

**Participation Agreement for Operable Units 1, 2, and 3 of the Petroleum Products
Superfund Site**

This Participation Agreement is entered into by “Participating Parties” (whose names appear on Appendix A to this Agreement, each a “Participating Party”) at the Petroleum Products Corporation (“PPC”) Superfund site located at and in the vicinity of 3130 Southwest 19th Street, Pembroke Park, Broward County, Florida (“**the Site**”) as of January 1, 2025.

The premises for this Participation Agreement are:

- A. On August 12, 2021, the United States Environmental Protection Agency (“EPA”) published a Record of Decision (“ROD”) for Operable Unit (“OU”) 2 of the PPC Superfund Site (“Site”) located in Pembroke Park, Broward County, Florida.
- B. For purposes of remediation, the Site was divided by EPA into three Operable Units (OU1, OU2, and OU3). OU1 was designed to address the removal of free oils from the subsurface of the Site. It is being implemented by Participating Parties and others under a consent decree entered by the United States District Court for the Southern District of Florida styled *United States of America v. Petroleum Products Corporation et al.*, Civ. No. 91-2014-Bloom (“OU1 Consent Decree”).
- C. OU2 is designed to address oily-impacted soils resulting from releases of petroleum from petroleum storage systems during oil recycling operations of the former PPC. These soils will be stabilized in place as described in the Remedial Design (“RD”) for OU2.
- D. OU3 will address groundwater contamination if additional remedial action is required following OU2.
- E. OU2 will replace OU1. OU1 work continued through 2024.
- F. With respect to the OU2 ROD, all of the signatories to this Agreement as well as the United States Navy, United States Air Force, United States Coast Guard, and the United States Defense Reutilization Marketing Service (now the Defense Logistics Agency within the United States Department of Defense) [collectively, “Settling Federal Agencies” or “SFAs”], and Pembroke Park Warehouses Building Company, Filmore Investors Corp., Park 31st Corp., and AON 31st LLC [collectively, “Site Owners”] are Potentially Responsible Parties (“PRPs”).

- G. Remedial Design (“**RD**”) of the OU2 ROD Remedial Action (“**RA**”) was completed under a Remedial Design Administrative Settlement Agreement and Order on Consent (EPA, Region 4, CERCLA-04-2023-2523) (“**RD ASAOC**”) entered into by four of the Participating Parties. EPA paid 100% of the costs of the RD, but needed one or more of the Participating Parties to execute the RD ASAOC so that EPA could pay the RD costs through a trust account maintained by the Participating Parties. It was contemplated at that time that the Consent Decree for OU2 would include RD so that the remaining Participating Parties would have the same obligations as these four Participating Parties with respect to the RD.
- H. Participating Parties and Site Owners are signatories to a consent decree to implement RA for OU2 at the Site (“**OU2 Consent Decree**”).
- I. Because RD was completed before the OU2 Consent Decree was executed, the OU2 Consent Decree does not directly address RD. However, the RD ASAOC is an Exhibit to the OU2 Consent Decree. While it is unlikely that additional RD will be required, EPA has provided an email to Participating Parties that provides the following: “EPA agrees that 1) the RD ASAOC could be used for any needed future RD work, 2) the PPC Special Account funding has a balance of at least \$125,000 that could be used for future RD work reimbursement where necessary, and 3) the RD ASAOC would stay open and viable according to its terms until the RA work is complete. Although the RD ASAOC would not be attached through the “Integration” section at Paragraph 85, it would be included as an Appendix and the scope of the covenants address the work which I believe would cover the referenced RD activities.” Email from Rudy Tanasijevich to John M. Barkett dated February 14, 2024. Nonetheless, Participating Parties wish to provide that all of the Participating Parties are bound by the terms of the RD ASAOC should RD funding be required in the future from the four signatories to the RD ASAOC.
- J. The OU2 Consent Decree provides for joint and several liability. It also imposes certain obligations on Participating Parties with respect to implementation of the RA that can best be satisfied through a governance structure created by the Participating Parties.
- K. The Site qualified under the State of Florida Early Detection Incentive (“**EDI**”) Program funded by the Inland Protection Trust Fund (“**IPTF**”). As a result, the RA required by the OU2 Consent Decree will be conducted by a contractor retained by the State of Florida Department of Environmental Protection (“**FDEP**”) and paid for from the **IPTF** (“**RA Contractor**”).

