

**DELEGATION AGREEMENT  
BETWEEN THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
BROWARD COUNTY**

THIS Delegation Agreement (Agreement) is made and entered into by and between the State of Florida Department of Environmental Protection (hereinafter referred to as the DEPARTMENT) and Broward County (hereinafter referred to as the COUNTY).

**WITNESSETH**

WHEREAS, the Brownfields Redevelopment Act, Sections 376.77 - 376.86, Florida Statutes, as amended (F.S.), was enacted to reduce public health and environmental hazards on existing commercial and industrial sites by offering incentives to encourage responsible persons to voluntarily develop and implement cleanup plans on such sites; and

WHEREAS, the DEPARTMENT is the agency of the State of Florida with the authority and power to enforce the provisions of Chapter 376 and 403, F.S.; and

WHEREAS, the DEPARTMENT has the authority, pursuant to Section 376.81, F.S., to establish by rule, criteria for determining the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed; and

WHEREAS, the DEPARTMENT, pursuant to Section 376.81, F.S., has adopted Chapter 62-780, Florida Administrative Code, as amended (F.A.C.), the Contaminated Site Cleanup Criteria and Chapter 62-777, F.A.C., the Contaminant Cleanup Target Levels, to specify the criteria for determining when site rehabilitation at a brownfield site with an executed Brownfield Site Rehabilitation Agreement (BSRA) is complete; and

WHEREAS, the DEPARTMENT, pursuant to Section 376.80(9), F.S., has the authority to delegate the administration of the Brownfields Program to a local pollution control program approved under Section 403.182, F.S., which has the financial, technical, and administrative capabilities and desire to administer the Brownfields Program; and

WHEREAS, the COUNTY has the authority to accept the delegation described herein, and raise funds necessary to exercise the powers delegated by this Agreement; and

WHEREAS, the lands within the geographic boundaries and jurisdiction of the COUNTY are within the geographic boundaries and jurisdiction of the DEPARTMENT, and are therefore, subject to the rules, regulations, authority and orders of the DEPARTMENT pursuant to Chapters 376 and 403, F.S.; and

WHEREAS, the DEPARTMENT and the COUNTY desire to increase governmental efficiency and avoid duplicative regulatory efforts while maintaining levels of environmental protection;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed as follows:

**PART I.  
ADMINISTRATION OF AGREEMENT**

**SECTION 1. PARTIES**

The parties to this Agreement are the DEPARTMENT and the COUNTY.

**SECTION 2. DEFINITIONS**

The terms used in this Agreement are as defined in Section 376.79, F.S., and Chapter 62-780, F.A.C.

**SECTION 3. EFFECTIVE DATE AND DURATION OF AGREEMENT**

This Agreement shall become effective when the Agreement is fully executed by both parties. The term of this Agreement shall be for ten (10) years, unless terminated pursuant to Section 6 of this delegation Agreement. Additionally, the term of this Agreement may be amended pursuant to Section 4 of this Agreement.

**SECTION 4. MODIFICATION OF AGREEMENT AND CONFLICT BETWEEN AGREEMENTS**

This Agreement, and any Attachments attached hereto, may be modified at any time by written mutual agreement of the DEPARTMENT and the COUNTY. Upon the effective date, the provisions of this Agreement shall supersede any prior understandings, agreements, memorandums, letters, or other written or verbal arrangements between the DEPARTMENT and the COUNTY regarding the delegation of authority to administer the Brownfields Program.

**SECTION 5: DEVIATION FROM AGREEMENT**

The DEPARTMENT may determine, on a case by case basis, that deviation from this Agreement is necessary. In such event, the DEPARTMENT shall notify the COUNTY in writing of its decision to assert jurisdiction for the matters subject to this Agreement over the specified project, and the COUNTY shall forward all project related materials maintained under this Agreement to the DEPARTMENT within ten (10) days of receipt of the written notice.

**SECTION 6. TERMINATION OF AGREEMENT**

Either the DEPARTMENT or the COUNTY may terminate this Agreement with or without cause upon written notice to the other party at least 60 days prior to the effective date of termination, provided that, to the extent this Agreement is reflective of a local pollution control program, the termination of such program is subject to the provisions and procedures of Section 403.182, F.S.

The Secretary of the DEPARTMENT or the Secretary's designee shall sign such notice to the COUNTY. The COUNTY Administrator or the COUNTY Administrator's designee shall sign notice to the DEPARTMENT. Upon termination, the COUNTY shall provide to the DEPARTMENT copies of all files and the DEPARTMENT shall complete records applicable to this Agreement and the processing of any technical documents.

