



west virginia department of environmental protection

Office of Environmental Remediation
131A Peninsula Street
Wheeling, WV 26003
Phone: 304-926-0499

Harold D. Ward, Cabinet Secretary
dep.wv.gov

October 24, 2022

Ms. Emily Muzzarelli, Assistant City Manager
City of Morgantown
389 Spruce Street
Morgantown, WV 26003

Re: Voluntary Remediation Agreement, VRP Project #22015
White Park, Morgantown, Monongalia County

Dear Ms. Muzzarelli:

Enclosed please find the executed Voluntary Remediation Agreement for the subject site located in Morgantown, West Virginia.

We look forward to your continued participation in the program, with the common goal of securing a Certificate of Completion for the site. In this manner, the property will remain in productive and protective use for the citizens of our state.

If you have any questions, I can be contacted by phone at 304-926-0499, ext. 00097 or email at William.M.Gadd@wv.gov. Thank you for your participation in the Voluntary Remediation Program.

Sincerely,

A handwritten signature in blue ink that reads "W. Matthew Gadd". The signature is written in a cursive style.

W. Matthew Gadd
Project Manager

Enclosure

ec: Lydia Work, LRS
WVDEP File #22015
Erin R. Brittain, Program Manager, WVDEP/OER

WEST VIRGINIA VOLUNTARY REMEDIATION AGREEMENT FOR INVESTIGATION AND REMEDIATION ACTIVITIES

I. INTRODUCTION

1. The West Virginia Department of Environmental Protection (WVDEP), by its Secretary, and City of Morgantown, WV (Applicant) hereby enter into this Voluntary Remediation Agreement (Agreement), pursuant to the Voluntary Remediation and Redevelopment Act, W. Va. Code § 22-22-1, et seq. (the Act), for the purpose of investigating and remediating the property that is the subject of this Agreement (the Site).
2. Applicant reserves all rights it may have under common law, the West Virginia Code, and federal statutes to seek contribution or indemnity. WVDEP reserves all rights it may have under common law, the West Virginia Code, and federal statutes to seek contribution or indemnity from persons other than Applicant and those persons identified in W. Va. Code § 22-22-18.
3. By entering into this Agreement, Applicant neither admits nor denies liability for the conditions on the Site.

II. STATEMENT OF ELIGIBILITY

4. The Secretary has determined that the Voluntary Remediation Program Application submitted by Applicant is complete and that Applicant is eligible to participate in the Voluntary Remediation Program. However, neither the Secretary's determination of eligibility nor the entry into this Agreement precludes any finding by the Secretary at a later date that the Site poses an imminent and substantial threat to human health or the environment within the meaning of W. Va. Code § 22-22-7(d). In addition, if the Secretary determines that Applicant withheld or misrepresented information that would be relevant to Applicant's eligibility, the Secretary may withdraw from this Agreement.

III. PARTIES BOUND

5. This Agreement applies to and is binding upon Applicant, its officers, secretaries, principals, employees, agents, successors, subsidiaries, and assigns and upon WVDEP, its employees, agents, 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 ownership, corporate, or partnership status of Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or WVDEP withdraws from this Program as provided herein.
6. Applicant shall provide a copy of this Agreement to any subsequent owners or successors before Applicant transfers any ownership rights.

IV. DEFINITIONS

7. “Day” means a calendar day with the 24-hour period between 12:00 A.M. – 12:00 A.M.
8. “Rule” means the Voluntary Remediation and Redevelopment Rule, 60CSR3, promulgated pursuant to the Act.
9. “Site” has the meaning ascribed to it in the Act and, for purposes of this Agreement, means the property located in Morgantown, West Virginia, and is more particularly described in the Voluntary Remediation Program Application submitted to WVDEP and accepted by letter dated October 5, 2022.
10. All other terms contained in this Agreement shall be used in the manner as defined by W. Va. Code § 22-22-2 or the Rule.

