

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 22, 2016

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

Department: Airports

Submitted By: Department of Airports

Submitted For: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: a Resolution establishing a standard form Advanced Cleanup Application (Application) and a standard form Advanced Cleanup Program Agreement (Agreement) with the Florida Department of Environmental Protection (FDEP); authorizing the County Administrator or his or her designee to execute the standard form Application and Agreement; providing for maximum cost-sharing commitment; providing for severability; and providing for an effective date.

Summary: The Resolution establishes a new standard form Application and Agreement for use with FDEP's Advanced Cleanup (AC) Program for environmental remediation on County-owned property. The Application and Agreement are FDEP standard forms, and are required for FDEP to consider a proposal to share in the cost of expedited site rehabilitation pursuant to the AC Program. The maximum cost-share for any individual Application or Agreement provided for under the Resolution shall be \$250,000. Countywide (AH)

Background and Justification: Certain airport properties, upon which petroleum discharges have occurred, are eligible for state-funded cleanup, but because funding is given to sites with higher-priority scores, state-funded cleanup may not occur in the foreseeable future. Alternatively, sites may be remediated on a more expedited basis under the AC Program, which requires the applicant to propose a cost-sharing commitment of at least 25%. Applications are ranked and awarded by FDEP based on the highest cost-share percentage proposed. The Department currently anticipates submitting an application for the AC Program for a former Palm Tran facility located at Palm Beach International Airport where a petroleum discharge occurred in 1987. Because agreements for the AC Program are awarded on a competitive basis, the Department may be required to submit more than one application prior to acceptance in the AC Program. Expedited remediation will assist in making the site available for development. Approval of the standard forms will also enable the Department to timely pursue advanced clean-up for other eligible sites in the future.

Attachments:

- ## 1. Resolution

Recommended By:  10/25/16
Department Director Date

Approved By: for [Signature] 11/2/16
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT *	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
Budget Account No: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* The Resolution authorizes a standard form Application and Agreement. The fiscal impact of an individual Application and Agreement, if approved by FDEP, will not exceed \$250,000.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

[Signature]
OFMB ET 10/24

[Signature] 10/31/16
Contract Dev. and Control

B. Legal Sufficiency:

Anne Helgent 11/1/16
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01
(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

RESOLUTION NO. R-2016-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING A STANDARD FORM ADVANCED CLEANUP APPLICATION (APPLICATION) AND A STANDARD FORM ADVANCED CLEANUP AGREEMENT (AGREEMENT) WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP); AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS OR HER DESIGNEE TO EXECUTE A STANDARD FORM APPLICATION AND AGREEMENT; PROVIDING FOR A MAXIMUM COST-SHARING COMMITMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Palm Beach County ("County") owns and maintains property within the airport system in Palm Beach County, Florida, managed by the County's Department of Airports (collectively, the "Airports"); and

WHEREAS, Florida Department of Environmental Protection ("FDEP") maintains an "Advanced Cleanup Program" ("Program") whereby property owners may apply to receive prioritized assessment, removal, monitoring and remediation of contamination on property ("Remediation") on a cost-share basis; and

WHEREAS, it is in the public interest to complete Remediation on the Airports; and

WHEREAS, FDEP requires an owner of property seeking to participate in the Program to execute FDEP's standard form application, in the form attached hereto as Attachment "A" ("Application"); and

WHEREAS, when an Application is accepted by FDEP, the property owner must execute FDEP's standard form agreement, in the form attached hereto as Attachment "B" ("Agreement"); and

WHEREAS, the Board of County Commissioners ("Board") desires to authorize the County Administrator or his or her designee to execute the Application and the Agreement; and

WHEREAS, the delegation to the County Administrator or his or her designee to execute the Application and the Agreement would eliminate delays caused by requiring the Application and the Agreement to be brought before the Board for approval, which is consistent with the goal of the Board to streamline the agenda process.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the meaning ascribed to them in the Application and Agreement.