**SECTION 7. SEVERABILITY**

If any court determines any part of this Agreement invalid or unenforceable, the remaining parts of this Agreement shall not be affected.

**PART II.  
PROGRAM MANAGEMENT**

**SECTION 8. BUDGET**

The COUNTY shall maintain an adequate level of funding, staffing, and equipment to comply with all statutes and rules pertaining to the delegated Brownfields Program requirements.

**SECTION 9. PROGRAM ORGANIZATION**

**9.01 PERSONNEL**

The COUNTY shall hire and maintain staff qualified and capable of performing the duties specified in this Agreement. A Table of Staff Organization of the COUNTY, which gives a detailed description of existing or proposed staff positions to carry out the COUNTY's obligations under this Agreement, is attached and made a part of this Agreement as Attachment A. Upon request, updated versions shall be provided to the DEPARTMENT.

**9.02 COMPUTER EQUIPMENT, SOFTWARE, DATA ENTRY, FILE TRANSFERS, AND ELECTRONIC MEDIA COMPLIANCE**

- (a) The COUNTY shall install and maintain the computer hardware and software necessary to satisfy the requirements of this Agreement.
- (b) In an effort to increase efficiency, responsiveness, and further the environmental cause the DEPARTMENT and the COUNTY agree that electronic records are an acceptable media substitute for "hard copy" (paper) and shall be pursued as the first option of choice to arrive at compliance. Where an electronic format exists of the records it shall be used to transmit the data, file, report, document, map, plans, picture, record, or any other object that may be available in an electronic format. Electronic records shall be kept in industry standard formats such as TIFF, GIF, JPEG, PDF, as well as in Microsoft Word, Microsoft Excel, and Microsoft Access not older than one (1) release behind the current release.
- (c) Data requested by the DEPARTMENT for projects delegated under this Agreement shall be transmitted in a format mutually agreed upon by the DEPARTMENT and the COUNTY. Available formats include E-mail, Compact Disc (CD), or File Transfer via an FTP site. Additional formats may be considered at the time of the request.
- (d) In the event of a special request for data transfer the DEPARTMENT shall provide the COUNTY at least ten (10) business days advance written notice (i.e., e-mail, fax or letter) to comply with such request. In the case of an emergency

request the COUNTY will pursue the request on a "best effort" basis to comply with the request as soon as possible.

- (e) The DEPARTMENT and the COUNTY technical staff shall consult as needed to provide successful information system integration to ensure that compliance is achieved in a timely fashion. Should technical difficulties arise the corresponding technical contacts are:

<b>FOR THE COUNTY:</b> Brownfields Coordinator Environmental Engineering and Permitting Division 1 N University Drive, Mailbox 201 Plantation, FL 33324 (954) 519-1483	<b>FOR THE DEPARTMENT:</b> Brownfields Program Manager Division of Waste Management 2600 Blair Stone Road Tallahassee, Florida 32399-2400 (850) 245-8953
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**9.03 PERMIT FEES, MONETARY PENALTIES AND DAMAGES**

- (a) The COUNTY may charge and retain applicable fees for use in supporting the COUNTY's administration of the Brownfields Program tasks delegated by this Agreement. Any such fees shall be charged in accordance with the current fee schedule that has been reviewed and approved by the Board of County Commissioners. Nothing in this provision shall preclude the COUNTY from charging and collecting administrative fees, investigative costs, or other costs incurred by the COUNTY resulting from performing enforcement and compliance functions. Nothing in this Agreement shall prohibit the COUNTY pursuant to the COUNTY's administration of the Brownfields Program from seeking penalties, damages, costs, or attorney fees that it may be entitled to including, but not limited to, relief available pursuant to Chapters 403, 376, 162, and 125, F.S., as provided by law or rule. All civil penalties and damages recovered by the COUNTY shall be deposited in a separate county fund which shall be used as set forth in Section 27-41, of the Broward County Code.
- (b) The DEPARTMENT shall assess permitting or other authorized fees for activities performed by the DEPARTMENT at sites delegated under this Agreement.

**SECTION 10. PROGRAM PLANNING AND MANAGEMENT**

**10.01 STAFF TRAINING**

The parties to this Agreement shall ensure that their respective personnel have the requisite education, experience, and training necessary to accomplish the matters delegated by this Agreement. The DEPARTMENT shall invite the COUNTY representatives to participate in appropriate training sessions held by the DEPARTMENT. The COUNTY shall apprise the DEPARTMENT of appropriate training sessions conducted by the COUNTY.

