

RESOLUTION 18-5

A RESOLUTION OF THE BOARD OF SUPERVISORS OF CENTRAL COUNTY WATER CONTROL DISTRICT APPROVING THE PETROLEUM CLEANUP PARTICIPATION PROGRAM AGREEMENT BETWEEN FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND CENTRAL COUNTY WATER CONTROL DISTRICT; AUTHORIZING THE PRESIDENT OF THE BOARD OF SUPERVISORS TO SIGN THE AGREEMENT ON BEHALF OF CENTRAL COUNTY WATER CONTROL DISTRICT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Central County Water Control District (the “District”) previously entered into a contract with the Florida Department of Environmental Protection (“FDEP”) and its contractors, subcontractors, and vendors to enter into the District’s Property and assess it for potential remediation activities as a part of the Petroleum Restoration Program (“PRP”); and

WHEREAS, FDEP has determined the District’s property is eligible for participation in PRP and the District wishes to participate in PRP in order to save taxpayer funds; and

WHEREAS, the Board of Supervisors finds that entering into the Petroleum Cleanup Participation Program Agreement (“PCPP Agreement”) furthers the purposes of the District under Chapter 298, Florida Statutes, and the District’s Charter.

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the Central County Water Control District as follows:

Section 1. The Board of Supervisors hereby approves the PCPP Agreement attached and incorporated to this Resolution as Exhibit A and authorizes the President of the Board of Supervisors to execute the PCPP Agreement on behalf of the District.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 23rd day of May 2018.

**BOARD OF SUPERVISORS
CENTRAL COUNTY WATER CONTROL DISTRICT**

By: DENISE MILLER, President

ATTEST:

By: DUANE KELLY, District Manager

APPROVED AS TO LEGAL SUFFICIENCY AND FORM:

By: JOHN J. FUMERO, District Attorney

AGREEMENT FOR PETROLEUM CLEANUP PARTICIPATION PROGRAM
With participant fully complying with co-payment requirements

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 Central County Water Control District (hereinafter "Participant"), whose address is 475 S. Cabbage Palm Street, Clewiston, Florida, 33440 (collectively the "Parties") to perform certain site rehabilitation activities for contamination determined eligible for the Petroleum Cleanup Participation Program (hereinafter "PCPP") in accordance with Section 376.3071(13), Florida Statutes (F.S.). The contamination subject of this Agreement is the October 24, 1996 discharge at the Central County Water Control Division - Montura Ranch Estates facility located at 475 S. Cabbage Palm St, Clewiston, Hendry County, Florida, DEP **Facility ID #269600862**.

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department is authorized to provide state funding assistance for petroleum discharges determined eligible for PCPP, based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S., and Chapter 62-771, Florida Administrative Code (F.A.C.); and

WHEREAS, in accordance with Section 376.3071(13), F.S., the Department has determined the described contamination eligible; and

WHEREAS, based on the estimated costs of site rehabilitation the Participant is financially able to provide the required 25% copayment of the cost of cleanup.

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

GENERAL.

1. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapters 62-780, 62-771, and 62-772, F.A.C. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Chapter 287, F.S.

2. The Participant 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 – cost estimate, attached hereto as **Attachment A**, due to technical or cost considerations.

TERM OF AGREEMENT AND SPENDING LIMITS.

3. This Agreement is effective on the date of execution by the Parties until the earlier of: (1) the Department has determined that rehabilitation is complete pursuant to Chapter 62-780, F.A.C. and issues a Site Rehabilitation Completion Order (SRCO) or Conditional Site Rehabilitation Completion Order (CSRCO); or (2) the funding limitations set forth in

Section 376.3071(13)(b), F.S., are exhausted and site rehabilitation has not been achieved.