V. STATEMENT OF PURPOSE

11. This Agreement sets forth necessary terms and conditions to satisfy the requirements of the Act for the investigation and remediation of the Site.
12. The activities conducted by Applicant under this Agreement are subject to approval by WVDEP as provided herein. The activities conducted by Applicant shall be consistent with this Agreement, all applicable laws and rules, and any appropriate guidance documents.

VI. WORK TO BE PERFORMED

13. All work to be performed by Applicant pursuant to this Agreement shall be under the direction and supervision of a Licensed Remediation Specialist (LRS). Applicant may designate the LRS as Applicant’s project manager pursuant to Paragraph 27.
14. Applicant shall submit electronic copies of voluntary remediation work plans and reports which, when implemented, provide for the attainment of the applicable remediation standards.

Prior to the filing of the Voluntary Remediation Program Application and prior to the execution of this Agreement, Applicant has undertaken work at the Site. The LRS has accepted and approved the following documents in support of the requirements of the Act for the investigation and remediation of the Site:”]

Phase II Environmental Site Assessment, White Park Southside Trail Property, May 31, 2022, Environmental Standards, Inc.

Site Inspection Reassessment Final Report, White Park CERCLIS Site, July 2020, Triad Engineering, Inc.

Phase II Environmental Site Assessment, White Park, September 16, 2019, Triad Engineering, Inc.

Site Inspection Reassessment Final Report, White Park CERCLIS Site, December 2009, Triad Engineering, Inc.

For the purposes of remediation and preparing Final Reports, Applicant may divide the Site into separate areas, and use different human health and ecological remediation standards (e.g., De Minimis, Uniform Risk-Based, and Site-Specific Risk-Based) for these individual areas. Applicant currently contemplates that the Site will be subdivided into the following areas:

*Parcel A – Southside Trail
Parcel B - Upland*

15. The voluntary remediation work plans submitted with this Agreement include the following:

No voluntary remediation work plans are submitted with this Agreement.

16. The parties agree that the remediation standards to be achieved at the Site, consistent with Section 9 of the Rule; and where applicable, the engineering or institutional controls and any land use covenant to be imposed for the property, will be determined upon the Secretary's approval of the work plans and reports submitted in accordance with this Agreement.

VII. SUBMITTAL AND APPROVAL OF WORK PLANS OR REPORTS

17. Applicant shall submit electronic copies of the following work plans or reports in accordance with the following schedule:

Document	Due
Site Assessment Work Plan (SAWP)	90 days after Agreement
Site Assessment Report (SAR)	90 days after SAWP approval
Data Validation Report (DVR)	90 days after SAR approval
Human Health & Ecological Risk Assessment (HHERA)	90 days after DVR approval
Remedial Action Work Plan (RAWP)	90 days after HHERA approval
Remedial Action Completion Report (as applicable)	90 days after RAWP approval

When Applicant plans additional work plans, or reports as a follow-up to initial or subsequent activities, or additional or revised work plans or reports are required to achieve the desired remediation standards, Applicant shall submit electronic copies of the future work plans, reports, and schedules in accordance with a modification to this Agreement.

18. The Secretary may, based upon accuracy, quality, and completeness, either approve or disapprove a work plan or report submitted by Applicant.

