

**FIRST AMENDED DELEGATION AGREEMENT  
BETWEEN THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
THE ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

THIS First Amended Delegation Agreement (Agreement) is made and entered into this 6<sup>TH</sup> day of MARCH, 2012 by and between the State of Florida Department of Environmental Protection (hereinafter referred to as the DEPARTMENT) and the Environmental Protection Commission of Hillsborough County (hereinafter referred to as the EPC).

**WITNESSETH**

WHEREAS, the Brownfields Redevelopment Act, [Sections 376.77 – 376.86, Florida Statutes (F.S.), as periodically amended] was enacted to reduce public health and environmental hazards on real property by offering incentives to encourage responsible persons to voluntarily develop and implement cleanup plans; and

WHEREAS, the DEPARTMENT is the agency of the State of Florida with the authority and power to enforce the provisions of Chapters 376 and 403, F.S.; and

WHEREAS, the DEPARTMENT, has the authority, pursuant to Section 376.81, F.S., to establish by rule, criteria for determining the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be completed; and

WHEREAS, the DEPARTMENT, pursuant to Section 376.81, F.S., has adopted Chapter 62-785, Florida Administrative Code (F.A.C.), as amended, and Chapter 62-777, F.A.C., as amended, to specify the criteria for determining when site rehabilitation at a brownfield site with an executed Brownfield Site Rehabilitation Agreement (BSRA) is complete; and

WHEREAS, the DEPARTMENT, pursuant to Section 376.80(9), F.S., has the authority to delegate administration of the Brownfields Program to a local pollution control program approved under Chapter 403.182, F.S., which has the financial, technical, and administrative capabilities and desire to administer the Brownfields Program; and

WHEREAS the EPC is operating pursuant to a special act, Chapter 84-446 Laws of Florida (L.O.F.) as amended, and has the authority to accept the delegation described herein, and which is authorized to adopt rules, ordinances or local law and raise funds necessary to exercise the powers delegated by this Agreement; and

WHEREAS, the lands within the geographic boundaries of Hillsborough County and within the jurisdiction of the EPC are within the geographic boundaries and jurisdiction of the DEPARTMENT, and are therefore, subject to the rules, regulations, authority and orders of the DEPARTMENT pursuant to Chapters 376 and 403, F.S.; and

WHEREAS, the DEPARTMENT and the EPC desire to increase governmental efficiency and avoid duplicative regulatory efforts while maintaining levels of environmental protection; and

WHEREAS, the DEPARTMENT and the EPC entered into an original delegation agreement on June 15, 2004; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed as follows:

**PART I.  
ADMINISTRATION OF AGREEMENT**

**SECTION 1. PARTIES**

The parties to this Agreement are the DEPARTMENT and the EPC.

**SECTION 2. DEFINITIONS**

The terms used in this Agreement are as defined in Section 376.79, F.S. and Chapter 62-785, F.A.C., as amended.

**SECTION 3. EFFECTIVE DATE AND DURATION OF AGREEMENT**

This Agreement shall become effective when the Agreement is fully executed by both parties. The term of this Agreement shall be for ten (10) years, unless terminated pursuant to Section 7 of this delegation Agreement. Additionally, the term of this Agreement may be amended pursuant to Section 4 of the Agreement.

**SECTION 4. MODIFICATION OF AGREEMENT AND CONFLICT BETWEEN AGREEMENTS**

This Agreement and its Attachments may be modified in writing at any time by written mutual consent of the DEPARTMENT and the EPC. Upon the effective date, the provisions of this Agreement shall supersede any prior understanding, agreement, memorandum, letter or other written or verbal arrangement between the DEPARTMENT and the EPC regarding the delegation of authority to administer the Brownfields Program. Upon full execution, this Agreement shall rescind and replace the original agreement dated June 15, 2004.

**SECTION 5. DEVIATION FROM AGREEMENT**

The DEPARTMENT may determine, on a case by case basis, that deviation from this Agreement is necessary. In such event, the DEPARTMENT shall notify the EPC in writing of its decision to assert jurisdiction for the matters subject to this Agreement over the specified project, and the EPC shall forward all project related materials maintained under this Agreement to the DEPARTMENT within ten (10) days of receipt of the written notice.

**SECTION 6. TERMINATION OF AGREEMENT**

Either party may terminate this Agreement with or without cause upon written notice to the other party at least 60 days prior to the effective date of termination, provided that, to the extent this Agreement is reflective of a local pollution control program, the

termination of such program is subject to the provisions and procedures of Section 403.182, F.S.