2. **Standard Form Documents.** The Board hereby authorizes the County Administrator or his or her designee to execute the standard form Application and Agreement, attached hereto and incorporated herein by reference as Attachment "A" and Attachment "B", respectively, on behalf of the Board of County Commissioners. The County Administrator or his or her designee is hereby authorized to execute standard form Applications and Agreements that include non-material changes, or incorporate new Board policies. For purposes of this Resolution, "non-material changes" means changes that do not modify the substantive obligations of the County. For purposes of this Resolution, the Director of the Department of Airports shall be considered to be a designee of the County Administrator.

3. **Maximum Cost-Sharing Commitment.** The Program requires a cost-share commitment on the part of the applicant. The maximum cost-share for any single standard form Application or Agreement provided for under this Resolution shall be Two Hundred Fifty Thousand Dollars (\$250,000).

4. **Severability.** If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

5. **Effective Date.** This Resolution shall become effective immediately upon adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

District 1:
District 2: Paulette Burdick
District 3:
District 4: Steven L. Abrams
District 5:
District 6: Melissa McKinlay
District 7:

The Mayor thereupon declared this Resolution duly passed and adopted this ____ day of _____, 20__.

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: Anne Delgent
County Attorney

**ATTACHMENT “A”
TO
RESOLUTION**

ADVANCED CLEANUP APPLICATION FORM

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

ADVANCED CLEANUP APPLICATION

In accordance with Section 376.30713, Florida Statutes (F.S.), the Florida Department of Environmental Protection (herein referred to as the Department) is accepting applications from owners, operators, or persons otherwise responsible for site rehabilitation at sites eligible for restoration funding under the Early Detection Incentive Program (EDI), Abandoned Tank Restoration Program (ATRP), Petroleum Liability and Restoration Insurance Program (PLRIP) or the Petroleum Cleanup Participation Program (PCPP). Applications will be accepted by the Department of Environmental Protection, Division of Waste Management, Petroleum Restoration Program, Bob Martinez Center, 2600 Blair Stone Road, MS #4580, Tallahassee, Florida, 32399-2400 **until 5:00 P.M. on January 3, 2017**. One paper copy and one electronic copy of all applications must be in a sealed envelope, and contain the non-refundable application review fee of \$250.00 as described below. Applications received after 5:00 P.M. on January 3, 2017, will not be considered and will be returned to the applicant unopened. Applications received beginning November 1, 2016, and on or before 5:00 P.M. on January 3, 2017, shall be publicly opened at the Department of Environmental Protection located at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, in Room 433, on January 6, 2017, beginning at 9:00 A.M. Applications will be considered received by the Department when the sealed application is opened, and only at this time shall it be subject to Section 119.07(1), Florida Statutes.

A separate application must be submitted for each site either as an individual site application or as part of a bundled application package. Only one application per site shall be submitted during this application period. Only one proposed course of action and one proposed cost share shall be submitted in the application.

NOTE: If the Limited Contamination Assessment Report (LCAR) cannot be enclosed in the sealed envelope, it may be included in a separate package with the following statement appearing on the package: "Section VI of the Advanced Cleanup Sealed Application for Facility No. _____." In addition, all packages submitted in support of this application must contain the facility identification number and indicate the package number of the total number of packages submitted (i.e. Package 1 of 2, Package 2 of 2, etc.). Finally, packages should be bound together, with the sealed envelope on top, to avoid separation during mailing.

NOTE: THERE IS AN ADDITIONAL APPLICATION FORM FOR APPLICANTS PURSUING A BUNDLED PERFORMANCE BASED CONTRACT.

The information requested below must be provided to enable the Department to properly review and consider your application.