- L. The FDEP will conduct RA under the EDI Program after entry into **Access Agreements** that have been entered into by FDEP and the Site Owners. The RA is expected to cost in excess of \$30 million, all to be funded through the IPTF.
- M. While the FDEP is funding the RA, under the OU2 Consent Decree, a trust fund still must be established to provide financial assurance of at least \$250,000 for the RA ("**PPC Site Trust Fund**"). The PPC Site Trust Fund will be under the control of the Participating Parties.
- N. The OU2 Consent Decree allows certain non-federal generator PRPs to accept a "de minimis" settlement at the Site. Payments by the de minimis PRPs will be made to the PPC Site Trust Fund.
- O. The OU2 Consent Decree requires the SFAs to make payments for past costs and for future costs incurred by Participating Parties under a billing procedure set forth in the OU2 Consent Decree. The SFAs' payments will be made into the PPC Site Trust Fund.
- P. The RA will require removal or relocation of tenants at the Site. Participating Parties and Site Owners have separately entered into the "Petroleum Products Superfund Site Settlement and Cooperation Agreement" ("**Agreement with Owners**"). Under the Agreement with Owners, Site Owners are responsible for removal or relocation of tenants. The Agreement with Owners also requires Participating Parties, among other obligations, to make certain payments to one or more Site Owners.
- Q. The Participating Parties have incurred response costs under agreements related to OU1 or OU2. They have also agreed upon the allocation for the Site and have reallocated these costs pursuant to that allocation as described in the Agreement with Owners.
- R. The OU2 Consent Decree provides for forgiveness of EPA's past and future costs under EPA's orphan share policy of \$15,582,147.50.
- S. The OU2 Consent Decree also provides for a credit to "**Settling Parties**" (as defined in the Decree) in the amount of \$11,280,755 for past response costs EPA incurred through September 30, 2023, and a credit for EPA's future costs of \$4,301,392. Participating Parties anticipate that this credit will cover future response costs beyond the completion of the RA, and the OU3 RA (if any) including costs for Five-Year Reviews required under CERCLA. However, monitoring EPA's future costs to ensure that they are properly charged to the Site may be necessary.

- T. The OU2 ROD contains a groundwater remedy described in Extended Plume Alternative 2, Groundwater Recovery and Treatment. (ROD, Section 10.4.2.) The ROD contains an estimate that the capital costs of this RA will be \$919,250 and that Operation and Maintenance (“**O&M**”) is expected to take 15 years. Whether this remedy is necessary following completion of in-situ stabilization and solidification (“**ISS**”) will depend upon the results of post-ISS groundwater sampling. The Access Agreements provide that FDEP will satisfy the cleanup requirements of the ROD, which include this groundwater recovery and treatment remedy pursuant to and consistent with FDEP’s obligation to fund remediation of the Site under the August 22, 1990 Administrative Order in *Petroleum Products Corp. v. State of Florida Department of Environmental Regulation*, OGC Case No 87-0028 and DOAH Case No. 87-3124 (1990 WL 142708, Fla Dept Env. Reg.).
- U. Nonetheless, drafting of a Remedial Investigation (“**RI**”) report and Feasibility Study (“**FS**”) for OU3 might be required to satisfy requirements for an operable unit imposed on EPA at a Superfund Site under the National Contingency Plan. This work would not be covered by the FDEP’s obligations under the FDEP’s EDI Program.
- V. As a result of litigation brought by a number of PRPs, including Participating Parties, a Special Account exists at EPA for the benefit of the PPC Site. It currently contains in excess of \$5 million. Participating Parties have a common interest in ensuring that Special Account funds are spent only on the Site.
- W. Shook, Hardy & Bacon LLP (“**SHB**”) has served as common counsel to Participating Parties in their capacity as members of two PRP Groups implementing the OU1 RA and the development of the RD/RA for OU2, respectively. Trust accounts within the SHB Trust Account exist for both groups.
- X. Thus, the Participating Parties desire to establish a governance framework to protect their rights and manage their obligations under both the OU2 Consent Decree and the Agreement with Owners.
- Y. In entering into this Agreement, Participating Parties do not admit that they have any liability under the federal Superfund law, state law, or the common law, for the claims of the United States or the claims of any other person. To the contrary, they specifically deny any such liability. Rather, their interest is in establishing a sensible framework for them to work together in a cost-effective and cooperative manner to achieve the goals set forth above.

In consideration of the premises, mutual covenants and conditions herein contained, Participating Parties, therefore, agree as follows:

1. RD ASAOC

The Participating Parties who did not sign the RD ASAOC agree to be bound by the terms of the RD ASAOC as if they were signatories to the RD ASAOC.