**10.02 RECORDS MANAGEMENT**

The COUNTY shall maintain organized files of all records and materials prepared or received in connection with any official business conducted pursuant to this Agreement. The COUNTY shall comply with Chapter 119, F.S., with regard to the

inspection, copying, maintenance, and disposition of public records. The files shall be maintained for the period required by Florida law. Requests for copies of documents pursuant to Chapter 119, F.S., shall be forwarded to the COUNTY for processing.

### **10.03 REPORTING REQUIREMENTS**

#### **10.03.1 The COUNTY Reporting Requirements**

- (a) The COUNTY shall submit an annual report by June 1 of each year to the DEPARTMENT detailing the COUNTY's activities pursuant to the responsibilities outlined in this Agreement. The report shall, at a minimum, include the location of designated Brownfield areas and sites, and the acreage of each Brownfield area and site. In addition for each Brownfield site, the report should provide the person responsible for each Brownfield site rehabilitation, the status of redevelopment, and the status of remediation, including: whether the site has been remediated or is currently under remediation; where alternative cleanup target levels have been established pursuant to Section 376.81(1)(g)3, F.S.; and where engineering and institutional control strategies are being employed as conditions of a "no further action order". The annual report shall adhere to the U.S. Department of Health and Human Services Section 508.
- (b) The COUNTY shall submit to the DEPARTMENT fully executed copies of each executed BSRA within fifteen (15) days after execution of the BSRA.
- (c) The COUNTY shall submit to the DEPARTMENT copies of all approval letters within fifteen (15) days of issuance by the COUNTY in conjunction with the review of any technical documents and Final Orders resulting from the provisions of this Agreement.

#### **10.03.2 BROWARD COUNTY to DEPARTMENT Submittals**

The documents identified in Section 10.03.1 of this Agreement shall be submitted to the DEPARTMENT's Florida Brownfields Program staff members identified below. Electronic submission of these documents, in accordance with Section 9.02 of this Agreement, is encouraged.

Kent Edwards  
Brownfields SE District Coordinator  
3301 Gun Club Road  
West Palm Beach, FL 33406  
[Kent.Edwards@FloridaDEP.gov](mailto:Kent.Edwards@FloridaDEP.gov)

and to

Brownfields Program  
Division of Waste Management  
2600 Blair Stone Road, MS 4515  
Tallahassee, FL 32399-2400  
[FL\\_Brownfields@FloridaDEP.gov](mailto:FL_Brownfields@FloridaDEP.gov)

#### **10.03.3 DEPARTMENT Reporting Requirements**

The DEPARTMENT shall make available its rules, regulations, forms, policy and guidance memoranda within fifteen (15) days after effective date to the COUNTY.

#### **10.03.4 DEPARTMENT to COUNTY Submittals**

All correspondence associated with this Agreement shall be submitted by U.S. Mail or electronically to:

David Vanlandingham  
Environmental Engineering and Permitting Division  
Environmental Protection and Growth Management Department  
1 N University Drive, Mailbox 201  
Plantation, FL 33324  
DVANLANDINGHAM@broward.org

### **SECTION 11. PROGRAM OVERSIGHT**

The DEPARTMENT may review, upon seven (7) days written notice to the COUNTY, any document under review by the COUNTY pursuant to this Agreement for the purpose of assessing the COUNTY's performance under this Agreement. The DEPARTMENT may randomly inspect project sites for which site rehabilitation activities are being conducted.

The DEPARTMENT shall periodically conduct performance audits of the COUNTY's administration of this delegated program. The COUNTY shall have adequate time, not less than twenty (20) working days, to complete pre-audit surveys, and not less than twenty (20) working days to comment on draft audit findings.

## **PART III. PROGRAM RESPONSIBILITIES**

### **SECTION 12. SCOPE OF DELEGATION**

#### **12.01 PROGRAM ACTIVITIES DELEGATED TO THE COUNTY**

- (a) The responsibility to confirm that sites entering the Florida Brownfields Redevelopment Program meet all program eligibility requirements provided in Section 376.82, F.S. prior to execution of a BSRA;
- (b) The authority to administer Sections 376.80 - .83, F.S., and Chapters 62-780 and 62-777, F.A.C., on behalf of the DEPARTMENT relating to the Brownfields Redevelopment Act within the COUNTY;
- (c) The authority to negotiate, execute, and ensure compliance of Brownfield Site Rehabilitation Agreements for Brownfield sites within a designated area, consistent with the substantive requirements of the most current Model BSRA as maintained by the DEPARTMENT (see Attachment B);

- (d) The authority to review and approve, approve with modifications and/or comments, or disapprove all technical documents submitted pursuant to the Brownfields Redevelopment Act and Chapters 62-780 and 62-777, F.A.C., within the COUNTY including authority to issue Final Orders under the provisions of Chapter 62-780, F.A.C.;
- (e) The authority to administer Section 376.81, F.S., for sites covered under the executed Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4 (see Attachment C); and
- (f) The parties acknowledge that separate delegations made by the DEPARTMENT and the COUNTY shall continue in full force and are unaffected by this Agreement.

