

AGREEMENT FOR PETROLEUM CLEANUP PARTICIPATION PROGRAM

This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter "Department"), whose address is 2600 Blair Stone Road, Tallahassee, Florida, and _____ (hereinafter "Participant"), whose address is _____ (collectively the "Parties") to perform certain site rehabilitation activities for contamination determined eligible for the Petroleum Cleanup Participation Program (hereinafter "PCPP") in accordance with Section 376.3071(13), Florida Statutes (F.S.). The petroleum contamination subject of this Agreement is the discharge(s) date(s) _____ at the _____ (facility name) facility located at _____, _____ County, Florida, DEP Facility ID # _____.

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department is authorized to provide state funding assistance for petroleum discharges determined eligible for PCPP, based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S., and Chapter 62-771, Florida Administrative Code (F.A.C.); and

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department has determined the described contamination eligible and Participant provided the required Limited Contamination Assessment Report (hereinafter "LCAR") or assessment data [_____ (Report Title and Date)] exists and was determined to be sufficient to support the proposed course of action and to estimate the cost of the course of action; and

WHEREAS, the Participant shall provide one of the following: a 25% cost savings to the Department, a 25% copayment by the Participant, or a combination of both a cost savings and copayment that totals 25%.

PARTICIPANT AGREES TO PROCEED UNDER THE SELECTED OPTION (please select and initial only ONE option and appropriate sub-options if applicable)

1. Participant is providing a 25% cost savings to the Department:

Attached as Exhibit A the agency term contractor's (ATC's) written acceptance to a reduction in its Department ATC rates.

OR

Attached as Exhibit A is the Participant's executed PCPP Conditional Closure Agreement (CCA, including Attachment B Conditional Closure Agreement Contractor Recommendation) with an endpoint of RMO II. Also attach evidence of a properly recorded interim declaration of restrictive covenant.

Participant Initials _____
If cost savings selected

2. ___ Participant is paying a 25% copayment of the cost to cleanup.

Participant Initials _____
If copayment selected

3. ___ Participant is providing a combination of both a cost savings and copayment equal to 25% of the cost of cleanup (Attached as Exhibit A, recommended ATC's written acceptance to a reduction in its Department ATC rates and the Participant copayment percentage combination).

Participant Initials _____
If combination selected

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from, the Department and the Participant do hereby agree as follows:

GENERAL.

1. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapters 62-780, 62-771, and 62-772, F.A.C. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Chapter 287, F.S.
2. The Participant understands that during the course of site rehabilitation, the Department may, based on the statutes, rules and guidance of the Department, revise a site rehabilitation strategy due to technical or cost considerations.

TERM OF AGREEMENT AND SPENDING LIMITS.

3. This Agreement is effective on the date of execution by the Parties until the earlier of: (1) the Department has determined that rehabilitation is complete pursuant to Chapter 62-780, F.A.C. and issues a Site Rehabilitation Completion Order (SRCO) or Conditional Site Rehabilitation Completion Order (CSRCO); or (2) the funding limitations set forth in Section 376.3071(13)(b), F.S., are exhausted and site rehabilitation has not been achieved.
4. The PCPP program funding cap per eligible PCPP discharge is \$400,000, less any funds previously spent to date, with an additional \$100,000 in auxiliary funding (available via amendment to this agreement if needed for remediation or monitoring in order to achieve a No Further Action determination).

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

5. In accordance with Sections 376.3071, F.S., and rules adopted pursuant to that Section, the Department will prepare Work Assignments, and procure the work as appropriate with the contractor designated and will thereby be responsible to the contractor solely for the Department's percentage of its cost share, whether that cost is 100% after a cost savings has been demonstrated, 75% cost share, or combination of both.

6. The Department will review and approve site rehabilitation activities in accordance with the terms of the procurement orders and Chapter 62-780, F.A.C., and shall make copies of such documents available to the Participant in the electronic site file Oculus (<https://depedms.dep.state.fl.us/Oculus/servlet/login>). The Participant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or procurement documents under this Agreement.

7. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The Participant understands that this Agreement shall not result in the encumbering of State funds upon execution of the Agreement.

COVENANTS AND REPRESENTATIONS OF THE PARTICIPANT.

8. The Participant represents that he or she or it is qualified to enter into this Agreement and able to fully perform their duties under this Agreement. Participant acknowledges that the responsibilities and obligations of this Agreement survive the transfer of the above referenced facility/property.

9. When the Participant is paying a 25% copayment, or copayment combination, the Participant further agrees that it shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its share of costs from the Contractor, when such invoice is accompanied by a written approval by the Department of the work completed.

10. When Participants are paying a copayment, the Participant shall maintain and provide upon request, documentation that the invoice amount was paid. Failure to timely and adequately pay the contractor and provide proof of that payment to the Department upon request shall be considered a material breach of the PCPP Agreement pursuant to paragraph 14 and may result in loss of eligibility. The Department will request confirmation of payment/ contractor certification either via letter or e-mail after the Department has approved the contractor's work.

11. In accordance with Chapter 376, F.S., it is unlawful for the Participant to receive any remuneration, in cash or in kind, from a Contractor performing cleanup activities subject of this Agreement. This would include an agreement whereby the Participant does not make timely payments of the required copayment when the option of 25% copayment or copayment and cost savings combination.

12. When a Participant is paying 25% copayment or copayment and cost savings combination, the Participant shall maintain books, records, documents and other evidence pertaining to compensation and payments directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Department, the State of Florida or their authorized representatives shall have access, without cost, except reasonable costs associated with photocopying such records, to such records for audit purposes during the term of this Agreement and for five years following termination of this Agreement.

TERMINATION OF AGREEMENT AND REMEDIES FOR BREACH OF AGREEMENT.

