the probate of the estate. IDEM shall be notified as a creditor of the bankruptcy and/or estate. IDEM's claim may be a contingent claim, in whole or in part, as there may be oversight costs due after the closing of the bankruptcy and/or probate estate.

Notice to Key Person(s)/Designated Project Managers.
Whenever any notice, statement, report, approval, notification, disapproval, and other correspondence or communication is required under this Agreement, it shall be sent to the following addresses by U.S. First Class mail, hand delivery, overnight mail, or by courier service:

Notices to IDEM:	Project Manager Voluntary Remediation Program MC 66-30V IGCN 1101 Indianapolis, Indiana 46204-2251 (317) 23_-(extension)
Applicant Project Manager: (See paragraph 16)	Name Address City, State, Zip Phone Number
Additional Applicant Contact (optional): (Delete this section is no add'l Contact is desired)	Name Address City, State, Zip Phone Number

Part II
Special Technical Conditions

Compliance with Guidance Documents.
Provided that the Applicant complies with all the time periods set forth in Exhibit A, Scope of Work, all work performed and all documents submitted shall be in accordance with all agency guidance documents available and in effect as the Effective Date of this Agreement, including IDEM's *Remediation Program Guide and Remediation Closure Guide,* and any updates and associated transition policies regarding agency guidance documents. In this context, "guidance" shall include both the aforementioned guidance documents as well as the screening levels (and the input parameters used to derive these screening levels) referenced in the Remediation Closure Guide which are current and in effect as the Effective Date of this Agreement. The Applicant may supplement this guidance with guidance or other documents approved by the VRP. Guidance documents identified in this Agreement are named for the convenience of the Applicant; the failure to specify a specific guidance document in this Agreement shall not be construed as a limitation on the applicability of a guidance document. If the Applicant fails to comply with the time period set forth for Task D in Exhibit A, Scope of Work, all subsequent work performed and documents submitted may, in IDEM's discretion, be subject to updated guidance, rules, or other documents approved or required by VRP, including modifications to IDEM's Remediation Closure Guide or changes in default screening levels.

If a RWP is approved by IDEM but is subsequently amended or revised such that a change in remedial objectives requires IDEM to reevaluate risk at the site, then both the guidance and the underlying science that is current at the time of that amendment or revision (including the screening levels and associated input parameters) shall apply.

Environmental Professionals.
All work plans and reports related to the practice of geology to be submitted by the Applicant shall be designed and implemented under the direction and supervision of a Licensed Professional Geologist ("LPG") licensed in Indiana with expertise in hazardous substance or petroleum Site investigation and remediation. If the work requires a designed remediation system or engineered barrier, the work will be done under the direction and supervision of a Professional Engineer ("PE") with expertise in hazardous substance or petroleum Site investigation and remediation.

Quality Assurance.
The Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan approved for use by IDEM throughout any sample collection and analysis activities under this Agreement, unless IDEM agrees otherwise.

Applicant shall provide IDEM Project Manager with reasonable advance notice of all sampling activities as detailed in site investigation plans or RWPs. IDEM reserves the right to require the presence of an IDEM representative during any sampling events, including those that the Applicant intends to use as confirmation sampling. To provide quality assurance and maintain quality control, the Applicant shall do each of the following.

(a) Applicant shall allow IDEM personnel and/or IDEM authorized representatives reasonable access to laboratories and personnel utilized by the Applicant for analyses.

(b) Applicant shall ensure that all sampling and analyses are performed according to U.S. EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by IDEM.

(c) Applicant shall ensure that any laboratories used by the Applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with U.S. EPA guidance documents. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of analytical data for each such laboratory.

(d) Applicant shall perform confirmatory sampling for all contaminants and all media for which a Certificate of Completion and Covenant Not to Sue are sought. Applicant shall specify in the RWP the means of taking confirmatory samples and notify IDEM personnel a minimum of fourteen (14) days prior to taking confirmatory samples.

IDEM reserves the right to reject any data not gathered consistent with the requirements of this section and Exhibit C, Part II (Sampling and Data/Document Availability) and to require that the Applicant utilize a different laboratory.