4. The Department's will not expend more than \$400,000 on site rehabilitation, including the \$7,713.53 previously spent to date. The Department and the Participant have estimated total costs under this Agreement by both parties for the remaining site rehabilitation activities for the eligible discharge to be approximately \$97,350.00 (the "Estimated Cost"). **This value is for planning purposes only.** However, the Parties recognize that due to unforeseen circumstances which may exist or occur at the site during cleanup, actual site rehabilitation costs may either exceed or be less than this estimated amount. Any changes made by the Department to the site rehabilitation strategy which will not increase the Participant's share of total cleanup costs may be made unilaterally by the Department and will not require the Participant's consent. However, the Participant may elect, upon the Department's consent, to continue a more costly or aggressive site rehabilitation strategy at the Participant'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 Participant's share of total cleanup costs in excess of the Estimated Cost will be made only after discussion with the Participant. If after discussion and agreement between the Parties that the site rehabilitation strategy cost will increase above the Estimated Cost the Department PCPP Coordinator will follow up with a letter confirming that cleanup is to continue under this PCPP Agreement in excess of the Estimated Cost.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

5. Based on the Participant's copayment obligation of 25% of the estimated cost of site rehabilitation, the Department's cost share is 75%. In accordance with Sections 376.3071, F.S., and rules adopted pursuant to that Section, the Department will prepare Work Assignments, and procure the work as appropriate with the contractor designated pursuant to paragraph 9 and will thereby be responsible to the contractor solely for the Department's percentage of its cost share.

Participant Initials _____

6. The Department will review and approve site rehabilitation activities in accordance with the terms of the procurement orders and Chapter 62-780, F.A.C., and shall make copies of such documents available to the Participant. The Participant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or procurement documents under this Agreement.

7. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The Participant understands that this Agreement shall not result in the encumbering of State funds upon execution of the Agreement.

COVENANTS AND REPRESENTATIONS OF THE PARTICIPANT.

8. The Participant represents that it is qualified to enter into this Agreement and is able to fully perform its duties under this Agreement. Participant acknowledges that the responsibilities and obligations of this agreement survive the transfer of the above referenced facility/property.

9. Within 30 days of execution of this Agreement, Participant shall select a Petroleum Restoration Program ("PRP") Agency Term Contractor ("Contractor") in accordance with Chapter 62-772, F.A.C. The Participant shall provide a Cost Share Site Contractor Selection Sheet (CSS) to the Department designating the Contractor within 30 days of execution of this Agreement or the Department will designate a Contractor. The CSS form can be found on the PRP web site @ <http://www.dep.state.fl.us/waste/categories/pcp/pages/qualified.htm>.

10. Participant further agrees that it shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its share of costs 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 Participant shall provide to the Department proof of such payment, which shall include a copy of the Participant's paid and canceled check to the Contractor. Alternatively, Participant can require the Contractor certify that the invoice amount specified in the certification was paid and indicate the date such payment was received by the Contractor from the Participant (**Sample FDEP Letter Requesting Confirmation of Payment of PCPP Cost Share – Attachment B**).

11. Participant has a copayment obligation to pay 25% of the cost of site rehabilitation. The Participant shall provide to the Department proof of payment of its copayment obligation to the Contractor, which must include a copy of the paid and canceled check **(copy of both front and back of check)** to the [Contractor] or certification by the [Contractor] that the invoice amount specified in the certification was paid and indicating the date such payment was received by the [Contractor] from the Participant. If a canceled check is provided as proof of payment, we recommend that you use a black marker to cross through the account number and bank's routing number to make them illegible. Additionally, any proof of electronic funds transfer to the contractor for required co-payments must be provided and include the dollar amount, date of funds transfer from bank account to the contractor, etc. Redact any account numbers and bank's routing number to make them illegible for any proof of electronic payments made to the contractor. Failure to timely and adequately pay the [Contractor] and provide proof of that payment to the Department within 21 days shall be considered a material breach of the PCPP Agreement pursuant to paragraph 14.

12. In accordance with Chapter 376, F.S., it is unlawful for the Participant to receive any remuneration, in cash or in kind, from a Contractor performing cleanup activities subject of this Agreement. The Participant is further prohibited from entering into any agreement with a Contractor which would have the effect of reducing the Participant's copayment

obligation under this Agreement, this would include an agreement whereby the Participant does not make timely payments.

13. The Participant 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 their 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.

14. 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. Failure to timely pay the Participant's 25% co-payment is considered a material breach of this PCPP Agreement. In the event that the Department determines, in its sole discretion, that the Participant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity.

15. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Participant 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 Participant in conjunction with this Agreement. The Department may terminate this agreement without cause with notice to the Participant pursuant to paragraph 14.

16. The parties hereto agree to waive any right to jury trial under this Agreement.

NOTICES.