2. Payments into PPC Site Trust Fund

Payments required of Participating Parties will be made into one of two trust accounts currently opened or to be opened either within the SHB Trust Account or at a financial institution.

- a. The first is the OU2 Trust Account currently held as part of the SHB Trust Account.
- b. The second is the PPC Site Trust Fund that will be opened as provided under the OU2 Consent Decree and to which will also be transferred any remaining funds in the OU1 Trust Account currently held within the SHB Trust Account.
- c. The PPC Site Trust Fund will receive payments from de minimis parties, Settling Federal Agencies, and Participating Parties, including Participating Parties' payments due under the Agreement with Owners, except for Park 31st Corp whose payment will be deposited in the OU2 Trust Account. The PPC Site Trust Fund will be used to meet financial obligations of Participating Parties under the OU2 Consent Decree and the RD ASAOC, including payment of EPA's Future Response Costs (as defined in the Consent Decree) should EPA's orphan share credit be fully expended. It will also be used to meet financial obligations of the Participating Parties under the Agreement with Owners.
- d. Funds in the OU2 Trust Fund will be used for any purpose necessary to meet the obligations or needs of the Participating Parties under this Agreement, including protecting the Participating Parties' interests with respect to the implementation of the OU2 Consent Decree, satisfaction of administrative needs of the Participating Parties, and payment of stipulated penalties, should any be imposed.

Notwithstanding any other provision in this Agreement, should litigation occur, OU2 or any future OU3 Trust Fund monies shall not be used to pay litigation costs without the consent of all Participating Parties.

3. Payments into PPC Trust Fund and Assessments

- a. By March 1, 2025, each Participating Party will pay into the PPC Trust Fund the amount due according to Appendix F to the Agreement with Owners, representing the share of the "Fair Market Value" ("FMV") payment due to Pembroke Park

Warehouses Building Company. The amount due from each Participating Party under Appendix F appears below:

Work Party	FMV payment due by 3/1/25
Miami-Dade County, Florida	\$433,875
Greyhound Lines, Inc.	\$118,202
CBC Trust #1 f/k/a Connor Brown Company	\$74,399
Florida Power & Light Company	\$124,364
Safety-Kleen Systems, Inc.	\$70,921
El Paso CGP Company, L.L.C. for Coastal Fuels Marketing, Inc.	\$43,639
Broward County, Florida	\$16,055
CSX Transportation, Inc.	\$11,776
The Goodyear Tire & Rubber Company	\$17,169
Ryder Truck Rental, Inc.	\$9,417
Bridgestone Americas Tire Operations, LLC	\$0

- b. Currently, the Participating Parties do not expect to have to make the FMV payment to AON 31st LLC because it is unlikely that the building owned by AON 31st LLC is going to be demolished. However, if the building does have to be demolished, the payments identified in Exhibit G to the Agreement with Owners will be made into the PPC Trust Fund by each Participating Party at least sixty (60) days before any payment to AON 31st LLC would be due.
- c. In the event that assessments are required to conduct work required under the OU2 Consent Decree or any future Consent Decrees for the Site (“Work”) executed by Participating Parties, each Participating Party will pay into the PPC Trust Fund an amount determined by multiplying each Participating Party’s Group Share (as set forth in Appendix B) times the amount needed to pay for the Work.
- d. If an assessment is required to conduct work approved by Participating Parties under this Agreement, each Participating Party will pay an amount determined by multiplying each Participating Party’s Group Share times the amount needed to pay for the Work. Payments shall be made within sixty (60) days after the invoice for an assessment is sent to the Participating Party.

4. Project Coordinator

- a. Participating Parties may designate one or more persons to facilitate the implementation of this Agreement and to administer funds on behalf of Participating Parties (“Project Coordinator”). The Project Coordinator may be an employee or agent of the Participating Parties, common counsel, or a third party. Subject to the

determination of the Participating Parties, the Project Coordinator may be given the authority to manage compliance by Participating Parties with the OU2 Consent Decree, retain consultants to perform Work, approve disbursements of funds for the Work, call meetings, and monitor or make periodic reports to Participating Parties on the progress of the Work, the status of funds, and the status of FDEP's compliance with its obligations to fund the remedial action from the IPTF.

- b. SHB has served as common counsel to the OU2 Group. To maintain continuity, under this Agreement, Participating Parties will continue to employ SHB as common counsel until such time as the Participating Parties decide to proceed without common counsel, or with a different common counsel.

