LIMITED ENVIRONMENTAL INDEMNITY AGREEMENT

This LIMITED ENVIRONMENTAL INDEMNITY AGREEMENT is entered into as of the _____ day of _____, 2011, by _____ ("Indemnitor") and the City of _____ (the "City").

RECITALS

A. **WHEREAS**, Indemnitor is the owner of certain real property located at _____ ("Indemnitor's Property") and legally described in Exhibit A; and

B. **WHEREAS**, an underground storage tank system, as defined in 40 CFR Part 280 or supplanting federal regulations, owned by Indemnitor or its predecessor in interest ("UST System"), was present on Indemnitor's Property; and

C. **WHEREAS**, a release to the environment of petroleum hydrocarbons, including gasoline and gasoline additives, has occurred in the past at the Indemnitor's Property. (All of the previously mentioned compounds and those identified in TACO/RBCA modeling calculations for the groundwater contamination identified at Indemnitor's Property are hereby collectively referred to as "Compounds of Concern") As a result of said release, the groundwater at the Indemnitor's Property contains detectable concentrations of Compounds of Concern. The groundwater impacted by Compounds of Concern extends beyond the Indemnitor's Property. The (Regulatory Agency Name) has assigned Incident Number(s) _____ to the releases at the Indemnitor's Property (collectively the "Release"); and

D. **WHEREAS**, Indemnitor desires to limit any potential threat to human health from groundwater impacted with the Compounds of Concern and has requested that the City enact a _____ (type of) agreement ("____ Agreement") that allows the use of a City owned and controlled roadway/groundwater use restriction in an area adjacent to and including the Indemnitor's Property to be used as an institutional control for the purpose of assisting Indemnitor in seeking a no further action determination from the _____(Regulatory Agency Name) for the Release. The _____ Agreement is attached hereto as Exhibit B. The area subject to this Agreement shall be the area in, under and adjacent to Indemnitor's Property which is within the jurisdication of the City as described and set forth within the Roadway Agreement ("Roadway Area").

NOW, THEREFORE, in consideration of the terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This Limited Environmental Indemnity Agreement ("Agreement") is not binding upon the City until it is executed by the undersigned representative of the City and, prior to execution, this Agreement constitutes an offer by Indemnitor. The duly authorized representative of Indemnitor has signed this Agreement, and this Agreement is binding upon Indemnitor, its successors and assigns.

2. The City agrees that it will adopt the Roadway Agreement provided, however, that if the City does not adopt the Roadway Agreement or rescinds the Roadway Agreement, this Agreement shall be deemed null and void, and Indemnitor shall have no other remedy against the City. Nothing contained in this Agreement shall be construed as an admission of liability by Indemnitor for any environmental condition at or adjacent to Indemnitor's Property but, if approved by the City, Indemnitor will undertake the activities set forth herein irrespective of this non admission. No breach by the City, its agents, trustees, employees and its successors in interest of a provision of this Agreement is actionable in law or equity by Indemnitor against the City, and Indemnitor hereby releases the City and City Affiliates (as defined below) from any cause of action it may have against them arising under this Agreement or Environmental Laws (as defined below), regulations or common law.

3. Indemnitor on behalf of itself, its successors and assigns shall covenant and agree, at its sole cost and expense, to indemnify, defend and hold the City and the City's former, current and future officials, trustees, officers, servants, employees, agents, successors and assigns (collectively "City Affiliates"), both in their capacities as City representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage , expenses, claims (whether direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits (including but not limited to suits alleging or related to personal injury and/or death), proceedings, disbursements or expenses (including, attorneys' and experts' fees and disbursements and court costs) (collectively, the "Liabilities"), arising under or relating to any Environmental Laws (as defined below), or any other Liabilities which may be incurred by or asserted against any of the City Affiliates resulting or arising from, alleged to arise from, or caused by, in whole or in part, from the presence of Hazardous Material (as defined below) on, in or from the Indemnitor's Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials resulting from the Release identified on or from the Indemnitor's Property.

Indemnitor shall assume the defense of all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. Indemnitor shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the City or any City Affiliate, at their sole discretion, may proceed to file suit against the Indemnitor to compel such payment. Indemnitor also agrees that it will not settle or compromise any action, suit or proceeding without the City's prior written consent, which consent shall not be unreasonably withheld.

For purposes of this Agreement, "Hazardous Materials" means and includes Compounds of Concern or those chemicals or substances which are or were commonly used in the operation of the underground storage tank system at Indemnitor's Property which are defined as hazardous, special or toxic materials, substances or waste under any Environmental Law. "Environmental Laws" collectively means and includes any present and future local, state, federal or international law, statute, ordinance, order, decree, rule, regulation or treaty relating to public health, safety or the

environment (including those laws relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage, disposal, treatment, transportation or management of Hazardous Materials) including, without limitation, the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. §655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136, et seq., the National Environmental Policy Act, 42 U.S.C. §4321, et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq., and the _____(state law reference) and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

In addition to the indemnity provided above, if the City or City Affiliates encounter Hazardous Materials present as a result of the Release while working in, on or under the Roadway/Groundwater Area or encounter Hazardous Materials migrating from Indemnitor's Property due to work being performed by the City on an emergency basis, the City has the right to remove contaminated soil or groundwater above Tier 1 residential remediation objectives (as set forth in the Risk Based Corrective Action provisions of ____state law___) from the area it is working and intends to do work and to dispose of them as it deems appropriate not inconsistent with applicable Environmental Laws so as to avoid causing a further release of the Hazardous Materials and to protect human health and the environment. If Hazardous Materials are found anywhere within the boundaries of the proposed Roadway Agreement, there is a rebuttable presumption that the Hazardous Materials migrated from and are attributable to the Release identified with operations at Indemnitor's Property.

