

OFFICE USE ONLY  
VCP Project number:

**Exhibit A**  
**RAILROAD COMMISSION OF TEXAS**  
**VOLUNTARY CLEANUP PROGRAM AGREEMENT**

**INTRODUCTION**

This Agreement is entered into voluntarily between \_\_\_\_\_ (Applicant) and the Railroad Commission of Texas (RRC or Commission, as defined by 16 Texas Administrative Code (TAC) § 4.405). This Agreement is not and shall not be construed as an admission of any liability under the Texas Natural Resource Code (NRC) or any other law or as a waiver of any defense to such liability. No approval hereunder or receipt of funds hereby shall be taken as a warranty as to sufficiency of the response action. The purpose of this Agreement is to detail the obligations and functions of each party, related to the voluntary response action process at the Site, as described in the above VCP Application.

The activities conducted by the Applicant in connection with this Agreement are subject to approval by RRC. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations, and any appropriate guidance documents. Applicant shall employ sound scientific, engineering and construction practices in executing its tasks under this agreement.

**STATEMENT OF ELIGIBILITY**

The Commission or its delegate has determined that the application submitted by the Applicant is complete and that the Site is eligible to participate in the VCP, established under Chapter 91, Subchapter O of the NRC. If the RRC determines that the Applicant withheld or misrepresented information that would be relevant to the Site's eligibility or determines that the Applicant is a responsible party, the Commission may exercise its right to withdraw from this Agreement.

**PARTIES BOUND**

This Agreement shall apply to and be binding upon the Applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which the Applicant exercises control, and assigns and upon the RRC, its employees, agents, assigns, and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in the ownership, corporate, or partnership status of the Applicant shall in any way alter its status or responsibilities under this Agreement unless the Applicant or RRC withdraws from this Agreement pursuant to the terms of this agreement.

The Applicant shall provide a copy of this Agreement to all subsequent business owners or business successors before ownership rights are transferred. If the Applicant is also the owner of the real property where the Site is located, the Applicant shall provide a copy of this Agreement to any prospective purchaser of the property, prior to transferring title. If the Applicant is not the surface owner, the Applicant shall provide a copy of this agreement to the surface owner. The Applicant shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants that are retained to conduct any work performed under this Agreement, within 14 days after the effective date of this Agreement or within 14 days after the date of retaining their services, whichever is later.

## DEFINITIONS

"Site" means the property or area described in the VCP application, and the attached property metes and bounds description and plat map (Exhibit B).

## ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by regular mail, certified mail, return receipt requested, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the Applicant or RRC may designate in writing.

Hard copies of all documents submitted to RRC should be sent to:

### **Mailing Address**

Voluntary Cleanup Program  
Site Remediation Section  
Railroad Commission of Texas  
P.O. Box 12967  
Austin, TX 78711-2967

### **Overnight/Express Mail Address**

Voluntary Cleanup Program  
Site Remediation Section  
Railroad Commission of Texas  
1701 N. Congress  
Austin, TX 78701

Electronic copies of all documents submitted to RRC should be sent to the Voluntary Cleanup Program Coordinator at [SR-BRP-VCP@rrc.texas.gov](mailto:SR-BRP-VCP@rrc.texas.gov)

## DESIGNATED PROJECT MANAGER

On or before the effective date of this Agreement, the RRC and the Applicant shall each designate a project manager. Each project manager shall be responsible for overseeing the implementation of this Agreement. The RRC's project manager will be the RRC-designated representative at the Site. To the maximum extent possible, communications between the Applicant and RRC and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During implementation of this Agreement, the respective project managers

shall whenever possible, operate by consensus and shall attempt, in good faith, to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five days prior to the change.

### **COMPLIANCE WITH APPLICABLE LAWS**

In consideration of the opportunity to obtain a release of liability from the state and such release, if achieved, the Applicant agrees that all work undertaken 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 the rules of the Railroad Commission of Texas, the Occupational Safety and Health Administration, the Department of Transportation, and the Resource Conservation and Recovery Act, NRC, and the Texas Risk Reduction Program (aka TRRP Rule, 30 TAC Chapter 350). In the event of a conflict between applicable federal, state, or local laws, ordinances or regulations, the Applicant shall comply with the most stringent provision, unless otherwise authorized in writing by RRC. Federal requirements shall be followed if they are the most stringent. However, as provided by NRC § 91.661, a state or local permit shall not be required, although the Applicant must coordinate with ongoing applicable programs and must comply with the substantive requirements of any state permit that would have otherwise been required. Where it is determined that a permit is required under federal law, the Applicant shall submit timely and complete applications and take all other actions necessary to obtain any such permit or approval. The Applicant shall be responsible for obtaining all federal permits necessary for the performance of any work hereunder.

