

**DRAFT**

**REMEDIATION AGREEMENT**

PADEP Facility ID #: 02-13744

PAUSTIF Claim #: 2009-0125(F)

This agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2016, by and between **Superior Petroleum Company** (“Client”), with a principal place of business at **[Insert Address]** and **[Insert Environmental Consulting Firm]**, (“Consultant”) with its principal place of business at **[Insert Environmental Consultant’s Address]** (collectively, the “Parties”).

**RECITALS**

WHEREAS, the Client is the current owner of Fueland #203, PADEP Facility ID# 02-13744, located at 101 Mile Lock Lane, Brackenridge, PA 15014, the “Site”.

WHEREAS, the Consultant, a **[Insert State]** Corporation, performs environmental consulting work as an independent contractor.

WHEREAS, the Pennsylvania Department of Environmental Protection (“PADEP”) has determined that corrective action including, but not limited to, site characterization, interim remedial measures and remediation, of a petroleum release at the Site is required (“Remediation”).

WHEREAS, the Client reported a claim for coverage relating to the release to the Pennsylvania Underground Storage Tank Indemnification Fund (“PAUSTIF”), claim number **2009-0125(F)** (“Claim”).

WHEREAS, PAUSTIF has determined the Claim is eligible for coverage from the PAUSTIF subject to the applicable statute and regulations including the payment of reasonable and necessary costs of corrective action at the Site.

WHEREAS, the Consultant has presented to the Client a proposal or bid response document for Remediation to be performed.

WHEREAS, the Client desires that Consultant perform the scope of work described in Exhibit A to this Agreement (the “Scope of Work”) for an amount not to exceed the fixed costs described in Exhibit B.

WHEREAS, the Consultant desires to perform the Scope of Work described in Exhibit A to this Agreement for an amount not to exceed the fixed costs described in Exhibit B.

WHEREAS, the Client and the Consultant desire to submit the costs of Remediation to PAUSTIF for review and payment through PAUSTIF’s third-party claims administrator, via payment requests and the supporting documentation specified in Exhibit B, to assure that payment is warranted based upon the conditions of this Agreement and subject to applicable laws and regulations including the limitation of the payment to the reasonable and necessary costs for Remediation, not to exceed the claim aggregate limit, and subject to applicable deductible and/or proration.

**DRAFT**  
**REMEDATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

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, as an independent contractor to Client, shall perform the Scope of Work (Exhibit A) in accordance with, and subject to, the other provisions of this Agreement.
- b. The Scope of Work shall be performed in accordance with all applicable federal, state, and local rules and regulations including, but not limited to, the requirements of the Storage Tank and Spill Prevention Act (Act 32 of 1989, as amended) and Pa. Code, Title 25, Chapter 245, established under the Land Recycling and Environmental Remediation Standards Act (Act 2 of 1995) and Pa. Code, Chapter 250 (Administration of Land Recycling Program).
- c. Consultant shall perform the Scope of Work for an amount not to exceed the Base Contract Price (“BCP”) of **[\$insert BCP]** plus any Cost Adders, Optional Milestones and/or Unit Costs, subject to all other provisions of this Agreement.
- d. Consultant shall participate in periodic site meetings with the Client and PAUSTIF for site status updates. Consultant will be provided no less than ten (10) days written notice of the date, time, and location of the meeting by the Client/PAUSTIF through their third party administrator.

**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 access agreements with other third party property owners, as necessary for Consultant 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, to PADEP, PAUSTIF, local governing authorities and others, 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 Scope of Work at the Site.
- e. Client shall make a good faith effort to minimize any and all interference with the progress of the Scope of Work if the Site is remodeled or otherwise modified. Client shall also make a good faith effort to place this condition on third parties that are not a party to this Agreement including, but not limited to, current owners, future owners, current operators, future operators, current lessees and future lessees.