I. General Site Information

Facility Identification Number: _____

Facility Name: _____

Facility Location: _____
[Street Address/Location]

[City] [County] Florida [Zip Code]
[State]

Real Property Owner: _____

Real Property Owner's Address: _____

[City] [State] [Zip Code]

Real Property Owner's Phone Number: (_____) _____
[Area Code] [Phone Number]

Real Property Owner's email: _____

II. Applicant Information

Name of Applicant (if different than the current real property: _____

Applicant's Address: _____
[Mailing Address]

[City] [State] [Zip Code]

Applicant's Phone Number: (_____) _____ - Daytime Phone
[Area Code] [Phone Number]

Applicant's Email: _____

Applicant's Relationship to the Facility (mark appropriate choice):

_____ Real Property Owner

_____ Real Property Operator

_____ Real Property Owner and Operator

_____ Person Otherwise Responsible for Rehabilitation (supply an explanation below
and attach documentation supporting this relationship)

Explanation: _____

III. Site Eligibility (mark appropriate selection(s) if more than one discharge):

- _____ Early Detection Incentive Program (EDI)
- _____ Abandoned Tank Restoration Program (ATRP)
- _____ Petroleum Liability and Restoration Insurance Program (PLRIP)
- _____ Innocent Victim Program (IVP)
- _____ Petroleum Cleanup Participation Program (PCPP)

IV. Applicant's Cost Share/Saving Commitment

Per 376.30713(2)(b)(I)-(II), the cost share commitment for individual sites may be submitted on one of two formats:

1. For an individual application proposing that the Department enter into a Performance-Based Contract (PBC) may use a commitment to pay, a demonstrated cost savings, or both.
2. For an individual application relying on a demonstrated cost savings to the Department, the applicant shall, in conjunction with the proposed Agency Term Contractor (ATC), establish and provide in the application the percentage of cost savings to the Department for cleanup of the sites under the application compared to the cost of cleanup of the same site using the current rates provided to the Department by the proposed ATC.

In order to be considered for Advanced Cleanup (AC) funding, applicants in the EDI, ATRP, PLRIP or IVP Programs must commit to provide cost share/cost savings of no less than 25% of the proposed course of action exclusive of the cost for the limited contamination assessment report (LCAR) and any costs previously expended on this site. Applicants in the PCPP Program must also commit to provide cost share/cost savings of no less than 50% of the proposed course of action exclusive of the cost for the limited contamination assessment report (LCAR) and any costs previously expended on this site. The Department shall rank applications received based on the percentage of cost-sharing/savings commitment proposed by applicants, with the highest ranking given to the applicant that proposes the highest percentage of cost-sharing. If the Department receives applications that propose identical cost-sharing/saving commitments and which exceed the funds available to commit to all such proposals during the advanced cleanup application period, the Department shall notify the group of applicants appearing in the identical cost-share/saving category and provide these applicants a second opportunity to revise their cost-share/saving commitment percentage. If such an opportunity is offered, the date and time for submittal of a revised cost-share/saving commitment percentage shall be included in the request that is mailed to such applicants.

Pursuant to Section 376.30713 (4), F.S., the Department is authorized to enter into contracts for a total of up to **\$15 million** of advanced cleanup work for this AC application round.

STATEMENT OF APPLICANT:

Cost Share: As an applicant for the Advanced Cleanup Program, the applicant commits to pay _____% of the total cost of the proposed course of action. The undersigned applicant understands that any expenditures made prior to the execution of a contract with the Department will not be eligible for funding under the Advanced Cleanup Program. The current estimated total cleanup cost for the proposed course of action for this facility is \$ _____.

Cost Savings: If the applicant also commits to demonstrate a cost savings, as part of an application, the percentage (%) of the demonstrated cost savings (as explained by the applicant in the proposed course of action) will be _____% of the current estimated total cleanup cost for the site.

V. Contractor Recommendation

The contractor performing the work with this Advance Cleanup Agreement must either be a current agency term contractor with the Department recommended by the applicant or the work must be competitively bid by the Department. The applicant must submit a completed and signed Site Contractor Recommendation Form with the AC application if they recommend an Agency Term Contractor.

VI. Limited Contamination Assessment Report (LCAR)

The purpose of the LCAR is to support the proposed course of action and the associated cost estimate. An LCAR will be required in the application package for the Advanced Cleanup Program as stated in Section 376.30713 Florida Statutes (F.S.). The LCAR must be sufficient and conform to the requirements set forth in the attached LCAR guidance document dated June 9, 2000 and the Required Information and Data for the Application Package. If there are any conflicts between that guidance and the instructions in this AC bid package, the instructions in the AC bid package shall govern.