### **APPLICABLE RULES AND REGULATIONS**

The NRC, Chapter 91, Subchapter O and the VCP Rules, 16 TAC §§ 4.401-4.450, authorize the activities under this agreement. The rules, regulations, guidelines, and protocols referenced in the above paragraph identify the standards by which the Applicant and RRC agree activities under this agreement shall be conducted and measured. Applicant shall check its choice from the boxes below to specify the type of closure request being sought for this Site. The selected closure option is specifically designated as being directly applicable to the Site and must be followed.

- Cleanup to Residential levels to receive a Final Certificate of Completion without conditions.
- Risk-Based Cleanup to receive a Final Certificate of Completion with conditions (i.e. relying on permanent institutional controls). Please select the type(s) of control from the list below:
  - Groundwater use restriction
  - Land use restriction for commercial/industrial use only

Physical or Engineered Control (please describe):

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Other (Please describe).

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### SUBMITTALS AND SCHEDULES

In compliance with the aforementioned rules, regulations, guidelines, or protocols, the following submittals are required in order to complete the voluntary cleanup activities necessary to receive a Certificate of Completion. Please list the anticipated date of submittal of each document/report in the blanks.

\_\_\_\_\_ Metes and Bounds Property Description and Plat Map, both stamped by a licensed land surveyor (required at time of application)  
\_\_\_\_\_ Phase I Environmental Site Assessment (required at time of application)  
\_\_\_\_\_ Property deed or Access Agreement (required at time of application)  
\_\_\_\_\_ Phase II Environmental Site Assessment/Limited Site Investigation  
\_\_\_\_\_ Closure Report

The following additional reports may be required based on site specific data. If these reports are not necessary, please list "N/A" in the applicable blank(s). If the need for such reports is currently unknown, please list "TBD" in the applicable blank(s):

\_\_\_\_\_ Groundwater Monitoring Reports (identify schedule for submittal):

- Quarterly  
 Annual  
 Other: \_\_\_\_\_

\_\_\_\_\_ Remedial Action Plan

\_\_\_\_\_ Restrictive Covenant

\_\_\_\_\_ Other – Please describe: \_\_\_\_\_

***Be advised that Professional Geoscientist (PG) seals are to be provided, as required by law, on reports submitted to the Site Remediation Section that contain geoscience work and services. More information and guidance on PG seal requirements can be found at the [Texas Board of Professional Geoscientist's website](#).***

The RRC may terminate this Agreement if:

1. The aforementioned submittals are not submitted within the time frames stated above, unless prior RRC approval of a revised schedule is granted or an amendment to this Agreement is not executed;

2. Responses to RRC comments or requests are substantively deficient or submitted late; or
3. Outstanding invoices are not paid in full by the due date.

## **ACCESS**

To the extent that the Site or other areas where work is to be performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain, or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include at a minimum, a certified letter from Applicant to the owner of the Site requesting an access agreement to permit Applicant, RRC, their authorized representatives, and persons designated by the RRC in accordance with the NRC, access to the Site. Any such access agreement shall be submitted to the RRC and incorporated by reference into this Agreement. Such an agreement shall provide access for Applicant, RRC and authorized representatives of RRC, and persons designated by the RRC in accordance with the NRC, as specified below. In the event that such access agreement is not obtained, the Applicant shall so notify RRC, which may then, at its discretion, terminate the agreement.

The Applicant shall provide authorized representatives of RRC access to the Site and other areas where work is to be performed at any reasonable time. 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 RRC may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and verifying the data submitted to RRC by the Applicant hereunder. The Applicant shall permit RRC'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 may exercise control.

## **DISPUTE RESOLUTION**

This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted. It should be noted that as provided for in the NRC, the Site Remediation Manager or the Applicant, in their respective sole discretion may terminate the Agreement by giving 15 days advanced written notice to the other party. If this Agreement is terminated for any reason, the Applicant shall pay only those costs incurred or obligated by the RRC on or before the effective date of termination.

The parties shall use their best effort to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement, that the parties are unable to resolve informally, the Applicant may submit written notice of such dispute to RRC and set forth specific issues in dispute and the position of the Applicant. This written notice shall be submitted no later than five calendar days after the Applicant

discovers the project managers are unable to resolve the dispute. The Applicant's project manager shall notify the RRC's project manager immediately by phone or other appropriate method of communication prior to submitting a written notice, when he/she believes the parties are unable to resolve a dispute. Within ten days of receipt of such a written notice, the RRC will provide a written response to the Applicant setting forth its position regarding the issues in dispute and the basis for its position. During the five calendar days following the receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences. If during this negotiation period, the RRC concurs with the position of the Applicant, the Applicant will be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

If the disputed issues are not resolved during the time periods described above, RRC staff shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement. RRC staff will provide written notice of its determination to the Applicant.