The Secretary of the DEPARTMENT or the Secretary's designee shall sign such notice to the EPC. The EPC Executive Director or the EPC Executive Director's designee shall sign notice to the DEPARTMENT. Upon termination, the EPC shall provide to the DEPARTMENT copies of all files and the DEPARTMENT shall complete records applicable to this agreement and the processing of any technical documents.

## **SECTION 7. SEVERABILITY**

If any court determines any part of this Agreement to be invalid or unenforceable, the remaining parts of this Agreement shall not be affected.

## **PART II. PROGRAM MANAGEMENT**

### **SECTION 8. BUDGET**

The EPC shall maintain an adequate level of funding, staffing and equipment to comply with all statutes and rules pertaining to the delegated Brownfields Program requirements.

### **SECTION 9. PROGRAM ORGANIZATION**

#### **9.01 PERSONNEL**

The EPC shall hire and maintain staff qualified and capable of performing the duties specified in this Agreement. A Table of Organization of the EPC's staff, which gives a detailed description of existing or proposed staff positions assigned to carry out the EPC's obligations under this Agreement, is attached and made a part of this Agreement as Attachment A. Upon request, updated versions shall be provided to the DEPARTMENT.

#### **9.02 COMPUTER EQUIPMENT, SOFTWARE, DATA ENTRY, FILE TRANSFERS, AND ELECTRONIC MEDIA COMPLIANCE**

- (a) The EPC shall install and maintain adequate computer hardware and software to satisfy the requirements of this Agreement.
- (b) In an effort to increase efficiency, responsiveness, and further the environmental cause, the DEPARTMENT and the EPC agree that electronic records are an acceptable media substitute for "hard copy" (paper) and shall be pursued as the first option of choice to arrive at compliance. Where an electronic format exists of the records it shall be used to transmit the data, file, report, document, map, plans, picture, record, or any other object that may be available in an electronic format. Electronic records shall be kept in industry standard formats such as TIFF, GIF, JPEG, PDF, as well as in Microsoft Word, Microsoft Excel, and Microsoft Access not older than one (1) release behind the current release.

- (c) Data requested by the DEPARTMENT for projects delegated under this Agreement shall be transmitted in a format mutually agreed upon by the DEPARTMENT and the EPC. Available formats include E-mail, Compact Disc (CD), or File Transfer via an FTP site. Additional formats may be considered at the time of the request.
- (d) In the event of a special request for data transfer the DEPARTMENT shall provide the EPC at least ten (10) business days advance written notice (etc., E-mail, fax or letter) to comply with such request. In the case of an emergency request the EPC will pursue the request on a "best effort" basis to comply with the request as soon as possible.
- (e) The DEPARTMENT and the EPC technical staff shall consult as needed to provide successful information system integration to ensure that compliance is achieved in a timely fashion. Should technical difficulties arise the corresponding technical contacts are:

<p><b>FOR EPC:</b></p> <p>Brownfields Coordinator  EPC Waste Management Division  3629 Queen Palm Drive  Tampa, FL 33619-1309  (813) 627-2600</p>	<p><b>FOR THE DEPARTMENT:</b></p> <p>Brownfields Program Manager  Bureau of Waste Cleanup  2600 Blair Stone Road, MS 4505  Tallahassee, Florida 32399-2400  (850) 245-8927</p>
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**9.03 PERMIT FEES, MONETARY PENALTIES AND DAMAGES**

- (a) The EPC may assess and retain applicable fees for use in supporting the EPC's administration of the program tasks delegated by this Agreement. Nothing in this provision shall preclude the EPC from charging and collecting administrative fees, investigative costs, or other costs incurred by the EPC resulting from the administration of the Brownfields Program. Nothing in this Agreement shall prohibit the EPC or Hillsborough County from seeking penalties, damages, costs, or attorney fees as provided by law or rule, including but not limited to, Chapter 84-446, L.O.F. All penalties and damages recovered by EPC or Hillsborough County pursuant to EPC's administration of the Brownfields Program shall be deposited in the Hillsborough County Pollution Recovery Fund and shall be used as set forth in Section 19 of Chapter 84-446, L.O.F.
- (b) The DEPARTMENT shall assess permitting or other authorized fees for activities performed by the DEPARTMENT at sites delegated under this Agreement.

**SECTION 10. PROGRAM PLANNING AND MANAGEMENT**

**10.01 STAFF TRAINING**

The parties to this Agreement shall ensure that their respective personnel have the requisite education, experience, and training necessary to accomplish the matters delegated by this Agreement. The DEPARTMENT shall invite the EPC representatives

to participate in appropriate training sessions held by the DEPARTMENT. The EPC shall apprise the DEPARTMENT of appropriate training sessions conducted by the EPC.

