

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

This Site Rehabilitation Funding Allocation Agreement (“SRFAA” or “Agreement”) is entered into between the Florida Department of Environmental Protection and {SRFA applicant} (hereinafter known as the “Parties”). The purpose of this Agreement is to perform site rehabilitation on a cost share basis pursuant to Section 376.30714, Florida Statutes. In consideration of the mutual benefits to be derived herefrom, and other good and valuable consideration, 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. { SRFA applicant } (“Applicant”) is the entity that has assumed responsibility for the costs to remediate the non-program eligible contamination that is the subject of this Agreement. The Applicant’s mailing address is { SRFA applicant’s address, street, city, state and zip code}.

BACKGROUND

3. The facility {FDEP Facility Identification Number} located at {county name} County, Florida and known as the {site name} (hereinafter referred to as “Site”) has been found to have petroleum contamination. This cost sharing allocation is applicable to only the Petroleum Products’ Contaminants of Concern as noted in Chapter 62-770 Table A, F.A.C.
4. Petroleum contamination originating at the Site 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, F.S. **OR** Early Detection Incentive (“EDI”) Program pursuant to Section 376.3071(9), F.S. **OR** Petroleum Cleanup Participation Program (“PCPP”) pursuant to Section 376.3071(13), F.S. **OR** Petroleum Liability and Restoration Insurance Program (“PLRIP”) pursuant to Section 376.3072, F.S.], for the discharge[s] discovered on {date(s) (if more than one, list chronologically)} (“eligible discharge[s]”).
5. Pursuant to Section 376.30711, F.S., 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 the eligible discharges pursuant to Section 376.3071(5)(a), F.S., and Chapter 62-771, F.A.C..
6. A discharge of petroleum products that is not eligible for State funded cleanup was discovered on {Date} at this Site.
7. It is necessary for the discharger, 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.

8. It is appropriate for persons assuming responsibility for cleanup of non-eligible discharges at facilities with eligible discharges, to share 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. Based on the priority score of {score} established for the eligible discharge, the cleanup shall be funded as funding becomes available within the Departments preapproval program spending procedures.

10. The Applicant and the Department desire to enter into this Agreement in order to share the costs of site rehabilitation as set forth below in order to effect site rehabilitation pursuant to Sections 376.30711, 376.30714 and 376.309(2), F.S., and Chapter 62-770, F.A.C.

11. Consistent with Sections 376.3071(5), 376.30711 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.

DUTIES

12. If no contractor has been previously designated, pursuant to Section 376.30711, F.S., the Applicant shall submit a Contractor Designation Form to the Department for approval within 30 days of execution of this Agreement. If no contractor is designated, the Department will designate a State cleanup contractor.

13. The Parties shall each contract separately with a single site rehabilitation contractor (the "Designated Contractor") to effect site rehabilitation.

14. The Applicant shall require the Designated Contractor to submit work plans and related documents to the Department requesting approval for the site rehabilitation strategy pursuant to Chapter 62-770, F.A.C. The Department will review proposals and documents promptly in accordance with the internal procedures of the Preapproval Program. The Department will provide copies of reviews to the applicant in accordance with the internal procedures of the Preapproval Program.

15. The Department shall issue work orders for the Department's share of the rehabilitation costs directly to the Designated Contractor for implementation of the approved site rehabilitation strategy. Such work orders will be effective upon execution of each work order by the Department and the Designated Contractor. The Applicant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or issuance of work orders under this Agreement.

COST SHARE

16. The cost share allocation described in Attachment A is based on assessment data presented by {Consultant} and the historical information on file with the Department. {Provide a brief description of the cost share rationale}. Therefore, it has been established that the site rehabilitation of the eligible discharge will constitute {Percent}% of the total cost of site rehabilitation for both the eligible and non-eligible discharge.