### **RESERVATION OF RIGHTS**

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

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action, or demands in law or equity that the parties may have against any person, firm, partnership or corporation, not a party to this Agreement for any liability 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, or causes of action they have against each other or against any and all other persons or entities who are not parties to this Agreement.

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

During the term of this Agreement, RRC will not bring an enforcement action against Applicant for any violation of statutes or regulations for the specific releases that are being remediated by this Agreement, unless the Applicant or RRC withdraws from this Agreement prior to completion of the response action. However, a responsible person remains liable for contamination should response action standards change, or additional contamination be discovered. As non-responsible persons, Applicants have a release from liability upon issuance of the Certificate of Completion subject to statutory conditions in the NRC.

## **ADMINISTRATIVE COSTS**

Applicant A, unless indicated otherwise in Section 3 of the VCP Application, agrees to reimburse RRC for all of its costs associated with implementation of this Agreement. RRC's costs may include direct or indirect costs, including but not limited to overhead, salaries, equipment, utilities, legal, management, or support costs associated with the review of the Applicant's work plans and reports and oversight of field activities.

The RRC will track all costs to the RRC for review and oversight activities related to the Site and send quarterly invoices to Applicant A or the person identified in Section 3 of the VCP Application. Payment of quarterly invoices is due within 30 days. If payment is not timely made, the RRC will stop reviewing any site-related submittals. If payment is not made within 60 days of the date of the invoice, RRC shall terminate this Agreement and request that the attorney general bring action to recover all costs allowed by law. The application fee of one thousand (\$1,000) dollars and any surcharge amount will not be reimbursed. The RRC reserves the right to withhold issuance of a Certificate of Completion for any site until payment for all outstanding invoices has been received. The Applicant may request an extension of an invoice due date, but such request must be RECEIVED by the RRC on or before the 30-day deadline for payment. The burden shall be on the Applicant to demonstrate proof of timely submittal of payments or requests for extension.

Checks shall be made payable to the Railroad Commission of Texas and be mailed, along with a transmittal letter stating the Site name, five-digit VCP number, and addressed, to the Railroad Commission of Texas; Attention: Cashier; P.O. Box 12967, Austin, Texas, 78711-2967.

If this Agreement is terminated for any reason, Applicant A or the party designated in Section 3 of the VCP Application, agrees to reimburse the RRC for all costs incurred or obligated by the RRC before notice of termination of the Agreement.

## **NOTICE OF BANKRUPTCY**

As soon as Applicant has knowledge of its intention to file bankruptcy or no later than seven days prior to the actual filing of a voluntary bankruptcy petition, Applicant shall notify RRC of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, Applicant shall give notice to the RRC as soon as it acquires knowledge of such petition.

## **INDEMNIFICATION**

The Applicant agrees to indemnify and save and hold the State of Texas, its agencies, successors, departments, agents and employees, harmless from any and all claims, damages or causes of action arising from or on account of performance of this Agreement, even if the claims, damages, or causes of action allege to negligence on the part of the RRC. By entering into this Agreement, the Applicant does not assume

any liability arising from the acts or omissions of the RRC or its agents or employees in carrying out any activities pursuant to this Agreement.

### **EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

The effective date of this Agreement shall be the date on which this Agreement is signed by the RRC's Representative.

This Agreement may be amended by mutual agreement of RRC and the Applicant. Amendments shall be in writing and shall be effective when signed by the RRC's Representative.

### **COMPLETION AND SATISFACTION**

The provisions of the Agreement shall be satisfied when RRC gives the Applicant written notice in the form of a Final Certificate of Completion, which states the Applicant has demonstrated to RRC's satisfaction that all terms of this Agreement have been completed, including the selection and implementation of a response action, when appropriate.

Nothing in the Agreement shall restrict the State of Texas from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from the Site not remediated in accordance with this Agreement.



## SIGNATURES

### Applicant A

Signature: \_\_\_\_\_ Name: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

### Applicant B

Signature: \_\_\_\_\_ Name \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

### Applicant C

Signature: \_\_\_\_\_ Name \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

### RRC Representative

Signature: \_\_\_\_\_ Name \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

**EXHIBIT B**

PROPERTY METES AND BOUNDS DESCRIPTION AND PLAT MAP