19. If the Secretary disapproves a work plan or report, the Secretary must, within five (5) days of its disapproval, notify Applicant in writing that he or she has disapproved its work plan or report. The written notice shall include a list specifying the reasons that the Secretary disapproved the work plan or report and shall specify all additional information the Secretary needs in order to approve the work plan or report.
20. If the Secretary disapproves a work plan or report as submitted, Applicant must resubmit the work plan or report or terminate this Agreement as provided herein.
21. Except for the Final Report as described in the Rule and Paragraph 24 of this Agreement, the Secretary shall either approve or disapprove all work plans and reports, including resubmitted work plans and reports, within thirty (30) days of receipt. The Secretary shall take action on a work plan or report and send confirmation in writing to Applicant within the thirty (30)-day period. The parties may mutually agree to an extension of time for the Secretary to approve or disapprove the work plans or reports, and confirm the extension in writing.
22. If the Secretary does not approve or disapprove work plans or reports or resubmitted work plans or reports within thirty (30) days of receipt by the Secretary, then the work plans or reports are deemed approved unless the Secretary determines the work plans or reports are materially inaccurate.
23. Any notice required to be given under the provisions of this Agreement shall be in writing and sent electronically with proof of receipt required. Notice is complete upon receipt.
24. Upon completion of the work contemplated by all work plans, Applicant shall submit to the Secretary an electronic copy of the Final Report prepared by the LRS, along with a request for a Certificate of Completion as required in the Rule. The Final Report shall include all information necessary for the Secretary to verify that Applicant has completed all work contemplated by the work plans and provided all information required by the Rule. Upon receiving the request for a Certificate of Completion, the Secretary shall evaluate the Final Report provided by Applicant and determine, within sixty (60) days, whether the LRS properly issued the Final Report.

VIII. ADDRESSES FOR ALL CORRESPONDENCE

25. The parties shall send all documents required by this Agreement, including reports, approvals, notifications, disapprovals, and other correspondence electronically to the following addresses or to alternate addresses as Applicant or WVDEP may designate in writing.
 - (a) Documents to be submitted to WVDEP should be sent to:

West Virginia Department of Environmental Protection
Office of Environmental Remediation
601 57th Street SE

Charleston, WV 25304
Phone: 304-926-0499
Email: DEPOERFileCopy@wv.gov

With a copy of all documents sent to the WVDEP project manager:

Attn: W. Matthew Gadd
VRP Project Manager
Office of Environmental Remediation
WV Department of Environmental Protection
131A Peninsula Street
Wheeling, WV 26003
Phone: 304-926-0499 Ext:00097
Email: william.m.gadd@wv.gov

(b) Documents to be submitted to Applicant should be sent to:

Attn: Emily Muzzarelli, P.E.
Assistant City Manager
City of Morgantown
430 Spruce Street
Morgantown, WV 26505
Phone: (304) 284-7406
Email: emuzzarelli@morgantownwv.gov

With a copy of all documents sent to the Licensed Remediation Specialist:

Lydia M. Work
Environmental Standards, Inc.
2501 Chapline Street, PO Box 6562
Wheeling, WV 26003
Phone: 304-552-1442
Email: lwork@envstd.com

IX. COMPLIANCE WITH APPLICABLE LAWS

26. All work undertaken by Applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and local laws, ordinances, and regulations. Applicant shall be responsible for obtaining all permits where necessary for the performance of any work hereunder. Specific statutes and rules with which compliance is mandated in connection with the investigation or remediation of the Site are as follows:
- (a) Surface Coal Mining and Reclamation Act, W. Va. Code § 22-3-1, et seq.;
 - (b) Air Pollution Control Act, W. Va. Code § 22-5-1, et seq.;
 - (c) Water Pollution Control Act, W. Va. Code § 22-11-1, et seq.;
 - (d) Groundwater Protection Act, W. Va. Code § 22-12-1, et seq.;

- (e) Solid Waste Management Act, W. Va. Code § 22-15-1, et seq.;
- (f) Underground Storage Tank Act, W. Va. Code § 22-17-1, et seq.;
- (g) Hazardous Waste Management Act, W. Va. Code § 22-18-1, et seq.;
- (h) The Aboveground Storage Tank Act, W. Va. Code § 22-30-1, et seq.;
- (i) Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(a)
- (j) Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 to 11050;
- (k) Occupational Safety and Health Act, 29 U.S.C. § 651 to 678;
- (l) Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.;
- (m) Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; and
- (n) Any applicable rule or regulation promulgated thereunder.