The **LCAR MUST PROVIDE SUFFICIENT SOIL AND GROUNDWATER DATA** to **characterize** and **delineate** the contamination at the site and contamination migrating off the site so that a reasonable remediation strategy and cost estimate can be developed. Along with any available historical data, soil laboratory analytical data no older than 5 years old for historic contaminated areas must be provided and be sufficient to justify the proposed remedial activity for soil cleanup. The latest groundwater analytical data presented in the LCAR must not be older than 270 days (9 months) from the time of the application per Chapter 780.700(3)(c) F.A.C. All soil and groundwater data must be presented in proper Table and Figure format.

If, in the determination of the Department, the LCAR is insufficient and does not meet the requirements set forth in Section VI of this application, the application shall be deemed non-responsive and will not be considered. Any costs incurred related to conducting the LCAR are not payable from the Inland Protection Trust Fund which supports the Advanced Cleanup Program.

NOTE: As stated earlier, if the information for this section cannot be enclosed in the sealed envelope, it may be included in a separate package with the following statement appearing on the package: "Section VI of the Advanced Cleanup Sealed Application for Facility No. _____." In addition, all packages submitted in support of this application must contain the Facility identification number and indicate the package number of the total number of packages submitted (i.e. Package 1 of 2, Package 2 of 2, etc.). Finally, packages should be bound together, with the sealed envelope on top, to avoid separation during mailing.

VII. Proposed Course of Action:

The applicant must provide the proposed course of action including the total estimated cleanup cost (using the ATC SPI unit rates) and the timetable for conducting the activities described in the proposed course of action. If the proposed course of action does not include the required cost estimate and timetable, the submittal will be deemed non-responsive. The Agreement requires the parties to continue with the work under the Agreement regardless of changes in ranking or score.

Proposals for less than total cleanup (i.e., not reaching an SRCO) may be appropriate in cases where the cost of total cleanup pursuant to Rule 62-780.680, F.A.C. (with or without conditions) will cause the Department to exceed the \$5 million annual limit pursuant to Section 376.30713(4), F.S. If the proposed course of action is for less than total cleanup, the applicant must clearly demonstrate that the proposed course of action will achieve substantial environmental and economic benefits to the state. Failure to clearly demonstrate substantial environmental and economic benefits to the state may result in unsuccessful negotiation of the Advanced Cleanup Agreement.

VIII. Non-refundable Application Review Fee

All applicants must include a cashier's check or money order (**DO NOT SEND CASH, PERSONAL CHECKS OR CORPORATE CHECKS**) issued to the "Florida Department of Environmental Protection" for the amount of \$250.00 to cover the non-refundable application review fee in order for your application to be reviewed for responsiveness. Failure to submit the non-refundable application review fee as required above shall result in your application package being disqualified from further consideration.

All applicants submitting incomplete application packages shall forfeit the non-refundable application review fee of \$250.00.

IX. Site Access Agreement

Site Access Agreements must be submitted with the application and be signed by each owner of the Property that is part of the application by an authorized representative (See the Department's OGC internet website, Enforcement Manual, appendix). The Site Access Agreement must be the current PRP Site Access Agreement dated 5/19/15 and include the following:

- A printout of the County Property Appraiser's Parcel and Property Information. If ownership has recently changed and the County Property Appraiser's website has not been updated to reflect the ownership change, include a copy of the recorded deed.
- A completed and signed by each property owner Site Access Agreement or similar permissions that do not violate state law (i.e., Ch. 376, 119, & 768, Florida Statutes).
- A completed and signed Site Access Agreement or similar permissions that do not violate state law for any long-term tenant or leasee with a lease recorded in the County records.

Please submit an electronic copy of the entire Application Package.