17. Any notice or written communication required or permitted hereunder between the Parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, delivered in person to or received electronically by e-mail by the appropriate Party Representative. The Department shall give reasonable notice (and not less than any notice 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.
PCPP Coordinator
Petroleum Restoration Program
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
Phone: (850) 245-8745
E-mail: Kenneth.Busen@dep.state.fl.us

For the Participant:

Denise Miller
President
Central County Water Control District
475 S. Cabbage Palm Street
Clewiston, Florida 33440
Phone: 863-983-5797
Email: manager@ccwcdfl.com

AMENDMENTS.

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

ASSIGNMENT.

19. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party. The Department will not accept assignment of this Agreement to any person or entity that, in the Department's determination, is unable to reliably comply with the 25% co-payment obligation.

CHOICE OF LAW/FORUM.

20. 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.

RESPONSIBILITY FOR SITE REHABILITATION WHERE CLEANUP COSTS EXCEED SPENDING LIMITATIONS.

21. In accordance with Section 376.3071(13)(f), F.S., in the event that the funding limitations specified in Section 376.3071(13), F.S., are exhausted or exceeded prior to completion of site rehabilitation, the Participant shall be obligated to continue site rehabilitation activities in accordance with Section 376.3071(5), F.S., and Chapter 62-780, F.A.C. If the Participant fails to timely continue the site rehabilitation activities, the Department and its agent(s) are permitted to continue performing assessment and remedial activities that the Department, at its sole discretion, deems appropriate. The Department may designate its own contractor(s) to undertake site rehabilitation actions without the approval of the Participant or any other party. The Department or its agent(s) will perform any assessment and remedial activities that the Department, at its sole discretion, deems appropriate to address the remaining petroleum contamination. As such, the Department, at its sole discretion, may choose to undertake assessment or cleanup activities that are less stringent than the requirements of Chapters 62-780 and 62-777, F.A.C., and which may not result in the issuance of a Site Rehabilitation Completion Order. Pursuant to Section 376.3071(7)(b), F.S., the Department will seek recovery for

all sums expended by the Department for actions taken pursuant to this paragraph. Therefore, the Department explicitly reserves its right to seek recovery from the Participant or any other responsible party that amount which was expended by the Department in these matters.

ENTIRE AGREEMENT.

22. It is hereby understood and agreed that this Agreement states the entire agreement and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement. This agreement is binding upon and is for the benefit of the Parties and to no other entities or persons not signatories to this Agreement.

FOR THE DEPARTMENT:

FOR THE PARTICIPANT:

Austin Hofmeister
Program Administrator
Petroleum Restoration Program

Print Name: Denise Miller
Title: President, CCWCD Board of Supervisors

Date: _____

Date: May 23, 2018

Attachment A: Cleanup Strategy - Cost Estimate

Attachment B: Sample FDEP Letter Requesting Confirmation of Payment of PCPP Cost Share

Electronic copy to: Site File/Oculus
Vince Molosky, Site Manager, vmolosky@northstar.com
John J. Fumero, District Attorney, JFumero@nasonyeager.com

Attachment A

Site Rehabilitation Strategy – Cost Estimate

Central Cnty Water Cont Div Montura Ranch Estates
Cabbage Palm St & Hunting Club, Clewiston, Hendry County, Florida
FDEP Facility # 269600862
PCPP Eligible Discharge Date 04/27/1996

Based on the results of the 04/11/2014 Event 1 Interim Deliverable (Low Score Site Initiative) submitted by American Environmental Engineering of Florida, Inc. the estimated cost to complete cleanup without conditions is \$97,350.00. The breakdown of the cost is below:

| | |
|--------------------------------------------------------|---------------------------------|
| Site Assessment | \$20,000 |
| Source Removal | \$50,000 |
| | |
| 1 Year Post Active Remediation Monitoring (PARM) | \$15,000 |
| | |
| Well abandonment | \$3,500 |
| | |
| 10 % Contingency | \$8,850 |
| | |
| | Estimated total \$97,350 |
| | |
| Estimated DEP Future Cost to Closure at 75% Cost Share | \$73,012.50 |
| | |
| Estimated RP Future Cost to Closure at 25% Cost | \$24,337.50 |



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

Attachment B

[Date]

[Mr. or Ms. or . . .] [PCPP Participant's Name]

(if applicable)[PCPP Participant Company]

[PCPP Participant's Mailing Address]

[City, State Zip Code]