X. PROJECT MANAGER/LICENSED REMEDIATION SPECIALIST

27. The WVDEP Project Manager for the Site is identified in Paragraph 25 of this Agreement. Applicant has designated Lydia M. Work (LRS #148) as Applicant's Licensed Remediation Specialist and project manager for the Site. The LRS is responsible for the supervision of all activities under this Agreement. The WVDEP project manager is the WVDEP-designated representative at the Site. To the maximum extent possible, Applicant and WVDEP shall direct all communications and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement through the project managers. During the implementation of this Agreement, the 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 or LRS and shall notify the other party of the change in writing within fourteen (14) days and shall execute a modification to this Agreement within thirty (30) days.
28. Work at the Site shall not stop solely due to the absence of Applicant's or WVDEP's project manager or Licensed Remediation Specialist from the Site. Applicant's project manager, LRS, or LRS's supervisor shall reasonably be available by telephone while work is being performed. Applicant shall designate a person to be in charge who will be available onsite when field work is being performed.

XI. QUALITY ASSURANCE

29. Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan approved for use by WVDEP throughout any work plan sample collection and analysis activities pursuant to this Agreement, unless otherwise approved by WVDEP in writing.
30. Applicant shall provide the WVDEP project manager with written notice (e.g., electronic mail) seven (7) days prior to beginning any field activities detailed in any work plan

described in this Agreement. To provide quality assurance and maintain quality control, Applicant shall:

- (a) Use laboratories certified by WVDEP;
- (b) 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 WVDEP; and
- (c) Ensure that any laboratories used by 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 WVDEP, such laboratories shall perform analyses of samples provided by WVDEP to demonstrate the quality of analytical data for each such laboratory.

Applicant may use a WVDEP-certified mobile laboratory with the advance written approval of the WVDEP project manager.

31. In the event any laboratory fails to perform the activities required above, WVDEP reserves the right to reject any data not gathered pursuant to the requirements listed above, and to require that Applicant utilize a different laboratory.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32. Upon request by WVDEP, Applicant shall make available to WVDEP the results of all sampling, including raw data and/or tests or other data generated by Applicant or on Applicant's behalf. WVDEP shall make available to Applicant the quality-assured results of sampling and/or tests or other data similarly generated by WVDEP.
33. At the request of WVDEP, Applicant shall permit an authorized representative of WVDEP to take samples of wastes, soils, air, surface water, and groundwater at the Site. For each sample taken, the authorized representative shall provide Applicant a receipt describing the sample obtained and, if requested, a portion of each sample equal in weight or volume to the portion retained.

XIII. ACCESS

34. To the extent that the Site or other areas where work is performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, Applicant shall obtain, or 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 present owner of the property requesting access agreements to permit Applicant or any authorized representative of WVDEP access to the property. The access agreement shall provide access for authorized representatives of WVDEP as specified below. In the event Applicant cannot obtain access agreements, Applicant shall so notify WVDEP, which may then, at its discretion, assist Applicant in gaining access.

35. Upon presentation of proper credentials, Applicant shall provide authorized representatives of WVDEP access to the Site and other areas where work is to be performed under this Agreement at all reasonable times. WVDEP's 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 Applicant's progress in carrying out the terms of this Agreement; and conducting any tests, inspections, and sampling as WVDEP may deem necessary consistent with this Agreement. Applicant shall permit WVDEP'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 over which Applicant exercises control. All persons with access to the Site pursuant to this Agreement shall comply with any applicable health and safety plans.
36. Nothing herein shall be construed as restricting the inspection or access authority of WVDEP under any law or regulation.