13. This Agreement may be terminated for material breach of obligations by either Party. Material breach means substantial failure to comply with the terms and conditions of this Agreement. A Party terminating the Agreement shall give written notice of the breach to the other Party within 14 days of discovery of facts giving rise to the breach. Such notice shall be of sufficient detail so that the Party allegedly in breach can formulate a remedy. If the breach is remedied within 15 days of the notice, the Agreement shall remain in effect. If the breach is not remedied within 15 days of the notice, the Agreement may be terminated within 15 days of the close of the 15 day remedy period. Failure to timely pay the Participant's 25% co-payment or 25% copayment and cost savings combination is considered a material breach of this PCPP Agreement. In the event that the Department determines, in its sole discretion, that the Participant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity.

14. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Participant to allow public access to all documents, papers, letters or other material regardless of the physical form, characteristics, or means of transmission, made or received subject to the provisions of Chapter 119, F.S., in conjunction with this Agreement (public records). The Department may terminate this agreement without cause with notice to the Participant pursuant to paragraph 16.

15. The parties hereto agree to waive any right to jury trial under this Agreement.

NOTICES.

16. Any notice or written communication required or permitted hereunder between the Parties shall be considered received when delivered via electronically by e-mail or delivered in person or by mail by the appropriate Party Representative. Party Representatives are as follows:

Remainder of page intentionally left blank

Department Representative:

Participant Representative:

Kenneth Busen, P.G.
PCPP Coordinator
Petroleum Restoration Program
Department of Environmental Protection
2600 Blair Stone Road, MS 4580
Tallahassee, Florida 32399-2400
Phone: (850) 245-8745
E-mail: Kenneth.Busen@FloridaDEP.gov

Name

Title

Street Address

City, State, Zip

Phone

Email

AMENDMENTS.

17. Any amendment to this Agreement must be in writing and signed by the Parties.

ASSIGNMENT.

18. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party. The Department will not accept assignment of this Agreement to any person or entity that, in the Department’s determination, is unable to reliably comply with the 25% cost savings, co-payment, or combination of both obligation.

CHOICE OF LAW/FORUM.

19. The parties hereby agree that any and all actions or disputes arising out of this Agreement shall be governed by the laws of the State of Florida; and any such actions shall be brought in Leon County, Florida.

RESPONSIBILITY FOR SITE REHABILITATION WHERE CLEANUP COSTS EXCEED SPENDING LIMITATIONS.

20. In accordance with Section 376.3071(13)(f), F.S., in the event that the funding limitations specified in Section 376.3071(13), F.S., are exhausted or exceeded prior to completion of site rehabilitation, the Participant shall be obligated to continue site rehabilitation activities in accordance with Section 376.3071(5), F.S., and Chapter 62-780, F.A.C. If the Participant fails to timely continue the site rehabilitation activities the Department and its contractors) are permitted to continue performing assessment and remedial activities that the Department, at its sole discretion, deems appropriate. The Department will designate its own contractor(s) to undertake site rehabilitation actions without the approval of the Participant or any other party. The Department or its contractor(s) will perform any assessment and remedial activities that the Department, at its sole discretion deems appropriate to address the remaining petroleum contamination. As such, the Department,

at its sole discretion, may choose to undertake assessment or cleanup activities that are less stringent than the requirements of Chapters 62-780 and 62- 777, F.A.C., and which may not result in the issuance of a Site Rehabilitation Completion Order. Pursuant to Section 376.3071(7)(b), F.S., the Department will seek recovery for all sums expended by the Department for actions taken pursuant to this paragraph. Therefore, the Department explicitly reserves its right to seek recovery from the Participant or any other responsible party that amount which was expended by the Department in these matters.

ENTIRE AGREEMENT.

21. It is hereby understood and agreed that this Agreement states the entire agreement and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement. This Agreement is binding upon execution of the Agreement and is for the benefit of the Parties and to no other entities or persons not signatories to this Agreement. This PCPP Agreement is the primary Agreement between the Parties and any conflict between the PCPP Agreement and any of the attachments the PCPP Agreement controls. No exhibit or attachment to the PCPP Agreement can modify any statutes, rules, or procedures applicable to the Petroleum Restoration Program.

FOR THE DEPARTMENT:

FOR THE PARTICIPANT:

Natasha Lampkin
Program Administrator
Petroleum Restoration Program

Participant Signature
Print Name: _____
Title: _____
Date: _____

Attachment: Exhibit A

Below is a checklist of the appropriate documents required to be submitted as Exhibit A with the PCPP Agreement.

1. a. When Participant is providing a 25% cost savings (as demonstrated in the form of reduced rates by the proposed ATC) to the Department attach:

ATC's written commitment to a reduction in its Department ATC rates

OR

1.b. When Participant is providing a 25% cost savings (RMO II) to the Department attach:

Participant's executed Conditional Closure Agreement with an endpoint of RMO II, with Attachment B Conditional Closure Agreement Contractor Recommendation

Evidence of a properly recorded interim declaration of restrictive covenant (only the current real property owner(s) can execute this document)

OR

2. When Participant is paying a 25% copayment of the cost to cleanup none required

OR

3. When Participant is providing a combination of both a cost savings and copayment equal to 25% of the cost of cleanup attach:

ATC's written commitment to reduction in its Department ATC rates with details of percentages for copayment and reduced rates

Please note, the above constitutes documentation required for Exhibit A, which will become a part of the PCPP Agreement. Additional Backup Documentation (such as the cost share contractor selection sheet, scope of work and cost estimate template, etc.) may also be required as a separate file during the PCPP submission process. Refer to the PCPP Instructions for Completion (<https://floridadep.gov/waste/petroleum-restoration/documents/instructions-completion-pcpp-agreement>) for full details on submitting.