

**SITE REHABILITATION FUNDING ALLOCATION AGREEMENT
FOR A PETROLEUM CONTAMINATED SITE WITH BOTH
ELIGIBLE AND NON-ELIGIBLE CONTAMINATION**

This Site Rehabilitation Funding Allocation Agreement (“SRFA” or “Agreement”) is entered into between the Florida Department of Environmental Protection and **Applicant** (hereinafter known as the “Parties”). The purpose of this Agreement is to perform site rehabilitation on a cost allocation basis pursuant to Section 376.30714, Florida Statutes. The Parties hereby agree as follows:

PARTIES

1. The Florida Department of Environmental Protection (“Department”) is the administrative agency of the State of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapters 376 and 403, Florida Statutes (F.S.), and the rules promulgated thereunder in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Agreement. The Department is located at 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000.
2. (“Applicant”) is the entity that has assumed responsibility for the costs to remediate the non-eligible contamination that is the subject of this Agreement.

BACKGROUND

3. The facility (FDEP Facility Identification Number) located at , County, Florida and known as the (hereinafter referred to as “Facility”) has been found to have petroleum [and chlorinated solvent, if applicable] contamination. [Revise the following if a mixed contaminant plume exists] This cost sharing allocation is applicable to only the Petroleum Products’ Contaminants of Concern as noted in Chapter 62-780 Table A, Florida Administrative Code (F.A.C.) and is exclusive of the chlorinated solvent contamination that is being addressed at this facility pursuant to Chapter 62-780, F.A.C.
4. Petroleum contamination originating at the Facility has been determined to be eligible for restoration coverage under the [(if more than one funding program, list the one corresponding to the earliest discharge) Abandoned Tank Restoration Program (“ATRP”) pursuant to Section 376.305, Florida Statutes (“F.S.”) OR Early Detection Incentive (“EDI”) Program pursuant to Section 376.3071(10), Florida Statutes (“F.S.”) OR Petroleum Cleanup Participation Program (“PCPP”) pursuant to Section 376.3071(13), Florida Statutes (“F.S.”) OR Petroleum Liability and Restoration Insurance Program (“PLRIP”) pursuant to Section 376.3072, Florida Statutes (“F.S.”)], for the discharge[s] discovered on date(s) (if more than one, list chronologically) (“eligible discharge[s]”).
5. The Department is authorized to provide State funding assistance for discharges determined eligible for any of the funding programs, based on the priority score established for

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the eligible discharge[s] pursuant to Section 376.3071(5)(a), F.S., and Chapter 62-771, Florida Administrative Code (“F.A.C.”). The Facility is, as of the date of this Agreement, scored ?.

6. A discharge of petroleum products that is not eligible (non-eligible) for State funded cleanup was discovered on **Date** at this Facility.
7. It is necessary for the Applicant, and desirable for the Department, to address the cleanup of non-eligible discharges that have occurred at a facility with existing contamination that has been determined to be eligible for State-funded cleanup. Due to the presence of a non-eligible discharge site rehabilitation shall proceed pursuant to “nonprogram” provision of section 376.30701(1)(b), F.S.
8. It is appropriate for persons assuming responsibility for cleanup of non-eligible discharges at facilities with eligible discharges, to apportion the costs associated with managing and conducting cleanup of those discharges upon application to the Department and in accordance with a priority established for such cleanup in negotiated site rehabilitation agreements.
9. The Department has determined that the cleanup of the discharges referenced in paragraph 4 and 6 shall commence when State funding becomes available and the Department has notified the Applicant. should be funded immediately **OR shall be funded as funding becomes available within the Department’s program spending procedures**. The site rehabilitation progress shall comply with all applicable Chapter 62-780, F.A.C., timeframes. For as long as the Department is the PRSR Rule 62-780.790(1)(b), F.A.C., applies.
10. The Applicant and the Department desire to enter into this Agreement in order to apportion the costs of site rehabilitation as set forth below in order to effect site rehabilitation pursuant to Sections 376.30701, 376.3071, 376.30714 and 376.309(2), F.S., and Chapter 62-780, F.A.C.
11. Consistent with Sections 376.3071(5) and 376.30714, F.S., and the rules and guidance adopted thereunder, the Department, in consultation with the Applicant and based on the **[list reports and report dates for information submitted and reviewed]**, and the site assessment data on file with the Department, have agreed to a funding allocation arrangement as described in Attachment A.

CONTRACTORS

12. The Parties shall mutually agree upon the selection of a single site rehabilitation contractor (the “Agency Term Contractor”) pursuant to Chapter 62-772, F.A.C, to effect site rehabilitation funded pursuant to paragraph 9. If an Applicant recommends a Contractor to conduct the work under this Agreement that Contractor must hold a current Agency Term Contract (ATC), awarded under the Department’s PRP, Rule 62-772.401(2), F.A.C., and is currently in good standing under the ATC. The Contractor shall perform the work at the Facility

pursuant to the terms and conditions of its (a) ATC, (b) this Agreement, and (c) any and all issued Purchase Orders (“Pos”).