#### **4. Period of Performance**

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

#### **5. Standard of Care**

Consultant shall perform the Scope of Work 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. Consultant is fully responsible for identification and avoidance of any and all underground utilities or other obstructions encountered while performing the Scope of Work. 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. Upon the completion of a milestone as described in Exhibit B, Consultant shall submit a payment request (“Payment Request”) to the Client for approval using the form in Exhibit B.
- b. Client shall, within thirty (30) days, review and approve, deny, or modify the Payment Request for PAUSTIF reimbursement and return it to Consultant. The Client approved or Client modified Payment Request shall then be submitted by the Consultant to the PAUSTIF for payment of reasonable and necessary costs. Client denied Payment Request shall not be submitted to PAUSTIF.
- c. Client shall use the PAUSTIF to satisfy the Payment Request in connection with the performance of the Scope of Work under the following conditions:
  - i. Client shall submit all necessary documentation to facilitate and permit Consultant direct payment from the PAUSTIF;
  - ii. Should the PAUSTIF be temporarily suspended or permanently terminated, Client shall pay Consultant for any unpaid Payment Request plus interest, within thirty (30) days. Interest is calculated as 0.75% per month on outstanding amounts;

**DRAFT**  
**REMEDATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

- iii. In all cases where Consultant is ultimately paid by the PAUSTIF for eligible amounts paid by Client, Consultant will refund to Client such amounts;
  - iv. All payments made by PAUSTIF shall be subject to the claim aggregate, and shall be subject to applicable laws and regulations. Client is responsible to pay any applicable deductible and/or proration;
  - v. With the exception of the Client's applicable deductible or proration, Consultant accepts payment from PAUSTIF of PAUSTIF covered items as payment in full and cannot seek to recover any difference from the Client.
  - vi. Reimbursement shall be adjusted from stated fixed costs in Exhibit B for elements of the Scope of Work not actually performed.
- d. The BCP may not be increased except upon the occurrence of a "New Condition" as defined in the Section titled "New Conditions" below and only in accordance with, and subject to, the provisions of this Agreement.

**7. Insurance**

- a. During the performance of this Agreement, Consultant will carry and maintain the following insurance coverage:
  - i. Workers Compensation Insurance at the statutory limits, and Employer's Liability with a limit of not less than \$1,000,000 each occurrence.
  - ii. Automobile coverage on all vehicles owned, hired, or used in performance of this Agreement with aggregate liability limits not less than \$1,000,000 (Bodily Injury and Property Damage combined single limit).
  - iii. 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.
  - iv. Pollution Liability/Professional Liability at \$1,000,000 each occurrence and \$2,000,000 in the aggregate.
- b. Consultant and Client shall each be solely responsible for obtaining and maintaining casualty and other applicable insurance as required by each respective party for the materials, equipment and property, including remediation equipment that each party owns.

**8. Performance Product and Warranty**

Ten percent (10%) of each quarterly payment for Milestone F (and Optional Cost Adder Milestone M, if implemented) will be withheld and accumulated pending successful completion of remediation and initiation of soil and groundwater attainment activities (Milestones G and H). When this condition has been met, the accumulation of 10% holdback payments, for the milestones actually completed, will be reimbursed in one lump sum. The 10% holdback milestone will not be paid if the remediation system has not attained the cleanup goal on or before the completion of Milestone F8 and Optional Cost Adder Milestone M[Enter #].

If the remedial system is shut down before all of Milestone F quarterly events are completed, Consultant is required to wait a minimum of two months before initiating groundwater attainment activities (Milestone G). If during the first quarter of groundwater attainment, concentrations of contamination rebounds above Statewide Health Standards (SHS) in any Point of Compliance (POC) well, Consultant is obligated to restart the system within seven days and continue with the residual quarterly Milestone F activities. Then, when all eight quarters of the Milestone F activities have been completed (plus any or all Optional Cost Adder Milestone M activities) and groundwater attainment activities are re-initiated, Consultant is obligated to perform the first of the restarted series of quarterly attainment events (Milestone G) at no cost.

## **9. Remediation Equipment and Property Loss or Damage**

**[The paragraph below must be modified if equipment is rented or leased, or equipment was previously purchased and is already located at the Site.]**

Through the effective period of the Agreement, Consultant shall be solely responsible for all costs for repairing or replacing materials and equipment at the Site, that are used, constructed or installed for completing the Agreement work scope that may, by any means, have become stolen, damaged, deteriorated, or destroyed by acts of nature, improper design, improper installation, improper maintenance, improper operation, improper handling, theft, or vandalism. All materials, equipment and other property at the Site, purchased and used under the Agreement, are considered Consultant owned through the effective period of the Agreement. Upon termination of this Agreement and subsequent to payment, according to the terms of the Agreement, by the Client, including reimbursement by the PAUSTIF, ownership of said materials, equipment and property shall reside with Client and Client shall be provided with the title to all trailer-mounted equipment. In such case, Client shall have the benefit of all manufacturer warranties on materials, equipment and other property that it owns.