XIV. RECORD PRESERVATION

37. Applicant agrees to preserve, during the pendency of this Agreement, and for a minimum of three (3) years after its termination, all documents required by this Agreement and any other documents generated or used to prepare the documents required by this Agreement. Upon request by WVDEP, Applicant shall make available to WVDEP the records, or copies thereof.
38. Applicant may assert a confidentiality claim for any information submitted pursuant to this Agreement on the grounds that information, or parts thereof, if made public would divulge methods, processes, or activities entitled by the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1, et seq. to protection as trade secrets. If no confidentiality claim accompanies the information when it is submitted to WVDEP, WVDEP may make it available to the public without further notice to Applicant. Applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data regarding environmental conditions at the Site.

XV. DISPUTE RESOLUTION

39. The parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. The period of informal resolution shall not exceed thirty (30) days from the time that either party commences informal resolution by verbally citing the dispute with reference to this paragraph to the other party, unless the parties agree otherwise in writing. If, however, the parties are unable to resolve the dispute informally, Applicant may, no later than ten (10) days after the expiration of the informal dispute resolution period, request a hearing, in writing, with the Secretary, which request shall set forth the nature of the dispute and Applicant's proposed remedy.

40. Within sixty (60) days from the date the Secretary receives Applicant's request, the Secretary or the Secretary's designee, acting as a hearing examiner, shall hold a hearing on the parties' dispute. In conducting the hearing, the Secretary or the Secretary's designee, acting as a hearing examiner, shall follow the procedures contained in the West Virginia Administrative Procedures Act, W. Va. Code § 29A-5-1, et seq.
41. If Applicant is aggrieved by the Secretary's decision, Applicant may either appeal the Secretary's decision in accordance with the provisions in W. Va. Code § 29A-5-4 or withdraw from this Agreement.
42. Until the dispute is resolved, all parties shall halt any actions concerning that element of work in dispute. The parties shall incorporate into the work plan the resolution of the dispute, which becomes an enforceable part thereof. The parties shall extend the time schedule for the work in dispute by the amount of time needed for resolution. Applicant shall complete elements of work and/or obligations not affected by the dispute in accordance with the schedule contained in the work plan.
43. The parties shall immediately incorporate, if necessary, elements of work and any actions required as a result of the dispute resolution into the appropriate plan or procedure, and into this Agreement. Applicant shall proceed with all remaining work according to the modified plan or procedure.

XVI. FORCE MAJEURE

44. Applicant shall perform all work and reporting required by this Agreement within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. "Force Majeure" means conditions or circumstances beyond the reasonable control of Applicant which could not have been overcome by due diligence and shall include, without limitation, acts of God, action or inaction of other governmental agencies, or administrative or judicial tribunals or other third parties, or strikes or labor disputes (provided, that Applicant is not required to concede to any labor demands), which prevent or delay Applicant from complying with the work plan.
45. Applicant shall notify WVDEP by telephone within five (5) days and by writing no later than ten (10) days after any event, which Applicant contends is a Force Majeure. The notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Applicant to minimize the delay, and the timetable by which these measures will be implemented. Applicant has the burden of demonstrating that the event is a Force Majeure. The Secretary shall make the final decision of whether an event is a Force Majeure and immediately communicate his or her decision to Applicant.
46. If a delay is attributable to a Force Majeure, the parties shall extend, in writing, the time period for performance under this Agreement by the amount of time that is attributable to the event constituting the Force Majeure.

XVII. RESERVATION OF RIGHTS

47. WVDEP and Applicant reserve all rights and defenses they may have pursuant to any available authority unless expressly waived herein.
48. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of actions, or demands in law or equity which 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 hereby.
49. Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any persons found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by Applicant in connection with the Site.
50. WVDEP reserves the right to bring an action, including an administrative action, against Applicant for any violation of statutes or rules except for the specific violations or releases that are being remediated in the work plan.
51. WVDEP reserves the right to withdraw its approval of the work plan at any time during Applicant's implementation of a work plan if:
 - (a) WVDEP determines that Applicant has failed to substantially comply with the terms and conditions of this Agreement or the work plan;
 - (b) Applicant declines to implement the work plan after being notified of its approval by the WVDEP; or
 - (c) WVDEP determines that any contaminant or regulated substance on the Site has become an imminent or substantial threat to human health or the environment.