#### **12.02 PROGRAM ACTIVITIES RETAINED BY THE DEPARTMENT**

Those activities, which are retained by the DEPARTMENT, are:

- (a) Any permitting or other activity, which by law, may not be delegated;
- (b) Issuance of variances or waivers under Section 120.542, F.S.;
- (c) Issuance of Declaratory Statements under Section 120.565, F.S. and;
- (d) Activities covered under this Agreement on the COUNTY owned properties or facilities.

#### **SECTION 13. TECHNICAL AND LEGAL CRITERIA**

- (a) The COUNTY shall apply the state rules that are adopted pursuant to Section 376.81, F.S., as amended from time to time, and set forth in Chapters 62-780 and 62-777, F.A.C., as amended from time to time, when implementing this Agreement.
- (b) The provisions of Chapter 120, F.S., shall govern actions taken by the COUNTY, for the purposes of this Agreement. All timely petitions for formal administrative hearings received by the COUNTY, except for those provisions pertaining to rulemaking, variance and waivers, and declaratory statements shall be referred to the Division of Administrative Hearings (DOAH) for the assignment of an administrative law judge if the petitions are submitted pursuant to Chapter 120 F.S., and satisfy the requirements set forth in Subsection 120.54(5)(b)4., F.S., (1998 Supp.), and the Uniform Rules of Procedures, with particular attention to Rules 28-106.204 and 28-106.303, F.A.C. At the time of referral of a petition to DOAH, a copy of the notice of referral, the petition, and the challenged decision shall be mailed to DEPARTMENT's Office of General Counsel, Attention: Deputy General Counsel for Waste Programs, at 3900

Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. The DEPARTMENT shall have the right, if it so chooses, to intervene in the DOAH proceeding. For all hearings challenging agency action on the delegated Brownfield Program, the COUNTY shall be responsible for preparation for the hearings, appearance at the hearings, and the preparation and submittal of the proposed recommended orders to the assigned administrative law judge. Prior to all final hearings, the COUNTY attorneys shall consult with DEPARTMENT attorneys regarding issues related to the case. Final agency action resulting from such DOAH proceedings shall be taken by the COUNTY. Appeals of final orders entered following an administrative hearing shall be the responsibility of the COUNTY. The DEPARTMENT may join the appeal as a party.

Orders entered by the COUNTY pursuant to administrative hearings shall be published in the Florida Administrative Law Reporter if they have precedential significance. All final orders entered after an administrative hearing under Sections 120.569 or 120.57, F.S., shall be published in the Florida Administrative Law Reporter and copies provided to the DEPARTMENT within 30 days of publication.

- (c) The DEPARTMENT shall make legal interpretation of the DEPARTMENT rules. Legal interpretation of the COUNTY ordinances shall be made by the COUNTY. In the event that there is litigation concerning the interpretation of the DEPARTMENT's rules, then the DEPARTMENT shall provide testimony concerning the interpretation of those rules. To the extent that litigation involves interpretation of the COUNTY ordinances, the COUNTY shall provide testimony concerning the interpretation of those ordinances.
- (d) The COUNTY is not authorized to utilize cleanup or review criteria that are more stringent than those set forth in Chapters 62-780 and 62-777, F.A.C.