13. Work under this Agreement will be performed by a contractor designated pursuant to the procurement requirements in Chapter 376.3071, F.S., and Chapter 62-772, F.A.C. The Department will review and approve site rehabilitation documents pursuant to Chapter 62-780, F.A.C. (if the Applicant wishes to receive copies of such documents, the Applicant must request them from the Agency Term Contractor).

14. The Applicant is further advised and understands that the Department may task a locally contracted county or a privately contracted Tallahassee-based company with review of the site rehabilitation documents under this agreement.

COST ALLOCATION

15. The funding allocation described in Attachment A is based on assessment data presented by and the historical information on file with the Department. **Provide a brief description of the cost share rationale.** It has been established that the site rehabilitation of the eligible discharge[s] will constitute **Percent%** of the total cost of site rehabilitation for both the eligible and non-eligible discharge[s].

16. Therefore, the apportionment of costs for the site rehabilitation of the discharges identified in paragraph 4 and 6 at the Facility are as follows:

- a. Applicant = **Percent%**
- b. Department = **Percent%**

17. During the performance of additional assessment, remediation or monitoring, information may come to light indicating residual contamination associated with the previously existing (eligible) discharge and more recent (non-eligible) discharge is different from what has been assumed as the basis for the allocation of costs for the remediation of the site. Also, the total cost to achieve site rehabilitation completion may be determined to be different than current projections. The Parties agree to reevaluate the funding allocation agreement at any time during the course of site assessment, remediation or monitoring, if a growing disparity of cleanup costs for the eligible and non-eligible discharge[s] from the basis of this Agreement becomes evident.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT

18. The Department has made a cost allocation commitment to pay **Percent%** of the total cost of site rehabilitation, as specified in paragraph 16 and Attachment A which is intended to pay the remediation of only the discharge[s] listed in paragraph 4. Pursuant to Section 376.30714, F.S., and paragraph 1 of this Agreement, the Department will negotiate work with the

Agency Term Contractor, and will thereby be responsible to the Agency Term Contractor solely for the Department's portion of the costs as specified in the purchase orders. The Applicant must pay the Agency Term Contractor pursuant to paragraph 23. Pursuant to 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.

19. When site rehabilitation has been completed, the Department will issue a Site Rehabilitation Completion Order ("SRCO") with or without conditions as applicable, for the eligible and non-eligible discharges identified in paragraph 4 and 6. Documentation of payment of the SRFA Applicant's portion of the cost must have been provided to the Department as required by paragraph 23 prior to the issuance of the SRCO. The issuance of the appropriate SRCO by the Department will complete the Department's obligation to commit State funds on the discharge[s] listed in paragraph 4, as well as the Applicant's obligations except for any conditions that may be stipulated in the SRCO. **If there is a funding cap limit to the Department's contribution to site cleanup of the discharge[s] listed in paragraph 4, then the expenditure of the funding cap or the issuance of an SRCO shall complete the Department's obligation to commit State funds for the discharge[s] listed in paragraph 4, whichever comes first.**

COVENANTS AND REPRESENTATIONS OF THE APPLICANT

20. The Applicant further represents that **(they are or it is a corporation in good standing in the State of Florida, or it is an LLC in good standing in the State of Florida)**, qualified to enter into this Agreement and is able to fully perform its duties under this Agreement. Failure to respond to the Department within 45 calendar days is considered a material breach of this Agreement subject to unilateral cancellation by the Department.

21. **DELETE IF 100% DEP COST SHARE** The Applicant has made a cost allocation commitment to pay **Percent**% of the total costs of site rehabilitation, as specified in Paragraph 16 and Attachment A. The Department will request confirmation of the applicant's portion of the costs during the cleanup of the site pursuant to paragraphs 23. If the Department establishes, at any time during the term of this Agreement, a material breach in accordance with the terms and conditions of this Agreement, then the Department may terminate the Agreement and either continue cleanup at the State's expense and pursue cost recovery against the Applicant, or stop all State funded remediation work on the site and pursue enforcement against the Applicant.

22. **DELETE IF 100% DEP COST SHARE** The Applicant understands that during the course of site rehabilitation the Department may, based on the statutes, rules and guidance of the Department, revise the site rehabilitation strategy due to technical or cost considerations. Any changes made by the Department to the site rehabilitation strategy which will not increase the Applicant's allocation of total cleanup costs may be made unilaterally by the Department and will not require the Applicant's consent. However, in the event the Applicant elects, upon the Department's consent, to continue a more costly or aggressive site rehabilitation strategy at the

Applicant's sole cost and expense, the Department's obligation under this Agreement shall be suspended until such time as the Parties can mutually agree upon the appropriate future site rehabilitation strategy and cost.