Upon WVDEP's withdrawal of its approval, WVDEP may choose to terminate this Agreement. WVDEP reserves the right to bring any action to enforce any statute or regulation under Chapter 22 of the West Virginia Code, including an action regarding the violations or releases that were the subject of this Agreement.

52. WVDEP acknowledges that, pursuant to W. Va. Code § 22-22-18, Applicant, upon receipt of the Certificate of Completion, is not liable for claims for contribution concerning matters addressed in this Agreement or any related work plan.

XVIII. ADMINISTRATIVE COSTS

53. Applicant agrees to reimburse WVDEP for all of its reasonable administrative costs associated with implementation of this Agreement at the rate of 3.5 times the hourly rate of the primary employee assigned to the Site plus the actual and direct expenses of the employee. Within sixty (60) days of the approval of the initial work plan, WVDEP shall send Applicant an itemized list of estimated in-house costs that WVDEP expects to incur under this Agreement. Applicant agrees that a reasonable estimate of WVDEP contractor costs will be provided as described in the following paragraph. Itemization will be in standard WVDEP format. The estimated costs may include the preparation of the itemized list of administrative costs. Applicant has the right, upon request, to examine any documentation in WVDEP's possession used to develop the itemized list of costs. Applicant shall make the request in writing, which WVDEP must receive within two (2) weeks from the date Applicant receives the estimate of costs.
54. WVDEP agrees to allow Applicant to review and comment on the scope of work and associated cost estimates for outside contractors prior to WVDEP's authorization of the contractor to proceed with the associated work. WVDEP will strive where possible to use cost effective and qualified outside contractors. "Outside contractors" are defined as individuals, partnerships, or corporations paid by WVDEP to assist in the oversight of the activities performed under this Agreement (e.g., risk assessment), but shall not include WVDEP employees. WVDEP shall submit to Applicant cost estimates and invoices from outside contractors within two (2) weeks from the date WVDEP receives the cost estimate or invoice. Applicant shall raise any and all objections regarding cost estimates or invoiced work to WVDEP within two (2) weeks from the date Applicant receives the forwarded cost estimates/invoices from WVDEP or within two (2) weeks of the receipt by Applicant of any back-up documentation of the said cost estimates/invoices that are contained in WVDEP files and requested by Applicant, whichever shall last occur.
55. Applicant shall pay these costs in accordance with the following provisions. WVDEP shall periodically send an accounting of contractor, subcontractor, and laboratory costs to Applicant. The accounting shall itemize all costs incurred by WVDEP for the previous calendar quarter. Applicant shall pay said amount within thirty (30) days of receipt of the accounting. WVDEP shall also periodically send an accounting of WVDEP's primary employee time charged to this Site to Applicant. Applicant shall pay said amount within thirty (30) days of receipt of the accounting.
56. Payment shall be made online at: <https://dep.wv.gov/payDEP/Pages/default.aspx>. or checks shall be made payable to the West Virginia Department of Environmental Protection for deposit into the Voluntary Remediation Administrative Fund and mailed along with a transmittal letter stating the Site name and address to:

West Virginia Department of Environmental Protection
Office of Environmental Remediation
P.O. Box 681
Charleston, WV 25323

XIX. NOTICE OF BANKRUPTCY

57. Applicant shall notify WVDEP of its intention to file a bankruptcy petition as soon as Applicant has knowledge of its intention to file bankruptcy or no later than seven (7) days prior to the actual filing of a voluntary or involuntary bankruptcy petition.