#### **SECTION 14. MISCELLANEOUS**

Nothing in this Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates, under each signature: DEPARTMENT OF ENVIRONMENTAL PROTECTION, by its Director, Division of Waste Management, duly authorized to execute same, and BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BROWARD COUNTY

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, BY ITS DIRECTOR, DIVISION OF WASTE MANAGEMENT

By: \_\_\_\_\_  
Broward County Authorized Signatory

By: \_\_\_\_\_  
Director, Division of Waste Management

\_\_\_\_\_  
Print Signatory's Name & Title

\_\_\_\_\_  
Print Director's Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Address

Approved as to form and legality:

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
FDEP Brownfields Program Attorney

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Print FDEP Attorney's Name

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

By Michael C. Owens Digitally signed by Michael C. Owens  
Date: 2020.04.21 08:39:13 -04'00'

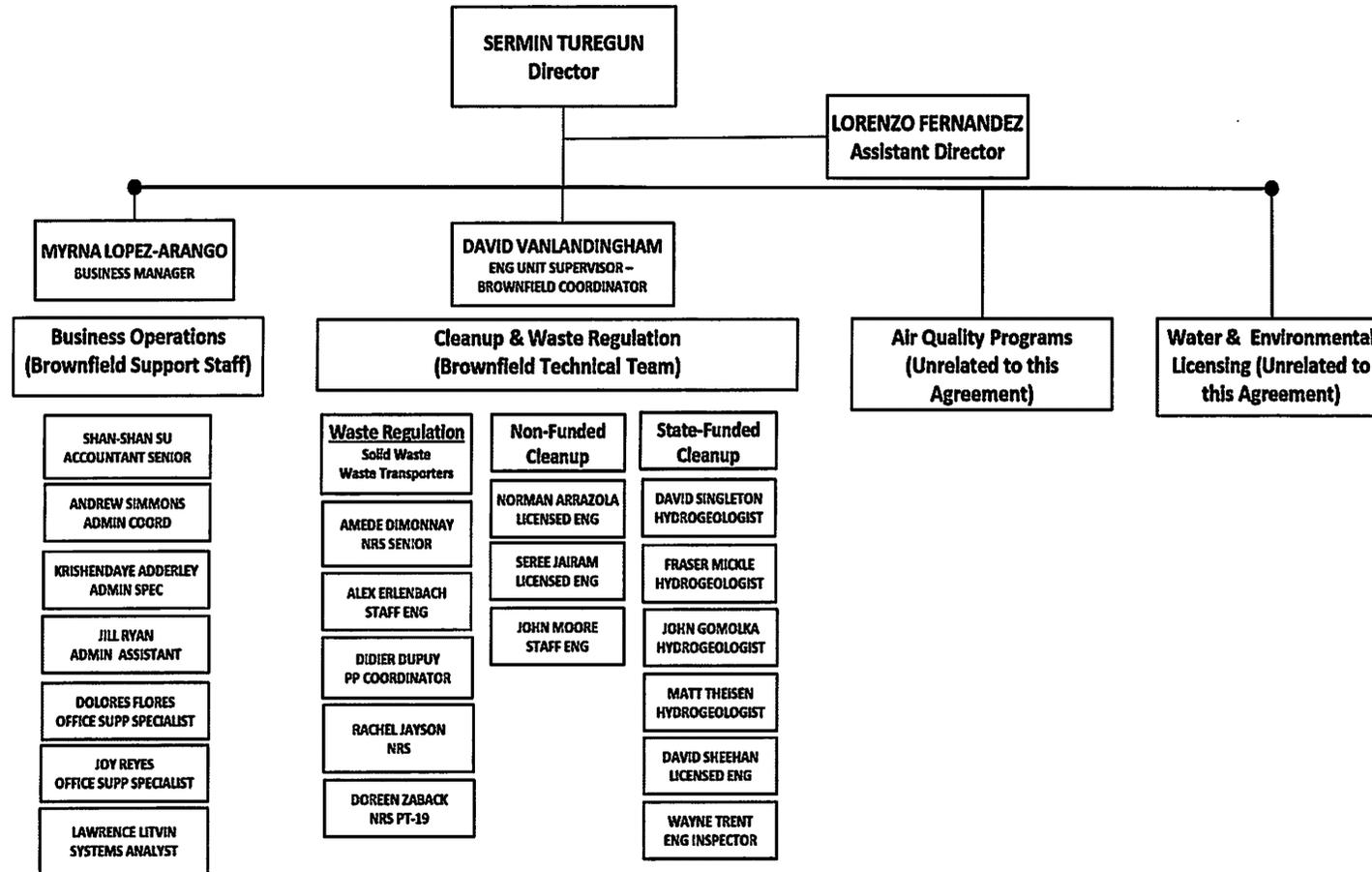
Michael C. Owens (Date)  
Senior Assistant County Attorney

\_\_\_\_\_  
Clerk (or Deputy Clerk)

Date: \_\_\_\_\_

By Maite Azcoitia Digitally signed by Maite Azcoitia  
Date: 2020.04.21 09:33:25 -04'00'  
Maite Azcoitia (Date)  
Deputy County Attorney