5. Decisions of Participating Parties

Participating Parties shall endeavor to reach a consensus on any decision that must be made by Participating Parties under this Agreement or to satisfy the terms of any future Consent Decree. To the extent that a consensus cannot be reached, each Participating Party shall have a vote, as long as the Participating Party has paid any outstanding assessments. No Participating Party may vote unless all assessments required of the Participating Party have been paid as of the time of the vote. When a vote is called for at an in-person, telephone, or video conference meeting, seven Participating Parties shall constitute a quorum. A non-attending Participating Party may give a proxy to an attending Participating Party to count towards the establishment of a quorum. Decisions may also be made (a) by email or (b) by establishing that a deadline by which a response is required, whereby no response represents an affirmative vote. Unless otherwise provided in this Agreement, when a vote is taken at an in-person, telephone, or video conference meeting, a majority vote of the voting power (as represented by each Participating Party's Group Share) of the Participating Parties in attendance) at the time of a vote is required to decide issues put to a vote by Participating Parties. For votes taken by means other than in-person, by telephone, or by video conference meetings, a majority vote of the total voting power is required for a decision.

6. Meetings

Participating Parties may authorize actions under this Agreement at meetings held in-person or by telephone or video conference. Meetings may be called by counsel that may be retained by the Participating Parties; by at least three Participating Parties; or, if one is named, by a Project Coordinator. When feasible, a meeting will be held after at least five (5) days' prior notice to all Participating Parties; although meetings may be held on less notice where necessary. Notices of a meeting may be made by telephone, email, facsimile transmission, or overnight delivery. Participating Parties may also authorize actions upon votes by email, facsimile transmission, U.S. mail, or overnight mail, without a meeting after all Participating Parties have been notified of the issue requiring a decision.

7. Cooperation

Each Participating Party will cooperate with each other to facilitate the completion of Work in a timely and cost-effective manner.

8. Committees

Participating Parties may form committees as they see fit to carry out the purposes of this Agreement. Unless specifically authorized by action of the Participating Parties, no committee may make decisions constituting an action of the Participating Parties.

9. Documents

Documents generated under this Agreement shall be maintained at a place determined by the Participating Parties. Participating Parties shall each have access to such documents.

10. Denial of Liability

Nothing in this Agreement is intended, or shall be construed to be, an admission by any Participating Party as to any fact or law, or an estoppel or a waiver of defenses, cross-claims, or third-party claims which may be asserted by any Participating Party should any litigation ever result involving the Site. Participation in this Agreement shall not be presumptive of or used as evidence of the liability or apportionment of liability, if any, for any costs associated with the Site.

11. Privilege and Nondisclosure

This Agreement is a confidential, limited joint defense undertaking and shall not be disclosed to nonsignatories without consent of the Participating Parties, unless ordered to do so by a court or otherwise required by law, or unless necessary to enforce its terms. If this document is requested of a Participating Party in discovery proceedings in future litigation, the Participating Party shall assert a claim of privilege.

12. Successors and Assigns

This Agreement shall be binding upon successors and assign of the Participating Parties. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Participating Party without the prior written consent of the other Participating Parties.

13. Allocation in the Event of Default

A majority of the voting power of Participating Parties shall have the authority to declare any Participating Party to be in default under this Agreement where the Participating Party has failed to satisfy any obligation in a timely manner. In the event that a Participating Party is declared in default, if an assessment is due from the defaulting Participating Party, the remaining Participating Parties shall pay their proportionate share of the defaulting Participating Party's share within fourteen (14) days after the declaration of default. Such payment does not waive any rights such Participating Parties may have against the defaulting Participating Party or its successors or assigns. A defaulting Participating Party is not entitled to the return of any funds paid under this Agreement, but must repay any of its assessments paid by the remaining Participating Parties as a condition of curing any default.

14. Waiver and Release of Liability

No Participating Party or its representative, nor any person or entity authorized to act on behalf of Participating Parties, shall be liable to any Participating Party for any claim, demand, liability, cost, expense, legal fee, penalty, loss, or judgment incurred or arising as a result of any acts or omissions taken or made pursuant to this Agreement. This paragraph shall survive the termination of this Agreement.

15. Notice

All notices, bills, invoices, reports, and other communications with a Participating Party shall be sent to the representative designated by the Participating Party beneath the Participating Party's signature at the end of this Agreement. Each Participating Party shall have the right to change its representative upon ten (10) days written notice to a Project Coordinator, if one is named, or to any other person designated by Participating Parties to receive such information. Notice may be provided by email, facsimile transmission, telephone or telephone voice mail, letter, overnight mail, or any other comparable means whether or not electronic.