23. **DELETE IF 100% DEP COST SHARE** The Applicant agrees to provide, within 30 days of execution of this Agreement, a copy of any and all agreements with the Agency Term Contractor performing site rehabilitation activities subject to this Agreement, including site access agreements. The Applicant shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its cost allocation commitment from the Agency Term Contractor, when such invoice is accompanied by a written approval by the Department of the work completed. Within 21 days of payment to the Agency Term Contractor, the Applicant shall provide to the Department proof of such payment, which shall include a copy of the Applicant's paid and canceled check to the Agency Term Contractor. Alternately, a certification by the Agency Term Contractor that the invoice amount specified in the certification was paid and indicating the date such payment from the Applicant was received by the Agency Term Contractor. Pursuant to Section 376.30711(6), F.S., it is unlawful for the Applicant to receive any remuneration, in cash or in kind, from the Designated Contractor performing site rehabilitation activities that are subject to this Agreement. The Applicant is further prohibited from entering into any agreement with the Agency Term Contractor that would have the effect of reducing the Applicant's cost allocation commitment under this Agreement.

24. **DELETE IF 100% DEP COST SHARE** The Applicant 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 or their authorized representatives shall have access, without cost, except reasonable cost 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.

MISCELLANEOUS

25. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapter 62-780, F.A.C. All other terms and conditions, including payments by the Department of its cost allocation under this Agreement, shall be construed in conformance with the provisions of Sections 376.3071 and 376.30714, F.S. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Section 287.058, F.S.

26. In addition to the limitations set forth in Section 376.30714, F.S., the applicable limitations and provisions governing the eligibility program referenced above as set forth in Florida Statutes and Department rules, including co-payments, deductibles and State funding caps, shall continue to apply. By entering into this Agreement, the Applicant is bound by the terms of this Agreement.

SRFA Administrator _____ Date _____

27. **DELETE IF 100% DEP COST SHARE** Any Party may terminate this Agreement for material breach of obligations. 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. In the event that the Department determines, in its sole discretion, that the Applicant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity including, but not limited to, suit for specific performance. In the event that the Department is in breach of this Agreement, then the Applicant reserves the right to exercise all remedies at law.

28. (a) This Agreement may be unilaterally canceled by Department for Applicant's failure or refusal to provide to the Department upon request, or to allow inspection and copying of, all documents, papers, letters, or other material made or received by Applicant in conjunction with this Agreement, unless the records are claimed and determined to be exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes. If Applicant fails to provide the public records to the Department within a reasonable time, the Applicant may be subject to penalties under s. 119.10, F.S.

(b) IF THE SRFA APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, FOR WHICH THIS CONTACT IS BLAKE MILLER AT (850) 245-8821 OR BLAKE.MILLER@DEP.STATE.FL.US OR DEPARTMENT OF ENVIRONMENTAL PROTECTION, 2600 BLAIRSTONE RD., MAIL STATION 4545, TALLAHASSEE, FL, FL 32399-2400. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Applicant to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, F.S., and made or received by the Applicant in conjunction with this Agreement.

29. Any notice or written communication required or permitted hereunder between the Parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, sent and received by electronic mail, or delivered in person to each appropriate Party Representative, as designated below. The Department shall give reasonable notice (and not less than any specifically required under this Agreement) of its inspection of documents, conduct of audits, review of files, request for information, request for copies or otherwise relating to the exercise of such rights as referred to in this Agreement. Party Representatives are as follows:

For the Department:

For the Applicant:

SRFA Administrator _____ Date _____

Jamie Lopez for the Program Administrator
Petroleum Restoration Program
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 4580
Tallahassee, Florida 32399-2400
Telephone Number (850) 245-8839
Jamie.L.Lopez@floridadep.gov

Applicant Name
Company Name
Applicant Address
Applicant Address Line 2
Applicant City, State and Zip Code
Applicant Telephone Number
Applicant Email Address

Each Party shall have the right to change its Representative upon 10 days written notice to all other Parties.

30. OWNERSHIP OF EQUIPMENT. Any equipment used for cleanup shall either be acquired or leased by the SRFA Applicant. If the equipment is leased each party shall pay its respective cost allocation. Equipment or machinery owned solely by a SRFA Applicant or purchased or leased directly by a SRFA Applicant shall remain the property and responsibility of that Party.

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

32. ASSIGNMENT. This Agreement shall not be assigned by any Party without prior written consent of the non-assigning Parties.

33. CHOICE OF LAW/FORUM. The Parties hereby agree that the laws of the State of Florida shall govern any and all actions or disputes arising out of this Agreement; and any such actions shall be brought in Leon County, Florida.

34. It is hereby understood and agreed that this Agreement states the entire agreement and understandings between the Parties, and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement or referenced in this agreement.

35. Any reference in this agreement to a specific time period refers to calendar days.

36. This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any party, by the Parties as between themselves or by any other person or entity not a Party. However, nothing in this Paragraph whatever is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of this Agreement against any Party to this Agreement by any Party to this Agreement.

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SRFA Administrator _____ Date _____

37. This agreement is effective upon execution by all of the Parties.

FOR THE APPLICANT:

Company Name

By: _____

Name: (NAME)

Title: _____

Date: _____

FOR THE DEPARTMENT:

Florida Department of Environmental Protection

By: _____

Name and Date: _____

Title: Program Administrator, Petroleum Restoration Program

Attachment A