**ENVIRONMENTAL ENGINEERING AND PERMITTING DIVISION**  
**Environmental Protection and Growth Management Department**



Broward County Table of Staff Organization  
Attachment A

**Attachment B**

**Model Brownfield Site Rehabilitation Agreement**

**MODEL - Effective Date: September 28, 2018**

**Brownfield Site Rehabilitation Agreement (BSRA) and  
Attached Instructions**

**NOTE:**

1. This model BSRA supersedes any previously distributed models. This model BSRA should be used as the template beginning on, September 19, 2018. However, if a BSRA has been drafted with an earlier template, the Florida Department of Environmental Protection (FDEP) will work with the Person Responsible For Brownfield Site Rehabilitation (PRFBSR) to make the appropriate changes.
2. This model BSRA **does not apply to sites that are subject to RCRA enforcement or HSWA permits.** Contact the FDEP's Brownfields Program Manager to obtain the model RCRA-BSRA for those sites.
3. Remove the attached instructions (these instructions and the instructions associated with each attachment) and delete all language in { } or [ ], but not ( ) before finalizing the document.
4. Submit a completed electronic Word or Word compatible copy or a hard copy of the draft BSRA with all attachments to the appropriate District Brownfield Coordinator for review. Please include a cover letter or email which provides contact information for the person(s) coordinating the BSRA for the PRFBSR and indicate when the BSRA needs to be executed (for example, by the end of the current calendar year, or some other date).
5. Contact the appropriate delegated local environmental program [Broward DEPGM (954-519-1478), Hillsborough County EPC (813- 627-2600, Ext. 1294) or Miami-Dade RER (305-372-6700)] for a copy of a modified template if the brownfield site is located within the jurisdiction of these counties.
6. The model includes optional language in a few places throughout the document. Please work with your District Brownfields Coordinator or the Brownfields Program Manager to determine the correct language for your project.
7. FDEP will provide the Brownfield ID numbers and OGC tracking number during review of the draft BSRA.
8. FDEP recommends that you use the Checklist provided at <https://floridadep.gov/waste/waste-cleanup/documents/brownfield-site-rehabilitation-agreement-checklist>, along with the instructions in this document, to ensure the submission of a complete BSRA.

Due to the large number of BSRAs and amendments submitted at the end of each calendar year, the FDEP recommends that BSRAs and BSRA amendments that need to be executed by the end of the calendar year, be submitted to the District Brownfield Coordinator no later than October 1. District Brownfield Coordinators are encouraged to review such drafts with PRFBSRs and, when complete, forward the BSRA to FDEP's Brownfields Program Manager as soon as possible.

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE: **[Insert Name of the Person(s) or Entity Responsible For Brownfield Site Rehabilitation]**  
**[Insert Brownfield Site Name]**  
**[Insert Brownfield Site Address, City, State, Zip Code]**  
**[Insert Brownfield Area Name]**  
**[Insert Brownfield Area Identification Number: "BFXXXXXXXXXX"]**  
**[Insert Brownfield Site Identification Number: "BFXXXXXXXXXX"]**  
**[Insert any other FDEP Identification Number(s): COM\_, Facility #, etc.]**  
**[Insert OGC Tracking Number: provided by DEP during review of draft]**

BROWNFIELD SITE REHABILITATION AGREEMENT PURSUANT TO §376.80(5),  
Florida Statutes (F.S.)

WHEREAS, the Brownfields Redevelopment Act was enacted to reduce public health and environmental hazards on existing commercial and industrial sites by offering incentives to encourage responsible persons to voluntarily develop and implement cleanup plans; and

WHEREAS, the Department of Environmental Protection ("Department") is the administrative agency of the State of Florida having the power and duty to protect Florida's environment and to administer and enforce the provisions of Chapters 403 and 376, F.S., and the rules promulgated thereunder, Chapters 62-777 and 62-780, Florida Administrative Code (F.A.C.), as amended; and

WHEREAS, the Department has jurisdiction over the matters addressed in this Brownfield Site Rehabilitation Agreement ("BSRA"); and

WHEREAS, the Department has the authority, pursuant to §376.81, F.S., to establish by rule, criteria for determining the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed complete;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed as follows:

This BSRA is entered into between the Department and \_\_\_\_\_ **{insert the full legal name of the entity entering into the BSRA}**, hereinafter the Person Responsible For Brownfield Site Rehabilitation ("PRFBSR") (collectively referred to as the "parties"), for the rehabilitation of a brownfield site within a designated brownfield area pursuant to §376.80(5), F.S. The Department and the PRFBSR agree to the following:

1. DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Department is the agency of the State of Florida with authority and power to enforce the provisions of Chapters 376 and 403, F.S.