16. Effective Date

The effective date of this Agreement shall be January 1, 2025.

17. Termination

This Agreement shall terminate upon the termination of the OU2 Consent Decree or upon the vote of 90% of the voting power of the Participating Parties.

18. Amendments

This Agreement may be amended only by unanimous written agreement of the Participating Parties, executed by each Participating Party's authorized representative.

19. Severability

If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

20. Entire Agreement

This Agreement constitutes the entire understanding of the Participating Parties with respect to its subject matter and supersedes all prior agreements or understandings, whether oral or written, among or between Participating Parties.

21. Applicable Law

For purposes of enforcement or interpretation of the provisions of this Agreement only, the Participating Parties agree that the laws of the State of Florida shall be applicable, and further agree not to contest personal jurisdiction in the State Court of Florida located in Miami-Dade or Broward County, Florida, or the United States District Court located in the Southern District of Florida with respect to litigation brought solely for enforcement or interpretation of the provisions of this Agreement. Participating Parties WAIVE TRIAL BY JURY in any litigation to enforce or interpret this Agreement.

22. Separate Documents

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. Nature of Agreement

Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Participating Parties.

24. Periodic Accounting Reports

Participating Parties will cause periodic accounting reports to be rendered on the handling and disbursement of funds contributed under this Agreement.

25. Waiver of Conflict of Interest

With respect to lawyers or law firms who are engaged by Participating Parties ("Common Counsel") for Participating Parties, each Participating Party agrees that: (1) it will not claim or assert that, based solely on Common Counsel's past or present representation of a

Participating Party, Common Counsel has a conflict of interest in performing legal services for Participating Parties; (2) it will not claim or assert that, based solely on Common Counsel's representation of Participating Parties under the terms of this Agreement, Common Counsel has a conflict of interest in connection with any representation of any other person or entity in any other matter involving a Participating Party; (3) it will not claim or assert that, based solely on Common Counsel's representation of Participating Parties, Common Counsel has a conflict of interest in any future representation of any person or entity unless the subject matter relating to said representation arises out of or is connected to the PPC Site or this Agreement and involves or could involve any confidential facts or information obtained from the Participating Party during the term of this Agreement; and (4) in the event that any conflict develops in the performance of work by Common Counsel for Participating Parties as a whole and the legal services authorized by any Participating Party that has retained Common Counsel, the Participating Party consents to Common Counsel's continued performance of the work for the Participating Parties as a whole.

IN WITNESS WHEREOF, the Participating Parties hereto, which may be by and through their appointed counsel, enter into this Agreement as of the date first written above. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter in this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Dated: _____

Participating Party: _____

By: _____

(Name and Title)

Designated Representative For Receipt of Notice and Invoices:

Name: _____

Address:

Telephone Number: _____

Facsimile Number: _____

E-Mail Address: _____

Approved as to form by

Andrew J. Meyers, Broward County Attorney

By _____

Michael C. Owens (Date)
Senior Assistant County Attorney

By _____

Maite Azcoitia (Date)
Deputy County Attorney

Appendix A

Bridgestone Americas Tire Operations, LLC
Broward County, Florida
El Paso CGP Company, L.L.C. for Coastal Fuels Marketing, Inc.
CBC Trust #1 f/k/a Connor Brown Company
CSX Transportation, Inc.
Florida Power and Light Company
The Goodyear Tire & Rubber Company
Greyhound Lines, Inc.
Miami-Dade County
Ryder Truck Rental, Inc.
Safety-Kleen Systems, Inc.

Appendix B

Participating Party	Group Waste-in Volume (gal)	Group Share
Bridgestone Americas Tire Operations, LLC	147,866	3.7958%
Broward County, Florida	214,050	5.4948%
El Paso CGP Company, L.L.C. for Coastal Fuels Marketing, Inc.	294,893	7.5701%
CBC Trust #1 f/k/a Connor Brown Company	383,000	9.8318%
CSX Transportation, Inc.	181,579	4.6612%
Miami-Dade County	1,199,885	30.8018%
Florida Power and Light Company	364,775	9.3640%
The Goodyear Tire & Rubber Company	171,101	4.3923%
Greyhound Lines, Inc.	482,500	12.3861%
Ryder Truck Rental, Inc.	148,954	3.8237%
Safety-Kleen Systems, Inc.	306,900	7.8783%
Participating Party Volume Total	3,895,503	100%