X. Conflict of Interest

The Department believes that the president or manager of an Agency Term Contractor who is also an owner, president or manager of the LLC that owns the property that is the source of contamination that is eligible for a state-funded cleanup constitutes a conflict of interest pursuant to the Agency Term Contract (ATC), paragraph 30. Subparagraph 30.A. of the ATC states that the contractor will not "acquire any interest which would conflict in any manner or degree with its performance of this" ATC. Contractors are then instructed by subparagraph 30.B. to notify the Department of any "contractual or other business relationships between the Contractor... and any of the persons or entities who are, or may be, responsible for contamination of a site on which it is assigned work." Paragraph 30.D. defines a business relationship and a contractor or subcontractor is "deemed to have had a business relationship with one of the responsible parties for site contamination if it has had a relationship with a parent organization, or subsidiary, a predecessor or a successor of such party, or if it has been engaged by independent legal representatives on behalf of any such parties. In addition, Contractor will be conclusively determined to have a conflict of interest with regard to any site, if it has given or offered remuneration, in cash or in kind, directly or indirectly, to the site owner or operator, or his or her designee to obtain the work associated with such site."

If there is the appearance of a potential conflict of interest, among the affiliates and/or the contractor, the Applicant shall be given 3 business days from date of notification by the Department to provide documentation that proves otherwise. The documentation must prove to the satisfaction of the Department there is no conflict of interest. If the Applicant fails to produce documentation to Departments satisfaction within the stated timeframe the application (including bundles) will be rejected in their entirety.

XI. Applicant's Certification

The undersigned applicant, under penalty of perjury, hereby certifies that he or she has the authority to negotiate and enter into an advanced cleanup contract with the Florida Department of Environmental Protection and qualifies as an applicant pursuant to Section 376.30713(2) F.S.

Signature of Applicant

Date of submittal

Print Name of Applicant

Applicant's Title with legal authority to bind the entity.

(If applicant's name is not listed with the Florida Division of Corporations, provide documentation or legal opinion from the entity's attorney of evidence of authority to bind the corporation, LLC, etc.)

Name of Corporation, LLC or Partnership
(if applicable)

ATTACHMENT "B"
TO
RESOLUTION

ADVANCED CLEANUP PROGRAM AGREEMENT FORM

ADVANCED CLEANUP PROGRAM AGREEMENT
DEP CONTRACT NO. AC xxx

This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter "Department"), whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida, and xxxxxxxxx (hereinafter "Applicant"), whose mailing address is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (collectively the "Parties") to perform preapproved advanced cleanup of certain contamination which is described in **Attachment A** of this Agreement at the xxxxxxxxxxxxx Facility located at xxxxxxxxxxxxxxxxxxxxxxxxx County, FDEP Facility I.D. #xx/xxxxxxx.

WHEREAS, in accordance with Section 376.30713, Florida Statutes (F.S.), the Department is authorized to approve an application for preapproved advanced cleanup at eligible sites, prior to funding based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S.;

WHEREAS, in accordance with Section 376.30713, F.S., the Department accepted Applicant's Advanced Cleanup (AC) application based on the Applicant's representations and covenants contained therein;

WHEREAS, consistent with Sections 376.3071(5) and 376.30711, F.S., and the rules and guidance adopted thereunder, the Department, in consultation with the Applicant and based on the Applicant's Limited Contamination Assessment Report and cost and schedule estimates, has conceptually agreed to the site rehabilitation strategy described in Attachment A, which the Applicant understands may be different than the course of action proposed in the AC application; and

WHEREAS, the Applicant and the Department desire to enter into an Agreement to share the costs of site rehabilitation as set forth below in order to effect site rehabilitation pursuant to Sections 376.3071, 376.30711 and 376.30713, F.S., and Chapter 62-780, Florida Administrative Code (F.A.C.).

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

GENERAL.

1. Pursuant to chapter 62-772, F.A.C., the Applicant shall select a Petroleum Restoration Program ("PRP") Agency Term Contractor ("Contractor") to perform all work under this Agreement pursuant to the terms and conditions contained in the "Agency Term Contract" with the PRP. The Applicant shall contract separately with the Contractor to comply with Paragraphs 11 through 14 of this Agreement to effect site rehabilitation. The Applicant agrees to cause the Contractor to submit Work Assignment Plans in alignment with the submitted rehabilitation strategy to the Department for internal review and

agreement upon the final scope of services. The Department will review such proposal plans promptly in accordance with the internal procedures of the PRP including the Agency Term Contract and, if sufficient funding is available, will issue Work Assignments directly to the Contractor for implementation of the approved site rehabilitation strategy. The Contractor will submit the final Work Assignment Plan to the Department with their approved Term Contract Rate Sheet for development of the Purchase Request within the "My Florida Marketplace" (MFMP) procurement system. MFMP will issue a Purchase Order (P.O.) for the Contractor to begin the Work Assignment. The Work Assignment may proceed once the Department notifies the Contractor to start the rehabilitation work. Each Work Assignment is subject to the availability of funding at the time that the Work Assignment is fully executed by the Department and Contractor.