17. Therefore, the percentage of the cost share for the site rehabilitation of the eligible and non-eligible petroleum discharges at the Site are as follows:

- a. Applicant = {Percent}%
- b. Department = {Percent}%

18. 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 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 the time of approval of a Remedial Action Plan (“RAP”), major RAP Modification, or at any time during the course of site assessment, remediation or monitoring, if a growing disparity of cleanup time frames or costs for the eligible and non-eligible discharges from the basis of this Agreement becomes evident.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT

19. The Department has made a cost-sharing commitment to pay {Percent}% of the total cost of site rehabilitation, as specified in Paragraph 17 and Attachment A. Pursuant to Sections 376.30711 and 376.30714, F.S., and Paragraph 1 of this Agreement, the Department will negotiate work orders with the Designated Contractor, and will thereby be responsible to the Designated Contractor solely for the Department’s percentage of its cost share as specified in the work orders. 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.

20. When site rehabilitation has been completed, the Department will issue a Site Rehabilitation Completion Order (“SRCO”) for the eligible and non-eligible discharges discovered on {Date} and {Date}. The issuance of the SRCO by the Department will complete the Department’s obligation to commit funds from the Inland Protection Trust Fund based on the eligible discharge, as well as the Applicant’s obligations except for any conditions that may be stipulated in the SRCO. If a limit to the Department’s contribution to site cleanup applies to the eligible discharge through a funding cap, then the expenditure of the funding cap shall complete the Department’s obligation to commit funds from the Inland Protection Trust Fund based on the eligible discharge.

COVENANTS AND REPRESENTATIONS OF THE APPLICANT

21. The Applicant specifically readopts and reaffirms the covenants and representations made in its application. To the extent that this Agreement does not specifically provide otherwise, the application terms and conditions, as well as the representations and covenants of the Applicant contained in the application, are hereby incorporated by reference.

22. The Applicant has made a cost-sharing commitment to pay {Percent}% of the total costs of site rehabilitation, as specified in Paragraph 17 and Attachment A. In this instance the Department has determined that the Applicant has sufficient resources and corporate commitment to its petroleum contamination cleanup obligations that initially provide adequate assurance to the Department of their ability to fulfill the obligations under this Agreement and eliminate the need for an additional site-specific means of financial assurance. 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.

23. 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 to cost share under this Agreement shall be suspended until such time as the Parties can mutually agree upon the appropriate future site rehabilitation strategy and cost.

24. The Applicant agrees to provide, within 30 days of execution of this Agreement, a copy of any and all agreements with the Designated Contractor performing site rehabilitation activities subject to this Agreement. The Applicant shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its cost share commitment from the Designated Contractor, when such invoice is accompanied by a written approval by the Department of the work completed. Within 40 days of payment to the Designated 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 Designated Contractor or a certification by the Designated Contractor that the invoice amount specified in the certification was paid and indicating the date such payment from the Applicant was received by the Designated Contractor. Pursuant to Section 376.30711, 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 Designated Contractor that would have the effect of reducing the Applicant's cost share commitment under this Agreement.

25. 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

26. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapter 62-770, F.A.C. All other terms and conditions, including payments by the Department of its cost share under this Agreement, shall be construed in conformance with the provisions of Sections 376.30711 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.

27. 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.

28. 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.

29. 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.

30. Any notice or written communication required or permitted hereunder between the Parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, 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:

Michael E. Ashey, Chief
Bureau of Petroleum Storage Systems
Florida Department of Environmental
Protection
2600 Blair Stone Road, MS 4575
Tallahassee, Florida 32399-2400
Phone (850)245-8821

For the Applicant:

{Contact Name}
{Company Name}
{Company Address}
{Company City, State, Zip}
Phone {Company Phone}

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

31. **OWNERSHIP OF EQUIPMENT.** Upon completion of site rehabilitation, the Parties shall cause an inventory to be performed of any equipment purchased by the Parties as part of the shared costs. The Parties shall then mutually agree upon an appropriate division of such equipment based upon their respective proportionate share of payment of the shared costs. During the term of this Agreement, any equipment purchased by the Parties shall only be used at the Site that is the subject of this Agreement or other facilities where the Parties have an executed Funding Allocation Agreement. Equipment or machinery owned solely by a Party or purchased or leased directly by a Party (other than a shared cost) shall remain the property of that Party.

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

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

34. **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.

35. 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.

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

37. 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.

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

FOR THE APPLICANT:

FOR THE DEPARTMENT:

(name)

(name)

Title: _____

Title: _____

Date: _____

Date: _____

Name of Corporation:

(if applicable)

Corporate Seal

Attachment A