2. PERSON RESPONSIBLE FOR BROWNFIELD SITE REHABILITATION

\_\_\_\_\_ is the PRFBSR {{OR if multiple parties will be sharing the PRFBSR responsibilities, "are jointly the PRFBSRs". The Department will not allocate such responsibilities in the BSRA.}} as defined in §376.79(15), F.S., for the real property described in the map and legal description in **Attachment A** (the "Brownfield Site"), incorporated herein, that has been designated by the {Insert "City of" or "\_\_\_\_\_ County"} in Resolution Number {insert resolution number and date approved here; if there is more than one resolution associated with the brownfield area, all resolution numbers and approval dates should be listed here} as a brownfield area as defined in §376.79(5), F.S. **Attachment A** is a composite exhibit that includes: (a) the legal description and map of the Brownfield Site; and (b) the {insert "city" or "county"} resolution(s) with all attachments including the map of the designated brownfield area. The brownfield site consists of \_\_\_\_\_ acres. {If the legal boundaries of the brownfield site and the brownfield area are the same, include the following sentence:} The legal boundaries of the brownfield site and the brownfield area are the same.

3. PRFBSR'S DUTIES

The PRFBSR agrees:

- (a) to conduct "site rehabilitation" of any "contaminated site(s)" as defined in §376.79, F.S., whose source originates on the real property described in **Attachment A as the Brownfield site**. If such contaminated site(s) extend(s) beyond the boundary of the Brownfield site, then PRFBSR agrees to conduct site rehabilitation to address the entire contaminated site;
- (b) to conduct site rehabilitation and submit technical reports and rehabilitation plans in a timely manner according to the attached brownfield site rehabilitation schedule agreed upon by the parties (see **Attachment B**), and incorporated herein;
- (c) to conduct site rehabilitation activities under the observation of professional engineers or professional geologists, as applicable, who are registered in accordance with the requirements of Chapters 471 or 492, F.S., respectively. Submittals provided by the PRFBSR must be signed and sealed by a professional engineer registered under Chapter 471, F.S., or by a professional geologist registered under Chapter 492, F.S., as applicable, certifying that the submittal and associated work comply with the laws and rules of the Department and those governing the profession. Upon

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

- completion of the approved remedial action, a professional engineer registered under Chapter 471, F.S., or a professional geologist registered under Chapter 492, F.S., as applicable, must certify that the corrective action was, to the best of his or her knowledge, completed in substantial conformance with the plans and specifications approved by the Department;
- (d) to conduct site rehabilitation in accordance with Chapter 62-160, F.A.C., as the same may be amended from time to time;
  - (e) to obtain any local, state or federal approvals or permits required for the site rehabilitation work and to conduct the necessary site rehabilitation consistent with local, state, and federal laws, rules and ordinances. All site rehabilitation shall be consistent with the cleanup criteria in §376.81, F.S., the requirements of Chapters 62-780, F.A.C., Contaminated Site Cleanup Criteria, and 62-777, F.A.C., Contaminant Cleanup Target Levels;
  - (f) to allow access by the Department during the entire site rehabilitation process, as evidenced by the attached documentation (see **Attachment C**) incorporated herein, establishing that such site access has been secured by agreement with the **real property owner**. Upon the transfer of any real property interest in any portion of the Brownfield Site before site rehabilitation is complete, the PRFBSR shall notify the Department within 15 days from the date that such an interest is effective. With notice the PRFBSR shall provide a copy of an access agreement in substantially the same form as that in **Attachment C** with any successor in interest to the **real property owner** of the Brownfield Site or with any party with a real property interest in the Brownfield Site after the effective date of this agreement, granting such access to the Department; and
  - (g) to consider appropriate pollution prevention measures and to implement those that the PRFBSR determines are reasonable and cost-effective, taking into account the ultimate use or uses of the real property described in **Attachment A**. Local pollution prevention programs as well as state pollution prevention programs are available to assist in determining pollution reduction measures. The Department recommends that the PRFBSR contact the Department's Waste Reduction and Registration Program at (850) 245-8864 or Hazardous Waste Program and Permitting at (850) 245- 8713 and visit the following websites at <https://floridadep.gov/waste/waste-reduction> and <https://floridadep.gov/waste/permitting-compliance-assistance/content/hazardous-waste-management-main-page> for recommendations on waste minimization and waste management and for assistance with pollution prevention measures. Such measures may include improved inventory or production controls and procedures for preventing