Sampling and Data/Document Availability.
The Applicant shall, upon request, make the results of all sampling, including raw data, and/or tests or other data generated by the Applicant, or on the Applicant's behalf, available to IDEM. IDEM will make available to the Applicant the quality assured results of sampling and/or tests or other data similarly generated by IDEM.

At the request of IDEM, the Applicant shall provide to IDEM (and/or its authorized representative) splits or duplicates of any samples collected by the Applicant pursuant to the implementation of this Agreement. At the request of the Applicant, IDEM (or its authorized representative) shall provide split or duplicate samples to the Applicant of any samples collected by IDEM and/or its authorized representative pursuant to the implementation of this Agreement. Each Party shall notify the other in advance of any sample collection activity.

Scientific Practices.
The Applicant shall employ sound scientific, engineering, and construction practices.

Part III
Interagency Cooperation

The following agencies have an interest in the RWP because of concurrent jurisdiction over the Site:

1. Indiana Department of Natural Resources
   Executive Office Room W-256
   402 W. Washington, Indianapolis, IN 46204
   Attn: John M. Davis
   Phone: (317) 232-4025
   Fax: (317) 233-6811

2. Indiana State Department of Health
   Epidemiology Resource Center
   3-D
   2 N. Meridian St.
   Indianapolis, IN 46204

3. Department of Homeland Security
   Fire Code Enforcement, Fire & Building Safety
   Rm E-241
   402 W. Washington St.
   Indianapolis, IN 46204
   Phone: (317) 232-2222
   Fax: (317) 233-0307

4. U.S. Department of Interior
   Fish & Wildlife Service
   Bloomington Ecological Services Field Office
   620 South Walker Street
   Bloomington, Indiana 47403-2121
   Telephone: (812) 334-4261
   Fax: (812) 334-4273

The Applicant shall provide notice to these agencies of the submission of the RWP by sending them a copy of the RWP Executive Summary, a Site map, and the names of the Project Managers for the Parties. Any of the above named agencies that wish to review the RWP shall be given an opportunity by IDEM to comment during the time that IDEM is reviewing the RWP or during the thirty (30) day public comment period provided for in IC 13-25-5-11. If the Applicant wishes to address natural resource damages in the RWP, the Applicant shall so notify the State and Federal Natural Resources Trustees within thirty (30) days of the Effective Date of this Agreement.

Part IV
Natural Resource Damages

The Applicant may devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources or pay to the State the value of the natural resources, as determined by the Natural Resource Trustees. The plan may be developed and implemented as part of the RWP. If the Applicant wishes to address natural resource damages in the RWP, the Applicant shall so indicate in the notice to State and Federal Natural Resources Trustees, as specified in Exhibit C, Special Conditions, Part III, *Interagency Coordination*.

After receiving notice of the Applicant's desire to address natural resource damages, the Natural Resources Trustees may perform a pre-assessment screen for injury to, destruction of, or loss of natural resources. The Applicant expressly agrees to reimburse IDEM for any and all costs incurred by either IDEM or the Indiana Department of Natural Resources in performing the pre-assessment screen. The Applicant will perform the assessment of damages based on the pre-assessment screen. This Agreement and the Covenant Not to Sue issued hereunder do not alter the liability of the Applicant or any other person to the federal government for claim of natural resource damages under any federal law.

EXHIBIT D
ITEMIZED COSTS

NON-BINDING COST ESTIMATE
IDEM SITE #: Site Number

Oversight of voluntary remediation at the Site Name site in Site City, Indiana will be required. The following tasks and estimated costs are anticipated:

Project Manager – delete this text and any of the following tasks that are not anticipated. Add others as needed:

Review of Voluntary Remediation Investigation Plan & Revisions	$ VRIP cost
Review of Investigation Report & Revisions	$ IR cost
Review of Remediation Work Plan & Revisions	$ RWP cost
Review of Risk Assessment & Revisions	$ RA cost
Implementation Oversight	$ IM cost
Review of Remediation Completion Report & Revisions	$ RCR cost

Please note that IDEM split sampling costs are NOT included in this estimate

Total: $ TOTAL

END OF DOCUMENT