Upon receipt of PADEP approval of a Remedial Action Completion Report (RACR) or Final Report, as applicable for the Site, Consultant shall provide Client in writing with the option of taking over ownership of a remediation system and/or trailer purchased under this Agreement. If Client chooses in writing to forgo taking ownership of said remediation equipment, Consultant shall retain ownership and remove the equipment from the Site in accordance with this Agreement.

## **10. Non-performance by Consultant**

**DRAFT**  
**REMEDIATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

If Consultant fails to meet any specification of the Scope of Work as outlined in this Agreement, the Client or the PAUSTIF shall notify Consultant in writing 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 terminate this Agreement or the PAUSTIF may withhold any further payment. If Consultant corrects the deficiency(ies) within thirty (30) days, this Agreement shall continue.

- a. Lack of continuous progress is considered a failure to meet the specifications of the Scope of Work. Continuous progress is defined as persistent and effective action on the part of Consultant done in furtherance of implementing the Scope of Work. If Client determines that continuous progress is not being made toward implementing the Scope of Work, Client may provide a written First Notice of Deficiency to Consultant and the PAUSTIF detailing the reasons for this determination. After sixty (60) days from date of the First Notice of Deficiency, Client may provide a written Second Notice of Deficiency to Consultant and the PAUSTIF, providing details regarding the ongoing lack of continuous progress. Consultant may be notified in writing by Client sixty (60) days after the date of the Second Notice of Deficiency, that the Consultant is in breach of contract and Client may terminate this Agreement or the PAUSTIF may withhold any further payment.
- b. If the Agreement is terminated, Consultant shall be notified in writing that the Agreement has been terminated. Consultant shall submit Payment Request(s) for all reasonable and necessary costs of completed milestones in accordance with the Section titled "Fees and Payment" within thirty (30) days of notification that the Agreement is terminated, and Consultant and Client shall have no further obligations under this Agreement.
- c. All referenced written notices are to be sent via certified mail, return receipt requested, and first class mail.

## **11. New Conditions**

- a. A "New Condition" exists when one (1) or more of the following events occur and, as the result of such event, Consultant, Client or the PAUSTIF has demonstrated that the cost and/or period of time necessary to accomplish the Scope of Work is materially increased, or that it is no longer practicable to implement all or part of the Scope of Work:
  - i. The discovery of New Contamination (defined as any presence or release, or any portion of a presence or a release, of any regulated substance including, without limitation, a regulated substance that materially impacts soil, sediment, surface water, soil vapor, indoor air quality and/or groundwater quality that did not exist or was not identified in previous corrective action(s)). New Contamination includes, but is not limited to:
    - 1) in the case of a Site with no separate phase liquid (SPL) in subsurface media in the two (2) years prior to the date of this Agreement, the detection of SPL that occurs after the date of this Agreement in one (1) or more monitoring

**DRAFT**

**REMEDIATION AGREEMENT**

PADEP Facility ID #: 02-13744

PAUSTIF Claim #: 2009-0125(F)

- points for two (2) or more consecutive quarters with a thickness of 0.01 feet or greater as measured by an interface probe;
- 2) regulated substances discovered after the date of this Agreement that are present in Site media in separate, dissolved, sorbed or volatile form that could not reasonably be anticipated at a petroleum release site including, but not limited to, dry cleaning chemicals, fertilizers, and combustion ash, and that cause a material impediment in performing the Scope of Work;
  - 3) increases in concentrations in regulated substance(s) dissolved in surface water or groundwater greater than one hundred (100) times the maximum concentration of such regulated substance(s) measured during the two (2) years prior to the date of this Agreement, and present at more than one hundred (100) times the maximum concentration for two (2) or more consecutive quarters, provided that this increase cannot be attributed to the Remediation including, but not limited to, rebound caused by the deactivation of any and all remediation systems; or
  - 4) migration of off-site contamination on to the Site that materially affects the Consultant's ability to perform the Scope of Work.
- ii. Construction, remodeling or other reconfiguration of the Site to the extent that it materially impedes the performance of the Scope of Work;
  - iii. A release reported to the PADEP and/or the PAUSTIF from an Underground Storage Tank (UST) system(s) or surface spill that occurs after the date of this Agreement and that materially impacts soil, sediment, surface water, soil vapor, indoor air quality, and/or groundwater quality;
  - iv. A release, past or present, from a UST system(s) present at the Site but not known to exist by Consultant and/or Client, or known to the Client but not revealed to the Consultant, on or before the date of this Agreement that materially impacts soil, sediment, surface water, soil vapor, indoor air quality and/or groundwater quality;
  - v. Promulgation of new, or change in interpretation of existing, federal, state, or local law, regulation, ordinance, guidance or written policy to the extent that it materially impedes the performance of the Scope of Work. This shall include material changes to laws and regulation that establish, implement and administer the PAUSTIF;
  - vi. Limits or changes to access to the Site or adjacent properties that occur after the date of this Agreement that materially impedes the performance of the Scope of Work;
  - vii. Demands, claims, lawsuits, regulatory enforcement actions and the like initiated by parties other than Client and Consultant that materially impedes the performance of the Scope of Work, including those tasks whereby the continued execution of this