XX. INDEMNIFICATION

58. Applicant agrees to indemnify and hold harmless the State of West Virginia, its agencies, departments, agents, and employees from and all claims or causes of action arising from, or on account of, acts or omissions of Applicant, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Agreement.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

59. The effective date of this Agreement is the date on which Applicant receives the notice that the Secretary has signed it.
60. The parties may amend this Agreement by mutual agreement. Amendments shall be in writing and effective when Applicant receives notice that the Secretary has signed it.
61. If the Secretary determines that there is an imminent threat to the public, he or she may unilaterally modify or amend this Agreement.

XXII. EXTENSIONS OF TIME PERIODS

62. Any written response is deemed timely performed if hand delivered, delivered by electronic mail, or postmarked by the last day of any time period prescribed herein. Whenever a party has the right or is required to do some act or make some response within a prescribed period after the service of a notice or other paper and the notice or paper is served by U.S. mail, three (3) days shall be added to the prescribed period.
63. Whenever any party is called upon to respond or otherwise act in a certain number of days, and if the final day occurs on a Saturday, Sunday, or legal holiday (whether State or national), the time limitation shall automatically extend to the next business day after the Saturday, Sunday, or legal holiday.
64. Any time periods specified in this Agreement may be extended only by agreement of the parties in writing.

XXIII. TERMINATION AND SATISFACTION

65. Upon completion of the Final Report prepared by the LRS, Applicant may seek a Certificate of Completion from the Secretary. Upon receipt of a request for a Certificate of Completion, the Secretary shall determine whether the Site meets applicable standards for

those areas of the Site and for those contaminants identified in this Agreement and whether Applicant has complied with this Agreement and any approved work plans for the Site. Upon making this determination, the Secretary shall issue a Certificate of Completion which conforms substantially to Appendix 60-3C of the Rule. Where this Agreement requires a Land Use Covenant, the Certificate of Completion shall not become effective until it is properly filed with the Clerk of the County Commission of the county in which the property is located.

If the Secretary determines that the Certificate of Completion should not be issued because Applicant has not completed the work required by this Agreement and any approved work plans or because the Site does not meet applicable standards, the Secretary shall initiate the procedures relating to denial of a Certificate of Completion as provided in the Rule.

66. The provisions of this Agreement are satisfied, and this Agreement shall terminate when the Secretary issues the Certificate of Completion.
67. Nothing in this Agreement shall restrict the State of West Virginia 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.
68. Applicant may, in its sole discretion, terminate this Agreement by providing to the Secretary fifteen (15) days advance written notice of termination. Only those costs incurred or obligated by the Secretary before the notice of termination is received are recoverable if the Agreement is terminated. If Applicant terminates this Agreement, then Applicant shall pay WVDEP's costs associated with the voluntary remediation within thirty-one (31) days after receiving notice that the costs are due and owing.

XXIV. LAND USE COVENANTS

69. The parties agree that activity and use limitations may be required at the Site to achieve one or more of the applicable remediation standards. If activity and use limitations are required, Applicant agrees to prepare and record a Land Use Covenant or secure other institutional controls as necessary (e.g., government ordinances) once the necessary restrictions are determined.

XXV. REOPENER

70. Upon agreement of the parties or upon occurrence of one or more conditions of W. Va. Code § 22-22-15, this Agreement may be reopened in accordance with the provisions of W. Va. Code § 22-22-15.

XXVI. PRECEDENCE OF AGREEMENT

71. In the event that conflict arises among the terms and conditions of this Agreement, the Statement of Work, or the approved work plan, this Agreement shall govern, and the terms and conditions hereunder shall determine the parties' rights and responsibilities.

XXVII. GOVERNING LAW

72. This Agreement shall be governed by the laws of the State of West Virginia.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Applicant

City of Morgantown, WV _____

Printed Name: Emily Muzzarelli, P.E.

Title: Assistant City Manager

 _____ 10/18/22
Signature Date

West Virginia Department of Environmental Protection

Printed Name: Robert Rice

Title: Director, Division of Land Restoration

 _____ 10/24/2022
Signature Date