If applicable: Sent by email only to: [PCPP Participant's email address]

Subject: Request for Confirmation of PCPP Cost Share Payment

[Facility Name]

[Facility Street Address]

[City, xxx] County

FDEP Facility ID# [xxxxxxxxxx]

PCPP Discharge(s):

Dear [Mr. or Ms. or . . .] [PCPP Participant's Last Name]:

The Department has approved site rehabilitation work under [Purchase Order # [insert purchase order number] or Task Assignment # [insert task assignment number]] and [insert name of Agency Term Contractor] ("Agency Term Contractor") has been notified that they can submit [an interim or a final] invoice to the Department for payment. Under the terms of the PCPP Agreement you will be required to pay the Agency Term Contractor your share of the approved task[s] of the [Purchase Order (including authorized Change Orders) or Task Assignment (including authorized Change Orders)], which is [\$ [amount of the RP share of the approved task[s] of the PO or TA or Contract work (including authorized Change Orders)]]]. Within **21 days of payment** to the Agency Term Contractor, you must provide to the Department proof of such payment, which must include a copy of your paid and canceled check (**copy of both front and back of check**) to the Agency Term Contractor or a certification by the Agency Term Contractor that the invoice amount specified in the certification was paid and indicating the date such payment was received by the Agency Term Contractor from you. If you provide a canceled check as proof of payment, we recommend that you use a black marker to cross through your account number and your bank's routing number to make them illegible. Failure to timely and adequately pay the Agency Term Contractor and provide proof of that payment to the Department shall be considered a material breach of the PCPP Agreement.

[Mr. or Ms. or . . .] PCPP Participant's Name]

(if applicable)[PCPP Participant's Company]

Date

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Please provide the proof of payment to me at the letterhead address, Mail Station [xxxx].

If you should have any questions, please contact me at (850) 245-[xxxx].

Sincerely,

[Site Manager's Name]

[Site Manager's Title]

Petroleum Restoration Section [x]

Petroleum Restoration Program

cc: [Consultant's Name, Consultant's Company – e-mail address]

Kenneth Busen, FDEP-PRP (PRP-2) – kenneth.busen@dep.state.fl.us

File



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

BOB MARTINEZ CENTER
2600 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32399-2400

RICK SCOTT
GOVERNOR

CARLOS LOPEZ-CANTERA
LT. GOVERNOR

NOAH VALENSTEIN
SECRETARY

**PETROLEUM RESTORATION PROGRAM
COST SHARE SITE CONTRACTOR SELECTION SHEET**

The Responsible Party (RP) may use this sheet to select an Agency Term Contractor to perform work pursuant to a cost-share agreement in the Petroleum Restoration Program (PRP) that meets the 25% or higher cost share requirement pursuant to Chapter 62-772, F.A.C., Procurement Procedures for the Petroleum Restoration Program. The entity selecting the Contractor must be a party to the executed cost share agreement.

Central County Water Control Division - Montura Ranch

Site Name: Estates Facility FDEP Facility ID#: 269600862

Site Address: 475 S. Cabbage Palm St., Clewiston, Hendry County, FL Parcel ID#: _____

Responsible Party Name: Central County Water Control District

Responsible Party Rep. Name & Title: Denise Miller, as President of CCWCD Board of Supervisors

Responsible Party Rep. Phone # & E-mail: 863/983-5797 & seat4@ccwcdfl.com (with a copy to manager@ccwcdfl.com)

Select only one of the contractor options listed below:

☐ A PRP Agency Term Contractor From Within the Same Region as the Site:

Co. Name: _____ DEP Contractor ID#: _____

Rep. Name & Title: _____

Rep. Phone # & E-mail: _____

☐ Allow the DEP to select a competitively procured contractor for the next scope of work in accordance with s. 287.057, F.S.

I understand that the contractor selection option chosen above cannot be changed once it has been approved by the Department, unless poor performance by the Contractor is affirmatively demonstrated.

Denise Miller, President CCWCD Board of Supervisors

5/23/2018

Responsible Party Rep. Name & Title

Signature

Date

Completed forms should be sent to the letterhead address, Mail Station 4580, Attention: Robert Perlowski. Questions about cost share site contractor selection may be referred to Rob Perlowski at 850-245-8917 or at Robert.Perlowski@dep.state.fl.us.