

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE: **RPO Name**
Address
City, FL Zip Code
Folio Number: _____
FDEP Facility ID# _____

VOLUNTARY CLEANUP AGREEMENT PURSUANT TO SECTION 376.3071(12)(a), F.S.

This Voluntary Cleanup Agreement (“Agreement”) is entered into between the State of Florida Department of Environmental Protection (“Department” or “FDEP”), and **[Insert RPO Name]** (hereinafter referred to as the “Real Property Owner”), to reach agreement on a schedule to conduct site rehabilitation pursuant to Section 376.3071(12)(a), Florida Statutes (“F.S.”). Compliance with the Agreement abates the Department’s **[Insert Reason for VCA; i.e., Order for Access for Contamination Assessment or Remedial Action, dated (Insert Date)]**. The parties agree to the following:

1. 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.

2. **[Insert RPO Name]** is the “Real Property Owner” as defined in Section 376.301, F.S., and owns the real property referred to as **[Insert current or former Name of the facility]**, located at **[Insert Address]** in the City of _____, in _____ County, Florida (the “Property”), identified in Department records as FDEP Facility ID# _____ that is the subject of this Agreement. The Property is described in **Exhibit A**, incorporated by reference herein, which is a composite exhibit that includes evidence of ownership in the form of a deed and a legal description, as well as a map identifying the location of the Property. The Property is contaminated with “petroleum” or “petroleum product” as the term is defined in Section 376.301(32) and (33), Florida Statutes. Petroleum contamination was reported to the Department on **[Insert Date]** (“Discharge”) and the Department determined the Discharge eligible for a State-funded restoration program, specifically **[Insert Program Name; i.e., the Florida Petroleum Liability and Restoration Insurance Program (“PLRIP”), Early Detection Incentive (EDI), etc.]** on **[Insert Date of eligibility determination]**. *{If there are other eligible discharges, enumerate each in the same manner except that they shall be collectively referred to as “Discharges” and each discharge shall be referred to as “DATE Discharge”}. If there is other petroleum contamination on the property, mention it, and indicate PRP’s expectation for the RP to clean up that contamination along with the eligible contamination – if that is NOT the expectation, please discuss with OGC. If there is other non-petroleum contamination on the*

property, specify the type and location of the contamination and which program/document provides oversight (e.g., for hazardous waste refer to the RCRA Permit).} No other contamination that may be found at the Property is eligible for state-funded site rehabilitation program.

3. Notwithstanding the Discharge's eligibility in a State-funded Petroleum Restoration program, the Real Property Owner has agreed to conduct voluntary "site rehabilitation" at the petroleum "Contaminated Site," as these terms are defined in Paragraph 4 below, in accordance with Section 376.3071(12)(a), F.S. Voluntary "site rehabilitation," including assessment activities, does not affect the Discharge's eligibility. Voluntary site rehabilitation costs incurred by the Real Property Owner under the Agreement shall not be reimbursed by the Department and cannot be counted toward any deductible required by a State-funded Petroleum Restoration program. The Real Property Owner agrees to obtain any local, state or federal approvals or permits required for the site rehabilitation work and to conduct the necessary site rehabilitation consistent with local, state, and federal laws, rules and ordinances. All site rehabilitation shall be consistent with the cleanup criteria in Section 376.3071(5), F.S., the requirements of the Contaminated Site Cleanup Criteria Rule, Chapter 62-780, Florida Administrative Code (F.A.C.), and the Contaminant Cleanup Target Levels Rule, Chapter 62-777, F.A.C. For the purpose of this Agreement, the Real Property Owner meets the definition of Person Responsible for Site Rehabilitation ("PRSR"), pursuant to Chapter 62-780.200, F.A.C. If construction activities are planned for this property prior to the completion of the site rehabilitation, such activities must not cause further spreading of and/or exacerbate the contamination.

4. **Definitions.** "Contaminated Site," as defined in Section 376.301(11), F.S., means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment. The Contaminated Site is defined irrespective of property boundaries; therefore, the Contaminated Site at issue may extend beyond the boundaries of the Property. "Site rehabilitation," as defined in Section 376.301(43), F.S., means the assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site.