**DRAFT**  
**REMEDATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

Agreement will result in, or has a credible possibility of resulting in, a third party lawsuit and/or enforcement action by the PADEP or other governmental agency;

- viii. One (1) or more Site-Specific Assumptions provided in Exhibit A no longer remain true and accurate.
- b. Upon the discovery or occurrence of a New Condition, the discovering Party shall notify the other Party and PAUSTIF in writing by certified mail, return receipt requested, and first class mail, describing the details and a summary of the expected impact to the Scope of Work of such New Condition within thirty (30) days of the discovery of the New Condition. Failure by the discovering Party to notify the other Party and/or the PAUSTIF within thirty (30) days of discovery of the New Condition shall grant the Party that should have received notification the right to terminate this Agreement.
- c. Upon notification of a New Condition, Client, in consultation with PAUSTIF, shall within thirty (30) days choose to:
- i. Terminate Agreement; or
  - ii. Request a modified Scope of Work and associated cost estimate from Consultant to address the New Condition(s) for Client's and the PAUSTIF's review.
- d. Upon receipt of Client's request for a modified Scope of Work and associated cost estimate, Consultant shall within thirty (30) days choose to:
- i. Prepare the requested documents and submit them to the Client and the PAUSTIF. Upon Client, PAUSTIF, and any necessary PADEP approval of the modified Scope of Work and associated cost estimate, a written Amendment to this Agreement shall be prepared and signed by both Parties. Upon execution of an Amendment, Consultant shall continue with the modified Scope of Work and perform the modified Scope of Work in accordance with the terms agreed to in the executed Amendment. Client, in consultation with PAUSTIF, may choose to reject (not authorize) the modified Scope of Work and associated cost estimate to address the New Condition(s) prepared and submitted by Consultant. In this case, Client shall terminate this Agreement; or
  - ii. Decline the Client's request to prepare a Modified Scope of Work and associated cost estimate to address the New Condition(s), or the Consultant may fail to submit the documents within thirty (30) days. In either event the Agreement shall be terminated.
- e. If the Agreement is terminated, the Party terminating the Agreement shall provide thirty (30) days written notice to the other Party by certified mail, return receipt requested, and first class mail. Consultant shall submit Payment Request(s) for all reasonable and necessary costs of fully and partially completed milestones in accordance with all other terms described in the Section titled "Fees and Payment" within thirty (30) days of



notification that the Agreement is terminated, and Consultant and Client shall have no further obligations under this Agreement.

## **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 Scope 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. Site Closure**

Consultant shall remove all Consultant owned materials, equipment and other property and arrange for the removal of all remediation-specific utilities from the Site within sixty (60) days of receipt of PADEP approval of its Remedial Action Completion Report (RACR) or Final Report, as applicable. Consultant shall properly seal and/or abandon all on-site and off-site remediation wells, monitoring wells, borings, trenches, and piping/utility runs and the like as part of corrective action and shall properly dispose of all corrective action related waste in accordance with all applicable requirements within sixty (60) days of receipt of PADEP approval of its RACR or Final Report, as applicable, except for those monitoring points necessary to implement a Post Remediation Care Plan (PRCP). Disruption of the Client's normal business shall be kept to a minimum. To the extent practical, the Consultant shall return the Site to the condition that existed prior to initiation of the Scope of Work. Conditions prior to initiation of the Scope of Work will be established with 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, waiver of, or cancellation of any term of this Agreement shall be valid unless it is in writing and signed by both Parties.