2. 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 share under this Agreement shall be construed in conformance with the provisions of Sections 376.3071, 376.30711 and 376.30713, F.S.

3. In addition to the limitations set forth in Section 376.30713, F.S., the limitations and provisions governing the (*site eligible state funded program*) as set forth in Section 376.3071, F.S., shall continue to apply. By entering into this Agreement, the Applicant is bound by the terms of this Agreement, even in the event that the facility's priority score comes in to funding range and would otherwise entitle the Applicant to proceed with site rehabilitation under Sections 376.3071 and 376.30711, F.S., during the term of this Agreement.

4. 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, attached hereto as **Attachment A**, due to technical or cost considerations. Any changes made by the Department to the site rehabilitation strategy which will not increase the Applicant's share of total cleanup costs specified in Paragraphs 6 and 12 may be made unilaterally by the Department and will not require the Applicant's consent. However, in this event the Applicant may elect, upon the Department's consent, to continue a more costly or aggressive site rehabilitation strategy at the Applicant's sole cost and expense, and 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 costs. Changes proposed by the Department to the site rehabilitation strategy which would increase the Applicant's share of total cleanup costs in excess of the amount contemplated in Paragraph 6 will be made only with the Applicant's consent.

TERM OF AGREEMENT AND SPENDING LIMITS.

5. This Agreement is effective on the date of execution and shall be in effect for **48** months. The Department reserves the right to renew this Agreement for an additional period of time not to exceed the original term of the Agreement in order to effect site rehabilitation. The Agreement may be terminated earlier upon mutual agreement of the Parties. Additionally, the Department will not renew this Agreement if substantial progress is not made towards site rehabilitation on an annual basis and will terminate the Agreement.

6. The Department and the Applicant have estimated, based upon the site rehabilitation strategy and the submitted assessment documents, total costs under this Agreement by both parties cumulatively for the specified site rehabilitation activities to be estimated at **\$xxxxxxx** (the "Estimated Cost"). The maximum amount of State funding that may be available under this Agreement is **\$xxxxxxx**, which represents the Department's estimated cost share (plus an additional reserved amount of 20% added to the Department's cost share) of the total costs of site rehabilitation. The Applicant recognizes that the Department's funding of site rehabilitation costs is subject to the availability of funding at the time each Work Assignment is fully executed, pursuant to Paragraph 1. The Parties understand that this Agreement shall not result in the encumbering of State funds upon Agreement execution. The Parties recognize that due to unforeseen circumstances which may exist or occur at the site during site rehabilitation, actual site rehabilitation costs may either exceed or be less than this Estimated Cost. In the event that total cumulative costs under this Agreement exceed the Estimated Cost, the Parties agree to cost share, in their respective proportions, any excess site rehabilitation costs up to 20% over the Estimated Cost. At any time during this Agreement, or any fully executed Work Assignment, it becomes evident that site rehabilitation costs will exceed the Estimated Cost by more than 20% or if Department funding is not available, the Parties agree to reevaluate this Agreement, and to suspend site rehabilitation under this Agreement, if necessary, for a term not to exceed six months. If the Parties agree to continue site rehabilitation under this Agreement in their respective cost share amounts, the Department reserves the right to amend this Agreement to increase or decrease the total amount of State funding which may be available under this Agreement, if the Department finds it necessary or desirable to do so.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

7. Based on the Applicant's cost-sharing commitment to pay **xx%** of the total costs of site rehabilitation as specified by the Applicant in the PAC application, the Department's cost share is **xx%**. In accordance with Sections 376.30711 and 376.30713, F.S., and Paragraph 1 of this Agreement, the Department will negotiate Work Assignments with the Contractor, and will thereby be responsible to the Contractor solely for the Department's percentage of its cost share as specified in the Work Assignment.