5. **Site Rehabilitation Schedule.** Attached hereto and incorporated herein as **Exhibit B** is the Site Rehabilitation Schedule ("Site Rehabilitation Schedule") for the Contaminated Site. Continued compliance with this Agreement, including compliance with Chapters 62-780 and 62-777, F.A.C. and the Exhibit B Site Rehabilitation Schedule, constitutes compliance with the requirements of Section 376.3071(12)(a), F.S.

6. **Imminent Hazard.** Nothing herein shall be construed to limit the authority of the Department to undertake any action in response to, or to recover the costs of responding to, conditions at

or from the Property that require the Department to take action to abate an imminent hazard to the public health, welfare or the environment.

7. **Submittals and Notifications.** An electronic or paper copy of all reports, plans and data required by this Agreement that are submitted to the Department should be sent to the Site Manager, [[Insert Site Manager's Name](#)], or his/her successor, at [[Address](#)], [[City](#)], Florida [[Zip Code](#)]; [[Email Address](#)] and PRPInspector@dep.state.fl.us. The Department prefers electronic submissions. Notification of field and remediation activities shall be performed in accordance with Chapter 62-780, F.A.C. and Exhibit B, and sent to the site manager and inspector email addresses identified in this Paragraph. Prior notification of construction activities at the Property is not required; however, within 30 days of modifying current structures on the Property, or 30 days prior to termination of this Agreement per Paragraph 11, the Real Property Owner agrees to submit copies of current site layout plans to the Department for its records.

8. **Document Review.** The Department shall review any submitted plan or report required by this Agreement and will provide the Real Property Owner with written responses as to the completeness and technical adequacy of the submittals. If additional information is necessary for the Department to evaluate the plan, or if the Department identifies incompleteness or technical inadequacy, the Department will make a written request to the Real Property Owner for additional information or revisions. The Real Property Owner shall provide all requested information or revisions in writing to the Department within the time limits specified in the Exhibit B Site Rehabilitation Schedule, from date of receipt of said request, or such longer period of time as specified by the Department. Actions required by any approved plan shall be completed within the timeframes identified in the Exhibit B Site Rehabilitation Schedule, upon receipt of the Department's written notification to the Real Property Owner that the plan or report has been approved. If, after reasonable requests for additional information by the Department and failure by the Real Property Owner to reasonably respond to such requests, a plan or report is not approved by the Department, then the Department, at its discretion, may continue to request additional information or modifications to the submission with time-certain deadlines, or notify the Real Property Owner that it believes the Real Property Owner is out of compliance with this Agreement and Chapter 62-780, F.A.C. In such event, the Department may terminate this Agreement pursuant to the provisions in Paragraph 10 and 11 below and pursue any remedies legally available to it.

9. **Delay.** If any event occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Agreement, then the Real Property Owner may request an extension of time to comply with the affected requirements. The Real Property Owner shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Real Property Owner and could not have been or cannot be overcome by the Real Property Owner's due diligence (i.e., good cause). Economic circumstances shall not be considered circumstances beyond the control of the

Real Property Owner, nor shall the failure of a contractor, subcontractor, material man or other agent (collectively referred to as “contractor”) to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of the Real Property Owner, unless the cause of the contractor’s late performance was also beyond the contractor’s control. Per Rule 62-780(3), F.A.C., the Real Property Owner shall notify the Department in writing at least 20 days prior to the time the action to be delayed was to be initiated. If emergency situations at a site do not allow for a full 20 days’ notice, the request shall detail such emergency situation. Within 20 days of receipt of a request for modification, the Department shall notify the Real Property Owner in writing whether modification of the time frame will be allowed or if additional information regarding the request is needed. Within 20 days of receipt of the additional information, if applicable, the Department shall notify the Real Property Owner in writing whether modification of the time frame will be allowed. Applicable deadlines will be tolled while a request for modification of a time frame is pending. Failure of the Real Property Owner to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of the Real Property Owner’s right to request an extension of time for compliance with the requirements of this Agreement. The Site Rehabilitation Schedule attached as Exhibit B may be amended in writing by the mutual consent of the Department and the Real Property Owner.