## **16. Mutually Agreed Termination**

If both Parties agree to terminate this Agreement, then the Agreement shall be terminated upon each Party notifying the other Party and each Party separately notifying the PAUSTIF in writing by certified mail, return receipt requested, and first class mail. Consultant shall submit Payment Request(s) for all reasonable and necessary costs of fully and partially completed milestones in accordance with all other terms described in the Section titled "Fees and Payment" within thirty (30) days of notification that the Agreement is terminated, and Consultant and Client shall have no further obligations under this Agreement.

**17. Integration and Severability**

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.

The provisions of this Agreement are severable, and in the event any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

**18. Order of Precedence**

In the event of a conflict in the terms and conditions of this Agreement and the conditions on which it is based, the following order of precedence shall apply:

- A. This Agreement including all Exhibits
- B. Consultant's **[Title of Bid Response or Proposal]** dated **[Insert Date of Document]**
- C. Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated **[Insert Date(s) of Documents]**
- D. The Request for Bid Document dated **[Insert Date of Document]**
- E. Other Contract Documents

The remainder of this page intentionally left blank.



## **EXHIBIT A**

### **SCOPE OF WORK**

The Scope of Work described in the Consultant's [Title of Bid Response or Proposal] dated [Insert Date], Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated [Insert Date(s)], and the Request for Bid Document dated [Insert Date], is incorporated herein, with the following exceptions:

- [Insert Site Specific Information, deletions or additions to the SOW or "None"]

#### **Site-Specific Assumptions:**

Assumptions are discussed in the Consultant's [Title of Bid Response or Proposal] dated [Insert Date], Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated [Insert Date(s)], and the Request for Bid Document dated [Insert Date]. However, for clarity and to facilitate administration of the Agreement, the only Site-Specific Assumptions that shall be considered under the Section of this Agreement titled "New Conditions" are as follows:

- [Insert Site-Specific Assumptions (SSA) accepted by both parties or "None"]
- [Examples of SSAs are 'PADEP will not require more than 8 wells to be installed', or 'use of the farm road to reach off-site locations will be permitted'. SSAs are statements that are believed to be true and accurate as of the date of the Agreement and that will materially impact the Scope of Work and/or costs if, at some point during the period of the Agreement, the SSA is no longer true or accurate.]
- Pre-remedial quarterly site monitoring, sampling & reporting events will not exceed the two quarters under Milestone D plus additional quarters under Cost Adder Milestone J.
- Remediation will be complete and soil and groundwater attainment activities will be initiated on or before the completion of Milestone F8 and Milestone M [enter final milestone #].
- Groundwater attainment demonstration will be successful on or before completion of Milestone G8. (For the purposes of meeting the criteria for a New Condition in Section 11 of this Agreement, Consultant must have completed at least the full eight quarters of O&M under the Milestone F series.)
- Milestone H soil sampling data will allow for attainment of the selected standard.
- The final RACR prepared under Milestone I will be approved by PADEP. (Note that RACR must be prepared in accordance with Section 245.313, be provided to Solicitor and PAUSTIF for review and comment two weeks prior to final submission to PADEP, and Solicitor and PAUSTIF comments must be incorporated into the final RACR for a New Condition to exist if PADEP does not approve the RACR).

**DRAFT**  
**REMEDATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

**Provisions:**

The following Provisions are agreed upon by both Parties. **[Provisions are agreements by both Parties that are not addressed by the main body of the Agreement. Optional costs and cost adders can be described here as well. Provisions will not trigger a “New Condition”.]**

