

AGREEMENT FOR EXPEDITED SITE REMEDIATION PROGRAM REVIEW

The Illinois Environmental Protection Agency (“Agency”) and (“Remediation Applicant”), having an address identified on the Site Remediation Program (“SRP”) DRM-1 application form as, _____ enter into and execute this Agreement for Expedited Site Remediation Program Review (“Agreement”) and hereby agree as follows:

SECTION 1 AUTHORITY:

Pursuant to subsection 58.7(b) of the Environmental Protection Act (“Act”), the Remediation Applicant has requested review and evaluation services by the Agency under the Site Remediation Program. As part of the Agency’s review and evaluation services the Remedial Applicant has requested that the Agency conduct an expedited review as set forth in this Agreement. Under subsection 58.7(b)(1)(D) of the Act, as a condition for the Agency providing review and evaluation services, the Agency may require the Remedial Applicant to agree to pay reasonable costs incurred and documented by the Agency. The Remedial Applicant agrees that the costs set forth in this Agreement are reasonable for the requested expedited review and agrees to pay said costs for the expedited review.

SECTION 2 ENTIRE AGREEMENT:

This document contains the entire agreement between the parties regarding the Agency’s review of the submission identified below in an expedited timeframe, and no statements, promises, or inducements made by either party or agent of either party, orally or in writing, that are not contained in this written Agreement are valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties.

SECTION 3 SUBMISSION TO BE REVIEWED:

Site LPC#:

Site Name:

Site Location:

Submission to be Reviewed:

SECTION 4 EXPEDITED REVIEW:

- A. The Agency agrees to perform the usual and customary review of Remediation Applicant’s Submission described in Section 3 (“Submission”), which may consist of one or more documents.

- B. The Agency agrees to take an action on the documents in the Submission by reviewing and approving, conditionally approving, or disapproving the documents (hereinafter “action” or “an action”) within _____ calendar days from the date

this Agreement is fully executed, the date the Agency has received the Submission, or the date the Agency receives the payment specified in Section 6, whichever is latest, subject to tolling as provided in Section 5.

- C. The Agency's review of the Submission within the timeframe set forth in paragraph B shall be known as "Expedited Review." This Agreement addresses only Expedited Review of the Submission and does not create any other right or obligation for either party.
- D. This Agreement is not intended to create any right to automatic approval of the documents in the Submission upon the Agency's failure to meet the Expedited Review timeframe. If the Expedited Review timeframe is not met, see Section 9 of this Agreement.
- E. The Expedited Review shall be of the Submission as described in Section 3. It does not include the review of any other information, including, but not limited to, information submitted in response or otherwise subsequent to the Agency's approval, conditional approval, or disapproval of any document(s) in the Submission.
- F. The Remediation Applicant understands the Expedited Review will be conducted by Agency staff during overtime work hours, which necessitates increased review fees as set forth in Section 6.
- G. The Agency's action on the Submission does not affect the Remediation Applicant's obligations and responsibilities under this Agreement, including but not limited to the payment of the fee(s) specified in Section 6.

SECTION 5 TOLLING OF EXPEDITED REVIEW:

- A. The period of time for Expedited Review will be tolled during any period of time the Agency is waiting for the Remediation Applicant or any other party, including but not limited to the Remediation Applicant's Consultant, to provide information necessary for the Agency to complete its Expedited Review. The date the Agency requests necessary information from the Remediation Applicant or from any other party shall be the date tolling of the Expedited Review time period begins. The Expedited Review time period shall resume when the Agency receives the necessary information. The Agency's record of the date of receipt shall be deemed conclusive.
- B. If the Agency sends the Remediation Applicant a notice of intention to terminate this Agreement pursuant to Section 7, the Expedited Review time period will be tolled until the Remediation Applicant corrects the deficiencies identified in the notice, unless the Agency elects to terminate this Agreement.

- C. The Agency will document when a tolling period begins, the reason(s) the Expedited Review time period is being tolled, and when the tolling period ends. The Agency will provide the Remediation Applicant a copy of this documentation upon request.

SECTION 6 FEES:

The Remediation Applicant agrees to pay the Agency an Expedited Review fee of \$15,000 plus an amount equal to 1.5 times the Agency's standard review fee for overtime review of the Submission subject to this Agreement. Payment of the \$15,000 must be made at the time of execution of this Agreement. Review time will be billed as it is incurred. Except as otherwise agreed to by the Agency, payment must be by a check or money order made payable to the "Illinois Environmental Protection Agency" with the following notes / information on the check: (1) "For Deposit in the Hazardous Waste Fund"; (2) "Expedited Review"; (3) the Remediation Applicant's FEIN or SSN; (4) the site's timecode (LP52 number), if known; and (5) the site's LPC# (if known).

The Remediation Applicant understands that the fees set forth in this Section apply only to the Expedited Review of the Submission conducted under this Agreement. Any other expedited review, including the review of documents submitted or re-submitted subsequent to denial or conditional approval by the Agency, will be subject to a new expedited review agreement and new fees.