10. **Failure to Comply.** Nothing in this Agreement relieves the Real Property Owner of the obligation to comply with all applicable rules. Non-compliance with applicable rules shall be grounds for termination of this Agreement but shall not terminate any obligation to conduct site rehabilitation that the Real Property Owner may otherwise have. Time is of the essence in conducting site rehabilitation at the Contaminated Site. Failure to strictly comply with the Site Rehabilitation Schedule set forth in Exhibit B shall be considered a breach of this Agreement and shall constitute grounds for termination of this Agreement. If the Real Property Owner fails to comply with the provisions of this Agreement, the Department will notify the Real Property Owner in writing of any breach of this Agreement. The Real Property Owner will have 60 days from receipt of the letter from the Department to return to compliance or to negotiate a modification to this Agreement with the Department for good cause shown. If compliance or a modification is not obtained, or if the Real Property Owner chooses, this Agreement will be terminated per Paragraph 11. The 60-day grace period does not apply if an imminent hazard exists at the site. If such imminent hazard exists, the Real Property Owner shall act immediately to abate the hazard.

11. **Termination.** If the Real Property Owner does not return to compliance with this Agreement or negotiate a modification to this Agreement with the Department, the Department will terminate the Agreement by providing at least 30 days prior written notice to the Real Property Owner. The Real Property Owner may also choose to terminate this Agreement at any time by providing 30 days prior written notice to the Department. If the Agreement is terminated for any reason, the Discharge shall

return to the priority ranking previously held to await state funded cleanup. Upon termination, the Real Property Owner shall inform the Department of the current status of assessment and remediation performed to date, including if any open excavations or remediation equipment remains on the Property. The Real Property Owner shall submit to the Department all documentation of assessment and/or remediation performed to date that have not been submitted to the Department in regard to the Discharge, including but not limited to, written environmental reports, laboratory reports, field notes, sampling logs, site plans, surveys, site building layouts, photographs, chains of custody, and manifests. Any investigation derived waste (IDW) that exists on the Property shall be properly disposed of off-site. Lastly, the Real Property Owner shall inform the Department about the existence of any monitoring wells on the Property, their current state and security, and whether those wells will be abandoned per Rule 62-532.500(5), F.A.C., or alternatively, requested to be transferred to the Department for its use, provided the Department concurs.

12. **Assignment.** If the Real Property Owner becomes divested of all ownership interest in the Property, the Real Property Owner shall notify the Department of the change in ownership within 30 days after such divestiture. The Real Property Owner shall not assign any rights or responsibilities under this Agreement to any other party without the written consent of the Department. However, the Department shall not withhold its consent to such an assignment if the proposed assignee has agreed, in writing, to assume all obligations of the Real Property Owner under the terms of this Agreement, including the Exhibit B schedule and timely performance of site rehabilitation tasks. The assignment shall be effective only upon the execution of an amendment to this Agreement by the assignee and the Department. Any lapses in tasks, whether due to assignment or otherwise, will be considered non-compliance with this Agreement and may be considered grounds for termination as described in Paragraphs 10 and 11. The Real Property Owner may not assign this Agreement if the Real Property Owner is not in compliance with its terms.

13. **Site Access.** During the time period for implementation of this Agreement, the Real Property Owner agrees to allow the Department access to the Property and further gives consent to the Department and its selected contractor for the collection of samples of any wastes, wastewaters, sludges, air, soils, groundwater, surface water, or sediments from any location on the Property upon reasonable notice. Nothing in this Paragraph shall be construed to indicate that the Department surrenders its rights under Sections 403.091 and 403.858, F.S.

14. **Governing Law.** This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida and any applicable local regulations. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in

connection herewith shall be brought in Leon County, Florida.

15. **Entirety of Agreement.** This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement, unless otherwise provided herein.

IN WITNESS WHEREOF, each of the parties has made and executed this Voluntary Cleanup Agreement on the date set forth for each signature of each representative below:

[SIGNATURES APPEAR ON THE NEXT TWO PAGES]

FOR THE REAL PROPERTY OWNER:

Print Name of Real Property Owner (or duly authorized representative)

Title: _____

Signature of Real Property Owner (or duly authorized representative)

Mailing Address of Real Property Owner (or duly authorized representative)

Phone Number of Real Property Owner (or duly authorized representative)

Email Address of Real Property Owner (or duly authorized representative)

Date

FDEP Facility ID: _____

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DONE AND ORDERED this _____ day of _____, 2019, in _____, Florida.

EXECUTION AND CLERKING

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Natasha Lampkin
Program Administrator
Petroleum Restoration Program

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

Property Owner
Site Manager
Appropriate District/County Contact

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date