- **[Insert Provisions or “None”]**
- **[Examples: ‘If this occurs then that will happen statements’ such as “If groundwater data in the designated POC groundwater monitoring wells has been either non-detect or below SHS for four consecutive quarters, Consultant will petition PADEP to approve a reduction in the total number of groundwater attainment sampling events.”; or “Should it be determined necessary to implement any of the Optional Cost Adders as described in the aforementioned documents, Optional Cost Adders will be billed consistent with Exhibit B of this Agreement.”]**
- Pilot Test Off- Ramp - If Consultant’s remedial approach is not reasonable, based solely on the pilot test results/data from Milestone B indicating that it cannot be implemented based on critical criteria outside defined ranges, then one of the following conditions will apply:
  1. With advance Solicitor and PAUSTIF approval, the selected bidder may elect to modify the remediation plan and continue with the project at no additional cost; that is, for the same total fixed price found in the bid response or a lesser fixed-cost. If selected consultant’s modified plan is approved by Solicitor and by PAUSTIF for funding, the executed Remediation Agreement may be amended, if necessary, to agree with the modified remediation plan and costs; however, the total fixed price of the Remediation Agreement shall not be increased.
  2. If the Solicitor or PAUSTIF choose not to approve the selected consultant’s revised remediation plan adjusting to the new data, the Remediation Agreement for the project will terminate.
  3. If the selected consultant adequately demonstrates the site conditions revealed by the results of pilot testing performed under Milestone Y could not have reasonably been expected prior to conducting the Milestone Y activities, the selected consultant may elect to not proceed and to terminate the Remediation Agreement for the project.

Critical criteria defined ranges **[List critical criteria here]**

- Consultant is expected to maintain at least an 85% uptime on the system during each quarter. Failure to meet this minimum expectation over two consecutive quarters will constitute, at the Client’s sole discretion, a breach of contract and the Client may choose to terminate this Agreement.
- If the groundwater data allows for discontinuing remedial activities prior to reaching the bidders specified timeframe for remedial system operation, the selected consultant will only be reimbursed for O&M events that have been completed.
- If groundwater data in the POC wells has been either non-detect or below SHS for four consecutive quarters, the PADEP will be petitioned to approve a reduction in the number of groundwater attainment sampling events.

## **DRAFT**

### **REMEDIATION AGREEMENT**

PADEP Facility ID #: 02-13744

PAUSTIF Claim #: 2009-0125(F)

- If the remedial system is shut down before all of Milestone F quarterly events are completed, Consultant will be required to wait a minimum of two months before initiating groundwater attainment activities (Milestone G). If during the first quarter of groundwater attainment, concentrations of contamination rebounds above SHS in any POC well, Consultant shall restart the system within 7 days and continue with the residual quarterly Milestone F activities. Then, when all 8 quarters of the Milestone F activities have been completed (plus any or all of the Cost Adder Milestone M quarters) and groundwater attainment activities are re-initiated, Consultant will perform the first of the restarted series of quarterly attainment events at no cost.
- If it becomes evident anytime during the groundwater attainment demonstration (initiated subsequent to completing at least the Milestone F eight quarters of remedial O&M) that the attainment demonstration will not be successful within the allotted 8 quarters in one or more of the POC wells (e.g., a greater than 10X result or more than two SHS exceedances, etc.), this will represent a New Condition under Section 11 of this Agreement.

## EXHIBIT B

### PAYMENT REQUEST AND SCHEDULE OF FIXED COSTS

[Modify table consistent with Scope of Work]

| Milestone Identification |   | Supporting Documentation   | Estimated Completion Month | Holdback Percentage/<br>Dollar Amount | Fixed Cost/<br>Payment Request Amount – Before Holdback |
|--------------------------|---|--|----------------------------|---------------------------------------|---|
| A                        | Supplemental Site Characterization Activities   | <ul style="list-style-type: none"> <li>▪ Time and Material Documentation</li> <li>▪ Site Drawings</li> <li>▪</li> </ul>  | TBD                        | None                                  | Time and Materials not to exceed \$10,000.00            |
| B                        | Pilot Testing & Reporting   | <ul style="list-style-type: none"> <li>▪ Pilot Test Report</li> </ul>  | TBD                        | None                                  | \$00.00   |
| C                        | Documentation of Findings: RAP Addendum; or Revised RAP                                     | <ul style="list-style-type: none"> <li>▪ Copy of [Report Title]</li> <li>▪ PADEP Approval Letter</li> </ul>  | TBD                        | None                                  | \$00.00   |
| D1                       | Pre-Remediation Quarterly Groundwater Monitoring, Sampling, & Reporting (insert # of wells) | <ul style="list-style-type: none"> <li>▪ Remedial Action Progress Report (RAPR)</li> </ul>   | TBD                        | None                                  | \$00.00   |
| D2                       | Pre-Remediation Quarterly Groundwater Monitoring, Sampling, & Reporting (insert # of wells) | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                        | None                                  | \$00.00   |
| E1                       | Installation of Remediation Wells   | <ul style="list-style-type: none"> <li>▪ Boring Logs / Well Construction Details</li> <li>▪ Waste Manifests</li> <li>▪ Well Development Forms/Notes</li> <li>▪ Survey Map &amp;/or Data</li> <li>▪ Cope of Quarterly RAPR Describing Well Installations</li> </ul>   | TBD                        | None                                  | \$00.00   |
| E2                       | In-Situ Remedial System Final Design, Equipment Purchase, & Assembly                        | <ul style="list-style-type: none"> <li>▪ Remedial System Design Drawings &amp; Specifications</li> <li>▪ Equipment Purchase Receipts</li> <li>▪ Documentation of Post-Assembly Equipment Testing</li> <li>▪ Documentation of Site Conditions Prior To RAP Implementation</li> <li>▪ Photographs</li> </ul> | TBD                        | None                                  | \$00.00   |