## **10.02 RECORDS MANAGEMENT**

The EPC shall maintain organized files of all records and materials prepared or received in connection with any official business conducted pursuant to this Agreement. The EPC shall comply with Chapter 119, F.S., with regard to the inspection, copying, maintenance, and disposition of public records. The files shall be maintained for the period required by Florida Law. Requests for copies of documents pursuant to Chapter 119, F.S., shall be forwarded to the EPC for processing.

## **10.03 REPORTING REQUIREMENTS**

### **10.03.1 The EPC Reporting Requirements**

- (a) The EPC shall submit an annual report by June 1 of each year to the DEPARTMENT detailing the EPC's activities pursuant to the responsibilities outlined in this Agreement. The report shall, at a minimum, include the location of designated Brownfield areas and sites, and the acreage of each Brownfield area and site. In addition for each Brownfield site, the report should provide the person responsible for each Brownfield site rehabilitation, the status of redevelopment, and the status of remediation, including: whether the site has been remediated or is currently under remediation; where alternative cleanup target levels have been established pursuant to Section 376.81(1)(g)3, F.S.; and where engineering and institutional control strategies are being employed as conditions of a "no further action order."
- (b) The EPC shall submit fully executed copies of a BSRA within fifteen (15) days after execution of the BSRA.
- (c) The EPC shall submit to the DEPARTMENT copies of all approval letters within fifteen (15) days of issuance by the EPC in conjunction with the review of any technical documents and Final Orders resulting from the provisions of this Agreement.

### **10.03.2 EPC to DEPARTMENT Submittals**

The documents identified in Section 10.03.1 shall be submitted to the DEPARTMENT's Florida Brownfields Program staff members identified below. Electronic submission of these documents, in accordance with Section 9.02, is encouraged.

John Sego  
Brownfields SW District Coordinator  
13051 N. Telecom Parkway  
Temple Terrace, FL 33637-0926  
813-632-7600  
John.R.Sego@dep.state.fl.us

and to

Kim Walker  
Brownfields Program Manager  
Bureau of Waste Cleanup  
2600 Blair Stone Rd, MS 4505  
Tallahassee, FL 32399-2400  
850.245.8934  
Kim.Walker@dep.state.fl.us

#### **10.03.3 DEPARTMENT Reporting Requirements**

The DEPARTMENT shall make available its rules, regulations, forms, policy and guidance memoranda within fifteen (15) days after its effective date to the EPC.

#### **10.03.4 DEPARTMENT to EPC Submittals**

All correspondence associated with this Agreement shall be submitted by U.S. Mail or electronically to:

Brownfields Coordinator  
Waste Management Division  
3629 Queen Palm Drive  
Tampa, FL 33619-1309  
yearganm@epchc.org

### **SECTION 11. PROGRAM OVERSIGHT**

The DEPARTMENT may review, upon seven (7) days written notice to the EPC, any document that the EPC possesses or is reviewing pursuant to this Agreement. The DEPARTMENT may randomly inspect project sites for which site rehabilitation activities are being conducted. The DEPARTMENT shall periodically conduct performance audits of the EPC's administration of the delegated program. The EPC will be given adequate time, not less than twenty (20) working days, to complete pre-audit surveys, and to comment on draft audit findings.

## **PART III PROGRAM RESPONSIBILITIES**

### **SECTION 12. SCOPE OF DELEGATION**

#### **12.01 PROGRAM ACTIVITIES DELEGATED TO THE EPC:**

- (a) The responsibility to confirm that sites entering the Florida Brownfields Redevelopment Program meet all program eligibility requirements provided in Section 376.82, F.S. prior to execution of a BSRA;
- (b) Authority to administer Sections 376.80 - .83, F.S. and Chapters 62-785 and 62-777, F.A.C., as amended, in Hillsborough County, on behalf of the DEPARTMENT relating to the Brownfields Redevelopment Act within EPC's jurisdiction.
- (c) The authority to negotiate, execute, and ensure compliance of BSRAs for Brownfield sites within designated brownfields area, consistent with the substantive requirements of the most current Model BSRA as maintained by the

DEPARTMENT. A copy of the most current Model BSRA is attached and made a part of this Agreement as Attachment B;

- (d) The authority to, excluding risk assessment submittals, review and approve, approve with modifications and/or comments, or disapprove technical documents submitted to EPC pursuant to the Brownfields Redevelopment Act and Chapters 62-785 and 62-777, F.A.C., within the EPC's jurisdiction, including authority to issue Final Orders under the provisions of Chapter 62-785, F.A.C.;
- (e) The authority to administer Section 376.81, F.S., for sites covered under the executed Superfund Memorandum of Agreement with EPA Region 4. A copy of which is attached and made a part of this Agreement as Attachment C; and
- (f) The parties acknowledge that separate delegations made by the DEPARTMENT and the EPC shall continue in full force and are unaffected by this Agreement.

