This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter “the FDEP”), whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Responsible Party” [RP]) whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the eligible petroleum discharge[s] at [Facility Name], located at [Street], [City], [County] County, Florida, FDEP Facility Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Eligible Discharge Date(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WHEREAS**, it is desirable for the RP and the FDEP (hereinafter “the Parties”) to address the cleanup of the discharge[s] that [has or have] occurred at the above referenced facility. [This discharge has or These discharges have] been determined to be eligible for cleanup funding in accordance with **{{**(select one of the three options as applicable) the Petroleum Liability and Restoration Insurance Program (PLRIP), Section 376.3072, Florida Statutes (F.S.). OR the Petroleum Cleanup Participation Program (PCPP), Subsection 376.3071(13), Florida Statutes (F.S.). OR the Petroleum Liability and Restoration Insurance Program (PLRIP), Section 376.3072, Florida Statutes (F.S.) and the Petroleum Cleanup Participation Program (PCPP), Subsection 376.3071(13), F.S.**}}**

**WHEREAS** the cost of the cleanup work expended on the eligible discharge[s] is near the State funding cap.

**WHEREAS**, it is appropriate for the cleanup to continue and for the activities outlined in Exhibit A (hereinafter “Purchase Order”) to be completed in accordance with Chapter 62‑780, Florida Administrative Code (F.A.C.), and procedures established by the FDEP for the Petroleum Restoration Program (hereinafter “Restoration Program”) in accordance with Sections 376.3071 and 376.30711, F.S.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived herefrom, the Parties do hereby agree to the below provisions, covenants and representations.

#### GENERAL PROVISIONS

The Parties acknowledge the funding limitations as set forth for **{{**(select one of the two options as applicable) the PLRIP discharge[s] in accordance with Section 376.3072, F.S. [(if applicable) and] OR the PCPP discharge[s] in accordance with Subsection 376.3071(13)(b), F.S.**}}** **{**The PLRIP [(if applicable) and the PCPP] OR The PCPP**}** funding cap[s] for [this discharge has or these discharges have] been established at $\_\_\_\_\_\_\_\_\_\_\_ [(if applicable) and $\_\_\_\_\_\_\_\_\_\_\_]. At no time will the FDEP be obligated to pay for any amount that exceeds [this funding cap amount or the total funding cap amount] to clean up [this discharge or these discharges].

The Parties understand that there may be limited changes to the scope of work outlined in the attached Purchase Order (Exhibit A). Any change that: (a) does not increase or decrease the amounts specified herein may be made unilaterally by the FDEP and will not require the RP’s consent, (b) increases the amounts specified herein may only be made with the RP’s prior written consent and the RP will be responsible for the payment of these additional costs to the Restoration Contractor (hereinafter “the Contractor”), or (c) decreases the amounts specified herein may be made unilaterally by the FDEP and will not require the RP’s consent. However, if there is a net decrease in the FDEP specified amount, the FDEP may elect to negotiate with the Contractor for additional work that will not exceed the specified amounts stated herein.

#### COVENANTS AND REPRESENTATION OF THE FDEP

Based upon provisions herein, the FDEP’s specified amount for inclusion in the attached Purchase Order will be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. At no time will the FDEP be responsible to pay the Contractor more than this specified amount.

The FDEP will review and approve all reports submitted by the Contractor in accordance with the terms of the attached Purchase Order, the provisions of the Restoration Program, and Chapter 62‑780, F.A.C.

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. As of the date of the execution of this Agreement by the FDEP the Legislature has appropriated the necessary funding.

**COVENANTS AND REPRESENTATION OF THE RP**

Based upon provisions herein, the RP’s specified amount for inclusion in the attached Purchase Order (excluding any amount payable directly to the FDEP for state-owned remediation equipment acquisition and ownership transfer) will be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The RP, based upon other provisions herein, may be responsible to pay the Contractor for additional work above this specified amount.

The RP agrees to pay the Contractor within 30 days of receipt of an invoice that is accompanied by a written approval by the FDEP for the event or activity completed. The FDEP may request proof of such payment to the Contractor that indicates the amount and date of payment.

The RP acknowledges that after completion of the attached Purchase Order, the RP or other responsible party is responsible for completing the remediation of the discharge[s] in accordance with Chapter 62‑780, F.A.C. Failure to adhere to the requirements and time frames in Chapter 62‑780, F.A.C., may result in the imposition of civil penalties up to $10,000.00 per day per violation pursuant to Sections 376.302 and 403.141, F.S.