**DRAFT**  
**REMEDATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

| Milestone Identification |   | Supporting Documentation   | Estimated Completion Month | Holdback Percentage/<br>Dollar Amount | Fixed Cost/<br>Payment Request Amount –<br>Before Holdback |
|--------------------------|---|--|----------------------------|---------------------------------------|--|
| E3                       | Site Preparation Work   | <ul style="list-style-type: none"> <li>▪ Copies of Permit &amp;/or Permit Exemptions</li> <li>▪ PA One Call Notification</li> <li>▪ Documentation of Utility Mark-Out</li> <li>▪ Field Forms/Notes</li> <li>▪ Photographs</li> </ul>   | TBD                        | None                                  | \$00.00  |
| E4                       | In-Situ Remediation Equipment Pad, Trenching, Subsurface Piping, Mechanical, & Electrical | <ul style="list-style-type: none"> <li>▪ Documentation of Piping Integrity Testing</li> <li>▪ Field Forms/Notes</li> <li>▪ Photographs</li> <li>▪ Waste Manifests</li> </ul>   | TBD                        | None                                  | \$00.00  |
| E5                       | Final Connections & Startup / Trouble-Shooting of the In-Situ Remediation System          | <ul style="list-style-type: none"> <li>▪ O&amp;M Plan</li> <li>▪ As-Built Drawings</li> <li>▪ Field Forms / Notes</li> <li>▪ Photographs</li> </ul>  | TBD                        | None                                  | \$00.00  |
| E6A                      | Temporary Operation of a CatOx Unit & Initial Setup of VGAC Units                         | <ul style="list-style-type: none"> <li>▪ Copy of Air Permit Application &amp; Issued Permit (as applicable)</li> <li>▪ Documentation of Criteria Applied to Trigger Transition to VGAC units</li> <li>▪ Field O&amp;M Forms</li> </ul> | TBD                        | None                                  | \$00.00  |
| E6B                      | Temporary Operation of a CatOx Unit & Initial Setup of VGAC Units                         | <ul style="list-style-type: none"> <li>▪ Field O&amp;M Forms</li> <li>▪ Sample Analytical Data</li> </ul>  | TBD                        | None                                  | \$00.00  |
| E6C                      | Temporary Operation of a CatOx Unit & Initial Setup of VGAC Units                         | <ul style="list-style-type: none"> <li>▪ Field O&amp;M Forms</li> <li>▪ Sample Analytical Data</li> </ul>  | TBD                        | None                                  | \$00.00  |
| F1                       | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)              | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                        | 10% - \$00.00                         | \$00.00  |
| F2                       | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)              | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                        | 10% - \$00.00                         | \$00.00  |
| F3                       | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)              | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                        | 10% - \$00.00                         | \$00.00  |
| F4                       | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)              | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                        | 10% - \$00.00                         | \$00.00  |