8. The Department will review and approve site rehabilitation activities in accordance with the terms of the Work Assignments and Chapter 62-780, F.A.C., and shall make

copies of such documents available to the Applicant. 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 Assignments under this Agreement.

9. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement or any executed Work Assignment is contingent upon an annual appropriation by the Legislature. The Parties further understand that the execution of a Work Assignment is contingent upon the availability of funding at the time of Work Assignment execution.

COVENANTS AND REPRESENTATIONS OF THE APPLICANT.

10. The Applicant specifically readopts and reaffirms the covenants and representations made in its AC Application. To the extent that this Agreement does not specifically provide otherwise, the AC Application terms and conditions, as well as the representations and covenants of the Applicant contained in the AC Application are hereby incorporated by reference. The Applicant further represents that it is a corporation in good standing in the State of Florida and is able to fully perform its duties under this Agreement. The Applicant acknowledges that the execution of a Work Assignment by the Department and Contractor is subject to the availability of funding needed to carry out the activities described under the Work Assignment. The Applicant understands that this Agreement shall not result in the encumbering of State funds upon execution of the Agreement.

11. Within 30 days of execution of this Agreement, the Applicant shall submit a Cost Share Site Contractor Selection Sheet (**Attachment B**) to the Department for approval in accordance with Section 376.30711, F.S. In addition, the Applicant shall submit a Responsible Party Affidavit (**Attachment C**) to the Department before assigned work at the facility can take place.

12. The Applicant has made a cost-sharing commitment to pay **xx%** of the total costs of site rehabilitation as specified in the AC Application, which is estimated, based on the Limited Contamination Assessment Report, to be **\$xxxxxxx**. The Applicant shall provide within five days of execution a copy of any and all agreements with any Contractor performing site rehabilitation activities subject to this Agreement. The Applicant is prohibited from entering into any agreement with the Contractor which would have the effect of reducing the Applicant's cost share commitment under this Agreement.

13. 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 Contractor, when such invoice is accompanied by a written approval by the Department of the work completed. Within **21** days of payment to the 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 Contractor. Alternatively, Applicant can require the Contractor certify to the Department that the invoice amount specified in the certification was paid and indicating the date such payment was received by the Contractor from the

Applicant. Failure of the Applicant to timely and adequately pay the Contractor shall be considered a material breach of this Agreement pursuant to paragraph 15.

14. 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 of Florida or its 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.

15. 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. 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 a 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.

16. 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.

17. The Department reserves the right to unilaterally cancel this Agreement if the Applicant, the contractor selected to perform the cleanup, or any subcontractor is denied access to the site by the property owner.

NOTICES.

18. Any notice or written communication required or permitted hereunder between the parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, received by the appropriate Party Representative by email or delivered in person to the 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:

Kenneth Busen, P.G.
PAC Coordinator
Petroleum Restoration Program
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
Phone (850) 245-8745
Email address: Kenneth.Busen@dep.state.fl.us

For the Applicant:

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
Phone: (xxx) xxx-xxxx
Email address: xxxxxxxxx

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

AMENDMENTS.

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

ASSIGNMENT.

20. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party. The Department shall require that any entity willing to accept assignment of this Agreement show a financial ability to fulfill the duties contained herein.

CHOICE OF LAW/FORUM.

21. 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.

ENTIRE AGREEMENT.

22. 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.

NO ADMISSION OF LIABILITY.

23. 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.

Applicant – xxxxxxxxxxxx

The Department:

By: _____
xxxxxxxxxxxxxx

By: _____
Diane D. Pickett
Program Administrator
Petroleum Restoration Program

Title: _____

Date: _____

Date: _____

- Attachments:
- Attachment A - Site Rehabilitation Strategy Summary/Cost Estimate
 - Attachment B - Cost Share Contractor Selection Sheet
 - Attachment C – Responsible Party Affidavit