[(if applicable) The Parties mutually agree that any State-owned remediation equipment existing at the cleanup site or included in Exhibit A, if applicable, shall be transferred to the RP in accordance with Exhibit B. If applicable, the RP’s specified amount for direct payment to the FDEP for the acquisition/transfer of ownership of the remediation equipment outlined in Exhibit B will be $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]

#### OTHER PROVISIONS

In accordance with Subsection 376.3071(6), F.S., it is unlawful for the RP to receive any remuneration, in cash or in kind, from the Contractor for any work associated with the attached Purchase Order. Furthermore, the RP is prohibited from entering into any agreement with the Contractor that would reduce the RP’s cost commitment as stated herein.

It is agreed that this Agreement will be effective upon execution of the Agreement by the Parties and shall automatically terminate, except for a responsible party’s continuing obligation to complete the remediation pursuant to Chapter 62‑780, F.A.C., when all invoiced costs associated with the attached Purchase Order have been paid.

It is understood that this Agreement states the entire agreement and understanding between the Parties, and that the Parties are not bound by any stipulation, representations, agreements or promises, oral or otherwise, not printed in or attached to this Agreement; each exhibit or attachment must be initialed by the Parties. This Agreement does not modify or supersede any other FDEP order, agreement, consent order, or contract regarding the above referenced Facility or discharge[s]. It is acknowledged that upon termination of this Agreement the FDEP is under no obligation to issue a new Purchase Order to the Contractor, continue the remediation, or issue a Site Rehabilitation Completion Order. [(if applicable) Additionally, it is acknowledged that the responsibility for any remediation equipment associated with the discharge[s] will be handled in the manner described in Exhibit B.]

**CERTIFICATION**

It is hereby declared that the undersigned, under penalty of perjury, certify that they have the legal authority to negotiate and execute this Agreement and that they have read and understand all the terms and conditions of this Agreement, including any and all exhibits or attachments to this Agreement.

FOR THE FDEP: FOR THE RP:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Print Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature and Date) (Signature)

Natasha Lampkin

Program Administrator \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Petroleum Restoration Program (Title)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
(Date)

### EXHIBIT B (delete if not applicable)

### TO THE FDEP & [PARTY], PETROLEUM RESTORATION PROGRAM

FUNDING CAP TRANSITION AGREEMENT FOR **REMEDIATION EQUIPMENT AT**

### [Facility Name & Discharge[s]]

The FDEP and [Name] (Owner/Responsible Party [RP]), acknowledge that there [is or will be] a remediation system located at [Address of equipment, which may or may not also be the source property address] for the purpose of remediating the above referenced discharge[s].

The remediation system consists primarily of [describe all major components of the system (with FDEP property numbers if applicable)] and associated piping, fencing and other components (equipment).

The equipment was purchased, in whole or in part, with funds from the Inland Protection Trust Fund (IPTF) pursuant to Subsection 376.3071(4) and Section 376.20711, Florida Statutes (F.S.). The purpose of the equipment is to clean up the above referenced petroleum contamination discharge[s] that [is or are] eligible for State-funded cleanup.

The purpose of the IPTF and associated eligibility programs is to promptly investigate, assess, remediate and restore contaminated sites in an efficient and cost‑effective manner. See Subsections 376.3071(2) and (4), F.S.

Due to the State funding cap, the discharge[s], which [is or are] eligible for State funding, [has or have] neither been fully remediated nor has the property been restored to the conditions that existed prior to the activities associated with the assessment and remediation of [this discharge or these discharges].

It is in the best interest of the State of Florida and the RP that the remediation equipment continue to be used to remediate the discharge[s]. It is in the best interest of the State that the RP take over full possession and ownership of the equipment. For State-owned equipment that was purchased prior to the attached Purchase Order, the acquisition/transfer fee payable directly to the FDEP shall be based on the current market value (if any) using a 5-year useful life from the date of installation prorated at a 20% reduction in the purchase price at system installation and startup followed by a reduction of 16% per year (1.33% per month) of use thereafter for the next 5 years. If the RP paid a percentage of the original remediation equipment cost, then the acquisition/transfer fee shall be further prorated accordingly. For new remediation equipment that is included in the attached Purchase Order, the acquisition/transfer fee described above shall be calculated only on the FDEP’s share of the equipment cost.

The FDEP hereby transfers responsibility for and ownership of the equipment where is and as is, and further makes no warranties, expressed or implied, as to the effectiveness, fitness to remediate the discharge, or merchantability of the equipment.

Any and all utilities (electric, water, etc.) necessary for the operation of the equipment currently maintained by the FDEP will be transferred from the FDEP to the RP. The RP shall ensure that the equipment is ultimately properly removed and disposed of in accordance with all applicable local, state and federal laws and regulations.

The RP hereby accepts possession of the equipment, including all responsibility and liability for the equipment.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Program Administrator, PRP signature & date RP signature & date