SECTION 7 TERMINATION:

- A. The Remediation Applicant may terminate this Agreement at any time. To terminate this Agreement, the Remediation Applicant must submit written notification of termination to the Agency. The termination shall take effect on the date the Agency receives the notification and the Remediation Applicant shall pay all Expedited Review fees incurred under this Agreement through the date of termination. When the Remediation Applicant terminates this Agreement, the Remediation Applicant waives any and all right to seek reimbursement or refund of the Expedited Review fees owed pursuant to Section 6.
- B. The Agency may terminate this Agreement for the following reasons.
 - 1. The Remediation Applicant fails to provide information requested by the Agency that the Agency deems necessary to complete the Expedited Review.
 - 2. A third party fails to provide information to the Agency that the Agency deems necessary to complete the Expedited Review.
 - 3. The Remediation Applicant fails to correct deficiencies in the Submission as identified by the Agency.

4. The Remediation Applicant's modification of one or more documents in the Submission causes the Agency to be unable to take an action within the time period set forth in Section 4, including but not limited to the modification creating the need for a review period longer than the Expedited Review period agreed to by the Parties.
5. The Remediation Applicant's Submission or portions thereof contain aspects outside of the project manager's normal review, including but not limited to risk assessments, bedrock groundwater modeling, groundwater ordinance reviews, surface water standards, non-TACO remediation objectives, or any additional Tier 3 proposals.
6. The Remediation Applicant fails to pay the fees provided in Section 6, or payment of the fees is drawn from an account with insufficient funds to cover the fee amounts specified in Section 6.
7. The Remediation Applicant fails to pay other fees or costs as required by the Act, the Board rules, or this Agreement.
8. The Agency no longer has the resources available to take action on the Submission within the time period set forth in Section 4, including but not limited to a tolling of the Expedited Review period that creates a conflict with the Agency project manager's availability to conduct the Expedited Review on overtime.

Prior to terminating this Agreement, the Agency shall notify the Remediation Applicant in writing of its intention to terminate and the reasons for the termination. When possible, the Agency shall provide the Remediation Applicant with a reasonable opportunity to correct the reasons for the termination. The notice shall be provided by certified or registered mail postmarked with a date stamp and with return receipt requested. Termination of the Agreement shall take effect on the date the notification of termination is postmarked, and the Remediation Applicant shall pay all review fees incurred under this Agreement through the date of termination.

SECTION 8 AMENDMENTS:

This Agreement may be modified by written agreement between the Agency and the Remediation Applicant. No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the Agency or Remediation Applicant unless made in writing and duly signed by both parties. A failure of or delay by either party to this Agreement to enforce at any time any of the provisions of this Agreement or to require at any time performance of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provision.

SECTION 9 REFUNDS:

The Remediation Applicant waives all rights to a refund from the Agency of any fee paid under Section 6 except as provided in this Section. Any refund to the Remediation Applicant shall not exceed the fee amount in Section 6 and shall not accrue interest.

If the Agency fails to take an action on the Submission within the time period set forth in Section 4, taking into account the tolling in Section 5, the Remediation Applicant shall be entitled to a refund of the amount equal to 1.5 times the standard review fee paid under Section 6, on a prorated basis. The refund shall be calculated as follows.

$$\text{Refund} = \frac{1.5 \times \text{standard review fee}}{\text{Expedited Review Time Period}} \times \frac{\text{Number of Days Past}}{\text{Expedited Review Deadline}}$$

The parties agree that the Remediation Applicant will not receive a refund if the Agency's failure to take action on the Submission within the time period specified in Section 4 was due to a force majeure or termination of the Agreement by either party.

SECTION 10 DISPUTES:

Disputes relating to performance of this Agreement that are not resolved by the Parties shall be decided by the Director of the Agency, or his or her authorized representative, who shall render a decision in writing. This decision shall be furnished to the Remediation Applicant by mail, electronic mail, facsimile, personal service, or by similar means. The decision of the Director, or his or her authorized representative, shall be final and conclusive.

SECTION 11 INDEMNIFICATION AND LIABILITY:

The Remediation Applicant agrees to defend, indemnify and hold harmless the State, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable in-house and contracted attorney's fees and expenses, caused by, arising out of or occurring in connection with any breach or violation of this Agreement, or any Agency action taken on the Submission specified in Section 3.

SECTION 12 SEVERABILITY:

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, that provision will be fully severable, and this Agreement will be construed and enforced as if the illegal, invalid or unenforceable provision had never been part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect.

SECTION 13 NOTICE:

Notices and other communications provided for herein, unless otherwise specified, shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, FedEx or other similar and reliable carrier), by e-mail or by fax showing the date and time of successful receipt. By giving notice, either Party may change the contact information. Notice shall be sent to following persons:

Agency Contact

Neelu Lowder
Remedial Project Management Section
Illinois EPA, Bureau of Land
2520 West Iles Avenue
P.O. Box 19276
Springfield, IL 62794-9276
Phone: 217/524-4826
Email: neelu.lowder@illinois.gov

Remediation Applicant Contact

Phone:
Email:

SECTION 14 IMPLEMENTATION:

The Remediation Applicant agrees to execute such further documents and take such further steps as the Agency reasonably determines may be necessary to effectuate its review of the Remediation Applicant’s Submission.

SECTION 15 AUTHORIZATION:

Each party to this Agreement represents and warrants to the other that (a) it has the right, power, and authority to enter into and perform its obligations under this Agreement, and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Agreement, and (c) this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed on behalf of the Parties. This Agreement shall be considered fully executed on the latest date of the Agency’s or the Remediation Applicant’s signature below.

Illinois Environmental Protection Agency

Remediation Applicant

Signature _____

Signature _____

James Jennings

Printed Name _____

Acting Director

Title _____

Date _____

Date _____