

(804) 698-4336

SECTION 14: ACCESS AND LAND COVENANT

To the extent that the Site or other areas where work is to be performed herein is presently owned or controlled by parties other than those bound by this Agreement, KMVLT shall obtain access agreements from the present owners. Such an agreement shall provide access for KMVLT, VDEQ and their authorized representatives. In the event that such access agreement cannot be obtained on a reasonable basis, KMVLT shall so notify VDEQ, which may then, at its discretion, assist KMVLT in gaining access.

KMVLT shall provide authorized representatives of VDEQ access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site under this Agreement and shall include, but not be limited to inspecting available records, operating logs and contracts related to the Work; reviewing the progress of KMVLT in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as VDEQ may deem necessary with respect to the Work; and verifying the data submitted to VDEQ by KMVLT hereunder. KMVLT shall permit VDEQ's authorized representatives to inspect and copy all available records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which KMVLT may exercise control. All persons with access to the Site pursuant to this Agreement shall comply with KMVLT's health and safety plans.

In the event that KMVLT proposes to record a land use covenant on the Site to ensure full protection of human health and the environment, KMVLT agrees that such covenant shall be in a form and contain content satisfactory to VDEQ.

SECTION 15: DISPUTE RESOLUTION

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, KMVLT may present written notice of such dispute to the VDEQ Director of the Division of Land Protection and Revitalization ("Division Director") and set forth specific points of dispute and the position of KMVLT. This written notice shall be submitted no later than five calendar days after KMVLT discovers the project managers are unable to resolve the dispute. KMVLT's project manager shall notify VDEQ's project manager immediately by phone or other appropriate method of communication prior to 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 Division Director will provide a written response to KMVLT setting forth VDEQ's position and the basis thereof. During the period that a decision is pending from the Division Director, the Parties shall attempt to negotiate in good faith a resolution of their differences. If, during this negotiation period, the Division Director concurs with the position of KMVLT, KMVLT will be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

If VDEQ and KMVLT are still in disagreement after a decision is issued from the Division Director, the Board shall make a determination regarding the dispute based upon all information previously made available to the Division Director and consistent with the terms of this Agreement.

SECTION 16: CERTIFICATION OF SATISFACTORY COMPLETION OF REMEDIATION AND IMMUNITY

Consistent with 9 VAC 20-160-110, Certification of Satisfactory Completion of Remediation, the issuance of the Certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (Va. Code § 10.1-1400 *et seq.*), the Virginia State Water Control Law (Va. Code § 62.1-44.2 *et seq.*), and the Virginia Air Pollution Control Law (Va. Code § 10.1-1300 *et seq.*).

SECTION 17: VDEQ RESERVATION OF RIGHTS

Except as specifically provided in this Agreement, nothing herein shall limit the power and authority of VDEQ/Board to take, direct, or order all actions necessary to protect human health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent VDEQ/Board from seeking legal or equitable relief to enforce the terms of this Agreement or from recovering any costs incurred in the enforcement of this Agreement.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the KMVLT 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. KMVLT/Board expressly reserve all rights, claims, demands, and causes of action they may have against any and all other persons and entities who are not parties to this Agreement.

VDEQ/Board reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by VDEQ for any condition or claim arising as a result of KMVLT's past, current, or future operations or ownership of the Site. If VDEQ/Board determines that KMVLT withheld or misrepresented information that would be relevant to the Site's eligibility in the VRP, VDEQ/Board may exercise its right to withdraw from this Agreement.

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

SECTION 18: KMVLT RESERVATION OF RIGHTS

This Agreement is not and shall not be construed as an admission by KMVLT of any liability under the Virginia Waste Management Act, Va. Code §10.1-1400 *et seq.*, or any other law, or as a waiver of any defense to such liability.

KMVLT reserves all rights and defenses it may have pursuant to any available legal authority. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which KMVLT 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. KMVLT expressly reserves all rights, claims, demands, and causes of action it may have against any and all other persons and entities who are not parties to this Agreement.

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

SECTION 19: REIMBURSEMENT OF ADMINISTRATIVE COSTS

In accordance with 9 VAC 20-160-60, KMVLT has paid a registration fee of \$5,000.00, received by VDEQ on May 21, 2013 for the Site's enrollment in the VRP. KMVLT is willing to reimburse VDEQ for the costs of administration and oversight specific to this Agreement. VDEQ accepts this reimbursement pursuant to the Board's authority in Va. Code §§10.1-1402(19) and (21) and not pursuant to VDEQ's authority to collect a registration fee in 9 VAC 20-160-60.

VDEQ seeks reimbursement for Costs incurred and/or to be incurred pursuant to this specific Agreement for administration and oversight of the Remedial Action at the Site. Within (30) thirty days after the Effective Date, KMVLT shall pay to VDEQ the sum of \$22,100. Thereafter, on the anniversary of the Effective Date for each subsequent year, KMVLT shall pay to VDEQ an amount to be determined by VDEQ and KMVLT as payment for costs to be incurred for administration and oversight of the Work scheduled to occur in the succeeding 365 days. Any amounts paid by KMVLT but not charged by VDEQ during the year shall be applied to the following year's payment; KMVLT shall not be required to make up any shortfall in any annual assessment.

VDEQ and KMVLT shall enter negotiations regarding the payment amount for subsequent years at least 30 days prior to the anniversary of the Effective Date.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The check, certified check, money order or cashier's check shall reference this Administrative Agreement.

Any funds submitted by KMVLT to cover costs that are unused by VDEQ and remain after Certification of Satisfactory Completion of Remediation shall be remitted to KMVLT within (60) days of the issuance of the Certification of Satisfactory Completion of Remediation.

SECTION 20: INDEMNIFICATION

KMVLT agrees to indemnify, save and hold the Commonwealth of Virginia, its agencies, successors, departments, agents and employees, harmless from any and all claims, damages or causes of action arising from or on account of, the willful or negligent acts or omissions of KMVLT, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which KMVLT exercises control and assigns in carrying out the activities pursuant to this Agreement. By entering into this Agreement, KMVLT does not assume any liability arising from the acts or omissions of VDEQ/Board its agents or employees in carrying out any activities pursuant to this Agreement.

SECTION 21: EFFECTIVE DATE AND MODIFICATION

The effective date of this Agreement shall be February 28, 2014.

This Agreement may be amended by mutual agreement of VDEQ/Board and KMVLT. Amendments shall be in writing and shall be effective when signed by both VDEQ/Board and KMVLT.

If any provision of this Agreement is found to be unenforceable for any reason, the remainder of the Agreement shall remain in full force and effect.

SECTION 22: INTEGRATION AND APPENDICES

This Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Agreement and become incorporated into and enforceable under this Agreement, constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the terms, conditions and requirements embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the Agreement other than those expressly contained in this Agreement. In addition to the documents referenced in Section 5, the following appendices are attached to and incorporated into this Agreement: 1) "Appendix A" is the Site map as described in the VRP application.