#### **12.02 PROGRAM ACTIVITIES RETAINED BY THE DEPARTMENT**

Those activities, which are retained by the DEPARTMENT, are:

- (a) Any permitting or other activity, which by law, may not be delegated;
- (b) Issuance of variances or waivers under Section 120.542, F.S.;
- (c) Issuance of Declaratory Statements under Section 120.565, F.S.. and;
- (d) Activities covered under this Agreement on EPC or Hillsborough County owned properties or facilities.

#### **SECTION 13. TECHNICAL AND LEGAL CRITERIA**

- (a) The EPC shall apply the state rules that are adopted pursuant to Section 376.81, F.S., as amended from time to time, and set forth in Chapters 62-785 and 62-777, F.A.C., as amended, when implementing this Agreement.
- (b) The provisions of Chapter 120, F.S. shall govern actions taken by the EPC, for the purposes of this Agreement. All timely petitions for formal administrative hearings received by the EPC, except for those provisions pertaining to rulemaking, variance and waivers, and declaratory statements shall be referred to the Division of Administrative Hearings (DOAH) for the assignment of an administrative law judge if the petitions are submitted pursuant to Chapter 120, F.S., and satisfy the requirements set forth in subsection 120.54(5)(b)4., F.S., and the Uniform Rules of Procedures, with particular attention to Rules 28-106.204 and 28-106.303, F.A.C. At the time of referral of a petition to DOAH, a copy of the notice of referral, the petition, and the challenged decision shall be mailed to Department's Office of General Counsel, Attention: Deputy General Counsel for Waste and Air Programs, at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. The DEPARTMENT shall have the right, if it so chooses, to intervene in the DOAH proceeding. For all hearings challenging agency action on the delegated Brownfield Program, the EPC shall be responsible for preparation for the hearings, appearance at the hearings, and the preparation and submittal of the proposed recommended

orders to the assigned administrative law judge. Prior to all final hearings, the EPC attorneys shall consult with DEPARTMENT attorneys regarding issues related to the case. The Executive Director of the EPC shall take final agency action resulting from such DOAH proceedings. Appeals of final orders entered following an administrative hearing shall be the responsibility of the EPC. The DEPARTMENT may join the appeal as a party.

Orders entered by the Executive Director of the EPC pursuant to administrative hearings shall be published in the Florida Administrative Law Reporter if they have precedential significance. All final orders entered after an administrative hearing under Chapters 120.569 or 120.57, F.S., shall be published in the Florida Administrative Law Reporter and copies provided to the DEPARTMENT within thirty days of publication.

- (c) The DEPARTMENT shall make legal interpretation of the DEPARTMENT rules. Legal interpretation of the EPC rules shall be made by the EPC. In the event that there is litigation concerning the interpretation of the DEPARTMENT'S rules, then the DEPARTMENT shall provide testimony concerning the interpretation of those rules. To the extent that litigation involves interpretation of the EPC rules, the EPC shall provide testimony concerning the interpretation of those ordinances.
- (d) The EPC is not authorized to utilize cleanup or review criteria that are more stringent than those set forth in Chapters 62-785 and 62-777, F.A.C.

#### **SECTION 14. MISCELLANEOUS**

Nothing in this Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: DEPARTMENT OF ENVIRONMENTAL PROTECTION, by its Director, Division of Waste Management, duly authorized to execute same, and the ENVIRONMENTAL PROTECTION COMMISSION of HILLSBOROUGH COUNTY, signing by its Executive Director, authorized to execute same by EPC action on the 6<sup>TH</sup> day of MARCH, 2012.

WITNESS:

Sharon Lee  
SHARON LEE

Judith Pennington  
JUDITH PENNINGTON

DEPARTMENT OF ENVIRONMENTAL PROTECTION, BY ITS DIRECTOR, DIVISION OF WASTE MANAGEMENT

By: Jorge Caspary  
Jorge Caspary  
Director

Date: 3/6/2012

Legal Form Approved  
Rebecca Robinette, Office of General Counsel

By: [Signature]

Date: 2/28/2012

ATTEST:

By: Mary E. Horgan

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY

By: Richard D. Garrity  
Richard D. Garrity  
Executive Director  
1900 9<sup>th</sup> Avenue  
Tampa, FL 33605

Date: 2/21/2012

By: [Signature]  
General Counsel