Prior to taking any action noted above, the City will first give Indemnitor not less than sixty (60) days prior written notice, unless there is an emergency or an immediate threat to the health or safety to any individual or to the public, that it intends to perform a site investigation and remove or dispose of contaminated soil or groundwater to the extent necessary for its work. Failure to give notice does not void all future obligations of the parties, however, such failure to give notice may be offered as an offset against unreasonable cost under this Agreement. The removal or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation), which Indemnitor may review or may perform, if requested to do so by the City. If practicable, Indemnitor shall be allowed to remove and dispose of the contaminated soil and/or groundwater necessary for the City's work in advance of that work. In any event, Indemnitor shall reimburse the incremental increase in cost incurred by the City to perform the site investigation and to dispose of any contaminated soil or groundwater. The parties understand and agree that the City's soil and groundwater removal will be in conjunction and/or associated with other work being done by the City in, on, under or near the Indemnitor's Property, and part of the purpose of this paragraph is that if the City encounters contaminated soil and/or groundwater while working on its utilities, or on a municipal project or otherwise, it will not be responsible in any way for the cost associated with encountering, removing and/or disposing of the contaminated soil and/or groundwater. In addition,

it is specifically understood and agreed between the parties that the City will not be identified at any time, in any place, document or manifest as the owner, generator or transporter of contaminated soil or groundwater taken from Indemnitor's Property. If asked, Indemnitor will cooperate with the City in the removal and disposal of such soil and groundwater and will sign all necessary documents and manifests for the proper transportation and disposal of the soil and/or groundwater.

4. This Agreement is intended by the parties hereto to be limited to claims, costs, expenses, causes of action, penalties, Liabilities, losses and damages actually sustained and incurred by the City Affiliates or for which the City Affiliates are found to be legally liable that arise as a consequence of Hazardous Materials that were released into the environment as a result of the Release at Indemnitor's Property within the Roadway Agreement Area.

5. Any notice required or permitted to be given to either party shall be deemed to be received by such party (i) three (3) days after deposit in the United States Registered or Certified Mail, Return Receipt Requested, or (ii) one (1) business day after deposit with a nationally recognized overnight delivery service guaranteeing next business day delivery, or (iii) upon personal delivery to the party to whom addressed provided that a receipt of such delivery is obtained, or (iv) on the same business day as transmitted and confirmed by telecopy provided that a confirmation copy is concurrently deposited in United States Certified or Registered Mail, Return Receipt Requested. Such notices shall be addressed to the parties at the following addresses:

If to Indemnitor: _____

If to the City: _____

or to the parties at such other addresses or telecopy numbers as they may designate by notice to the other party as herein provided.

6. This Agreement has been made and delivered in the state of _____ and shall be construed according to and governed by the internal laws of the state of _____ without regard to its conflict of law rules. If any provision hereof shall be held invalid, prohibited or unenforceable under any applicable laws of any applicable jurisdiction, such invalidity, prohibition or unenforceability shall be limited to such provision and shall not affect or invalidate the other provisions hereof or affect the validity or enforceability of such provision in any other jurisdiction, and to that extent, the provisions hereof are severable. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law.

7. Failure of the City to require performance of any provision of this Agreement shall not affect the City's right to require full performance thereof at any time thereafter, and the waiver by the City of a breach of any provision of this Agreement shall not constitute or be deemed a waiver of a similar breach in the future, or any other breach, or nullify the effectiveness of such provisions of this Agreement. The rights and remedies of the City of this Agreement are cumulative. The exercise or use of any one or more thereof shall not bar the City from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by the City waive any other right or remedy.

8. This Agreement shall be binding upon the Indemnitor and the successors and assigns for so long as the Groundwater/Roadway Agreement is required by Indemnitor as an Institutional Control as defined by the Environmental Laws. Provided, however, Indemnitor's duty to indemnify City shall survive if the Liabilities are incurred during the effective period of the Roadway Agreement. No transfer of Indemnitor's rights or obligations hereunder shall be made without the prior written approval of the City, which approval shall be with their reasonable discretion.

9. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may not be amended, modified, revised, supplemented or restated except by a writing signed by each of the parties hereto.

10. Indemnitor will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the City in enforcing the covenants and agreements of this Agreement.

11. The executing representatives of the parties to this Agreement represent and certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.

IN WITNESS WHEREOF, the parties have executed this Limited Environmental Indemnity Agreement as of the day, month and year first above written.

CITY OF _____	**INDEMNITOR**
By: _____	**By: _____**
Name: _____	**Name: _____**
Title: _____	**Title: _____**