**DRAFT**  
**REMEDIATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

| <b>Milestone Identification</b> |   | <b>Supporting Documentation</b>  | <b>Estimated Completion Month</b> | <b>Holdback Percentage/<br/>Dollar Amount</b> | <b>Fixed Cost/<br/>Payment Request Amount –<br/>Before Holdback</b> |
|---------------------------------|---|--|-----------------------------------|---|---|
| F5                              | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)        | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                               | 10% - \$00.00                                 | \$00.00   |
| F6                              | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)        | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                               | 10% - \$00.00                                 | \$00.00   |
| F7                              | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)        | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                               | 10% - \$00.00                                 | \$00.00   |
| F8                              | Remediation System O&M, Site Monitoring & Sampling, & Reporting (# of wells)        | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Checklists</li> </ul>   | TBD                               | 10% - \$00.00                                 | \$00.00   |
| F9                              | Holdback Payment – accumulation of 10% holdbacks for milestones actually completed. | <ul style="list-style-type: none"> <li>▪ RAPR and SRSS Results documenting successful initiation of soil and groundwater attainment activities,</li> </ul> | TBD                               | None  | \$00.00   |
| G1                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G2                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G3                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G4                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G5                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G6                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G7                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |
| G8                              | Groundwater Attainment Demonstration (9 wells)                                      | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                               | None  | \$00.00   |

**DRAFT**  
**REMEDIATION AGREEMENT**  
PADEP Facility ID #: 02-13744      PAUSTIF Claim #: 2009-0125(F)

| Milestone Identification                          |  | Supporting Documentation   | Estimated Completion Month | Holdback Percentage/<br>Dollar Amount | Fixed Cost/<br>Payment Request Amount –<br>Before Holdback |
|---|--|--|----------------------------|---------------------------------------|--|
| H   | Soil Attainment Demonstration  | <ul style="list-style-type: none"> <li>▪ SRSS Plan / Program Results</li> <li>▪ Boring Logs</li> <li>▪ Sample Locations on Drawing</li> <li>▪ Laboratory Analytical Reports</li> </ul> | TBD                        | None                                  | \$00.00  |
| I1  | Preparation and Submission of RACR to PADEP  | <ul style="list-style-type: none"> <li>▪ Draft RACR provided to Client and PAUSTIF 2 weeks prior to final submission to PADEP</li> <li>▪ Final RACR</li> </ul>                         | TBD                        | None                                  | \$00.00  |
| I2  | PADEP Approval of RACR   | <ul style="list-style-type: none"> <li>▪ PADEP Approval Letter</li> </ul>  | TBD                        | None                                  | \$00.00  |
| J   | Site Closure / Restoration Activities  | <ul style="list-style-type: none"> <li>▪ Well Abandonment Forms</li> <li>▪ Photographs</li> <li>▪ Waste Manifests</li> <li>▪ Client Approval of Site Restoration</li> </ul>            | TBD                        | None                                  | \$00.00  |
| <b>Base Contract Price</b>                        |  |  |                            |                                       | \$00.00  |
| <b>Optional Milestones/Unit Costs/Cost Adders</b> |  |  |                            |                                       |  |
| UC1   | Monthly Utilities & Discharge Fees   | <ul style="list-style-type: none"> <li>▪ Copies of bills</li> </ul>  | TBD                        | None                                  | Actual Cost  |
| K   | Additional Pre-Remediation Quarterly Monitoring, Sampling, & Reporting (# wells)   | <ul style="list-style-type: none"> <li>▪ RAPR</li> </ul>   | TBD                        | None                                  | \$00.00  |
| L   | Additional Monthly Operation of CatOx Unit   | <ul style="list-style-type: none"> <li>▪ O&amp;M Forms</li> <li>▪ Analytical Reports</li> </ul>  | TBD                        | None                                  | \$00.00  |
| M   | Additional Remediation System O&M, Site Monitoring, Sampling, & Reporting (insert additional M series milestones as necessary consistent with bid) | <ul style="list-style-type: none"> <li>▪ RAPR</li> <li>▪ O&amp;M Forms</li> </ul>  | TBD                        | 10% -<br>\$00.00                      | \$00.00  |
| N   | VGAC Change-Out  | <ul style="list-style-type: none"> <li>▪ Field Forms/Notes</li> <li>▪ Analytical Reports</li> <li>▪ Copy of Vendor Invoice</li> </ul>  | TBD                        | None                                  | \$00.00  |

## **EXHIBIT C**

### **SUPPORTING DOCUMENTS**

- Consultant's [Title of Bid Response or Proposal] dated [Insert Date of Document]
- Written Questions and Responses from the Third Party Reviewer that modify the Request for Bid Document dated [Insert Date(s) of Documents]
- The Request for Bid Document dated [Insert Date of Document]
- [Specify Other Contract Documents]