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

- loss, spills, and leaks of hazardous waste and materials, and include the goals for the reduction of releases of toxic materials.
- (h) **{Insert the following paragraph for sites that are subject to an existing Consent Order:}** that upon the execution of this BSRA the terms and conditions of Consent Order **{insert Consent Order Number and execution date}**, only as it pertains to corrective actions on the contaminated site(s) originating on the real property as described in **Attachment A**, will be held in abeyance and shall remain in abeyance, provided the PRFBSR is in compliance with the terms of this BSRA. In the event the Department determines that PRFBSR is not in compliance with the terms and conditions of this BSRA, subject to the provisions of Paragraphs **11** and **19** hereof, the PRFBSR agrees that the terms and conditions of the Consent Order shall return in full force and effect. **{If the Brownfield Site at issue is not subject to an existing Consent Order, then delete this paragraph.}**

#### 4. CERTIFICATION

**[Please use one of following paragraphs, as appropriate:]**

The PRFBSR certifies that it has consulted with the local government with jurisdiction over the brownfield area about the proposed redevelopment of the brownfield site, that the local government is in agreement with or approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. Documentation that supports this certification is provided as **Attachment D**, incorporated herein.

**[Or, use the following paragraph if the PRFBSR is a local government that has jurisdiction over the property]**

The PRFBSR is the local government with jurisdiction over the real property described in **Attachment A**. Therefore, the PRFBSR certifies that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. Documentation provided that describes the proposed redevelopment is provided as **Attachment D**, incorporated herein.

#### 5. SITE CONTRACTOR

The PRFBSR must ensure that the contractor who is performing the majority of the site rehabilitation program tasks pursuant to this BSRA or supervising the performance of such tasks by licensed subcontractors in accordance with the provisions of § 489.113(9), F.S., has provided certification to the Department that the contractor meets the requirements listed below. If the identity of the contractor is known at the time of the execution of this BSRA, a Brownfields Redevelopment Program Contractor Certification Form (CCF) shall be submitted as **Attachment E**

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

to this BSRA, and incorporated herein. If the contractor has not yet been determined, the PRFBSR shall ensure that the CCF is submitted to the District Brownfield Coordinator and approved by the Department before the contractor begins performing any site rehabilitation tasks at the site.

The PRFBSR must submit to the Department documentation as **Attachment F**, incorporated herein, which shows a National Environmental Laboratory Accreditation Program ("NELAP")-recognized authority has accredited the laboratory(s) that will perform the analyses required by this agreement.

Any contractor that performs site rehabilitation tasks at a contaminated site originating on the real property as described in **Attachment A** shall provide documentation in accordance with the provisions of the paragraph above and with **Attachments E and F**, if applicable, showing that any contractor that performs site rehabilitation tasks:

- (a) meets all certification and license requirements imposed by law; and
- (b) performs, or has laboratory analyses performed, pursuant to NELAP certification requirements and performs, or has field sampling work performed, in accordance with the Standard Operating Procedures provided in Chapter 62-160, F.A.C., as amended, if applicable to performance of site rehabilitation tasks.

## 6. CONTINUOUS COMPLIANCE

During the entire site rehabilitation process, the PRFBSR agrees to ensure that the contractor continues to comply with the requirements of **Paragraph 5** of this BSRA pursuant to the requirements of §376.80(6), F.S.

## 7. VOLUNTARY CLEANUP TAX CREDIT PROGRAM

Not all activities that are approved or performed in association with a BSRA are eligible for the state's Voluntary Cleanup Tax Credit (VCTC). In accordance with Section 376.30781, F.S., only costs incurred and paid by the applicant that are either integral, necessary and required for site rehabilitation or for solid waste removal, are eligible for the VCTC. Contamination assessment or remediation paid for by the State of Florida for a discharge that is eligible for a state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP) or one of the Petroleum Restoration Program's (PRP) eligibility programs, may not be used to calculate a tax credit. Likewise, expenses incurred that are statutorily-required to participate in the DSCP (i.e., deductibles) or one of the PRP eligibility programs (i.e., deductibles, review fees, limited contamination assessment reports, and co-payments), are not eligible for the state's VCTC. "Site rehabilitation" means the

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

assessment of site contamination and the remediation activities that reduce the levels of contaminants at a site through accepted treatment methods to meet the cleanup target levels established for that site. For sites subject to the Resource Conservation and Recovery Act, as amended, the term includes removal, decontamination, and corrective action of releases of hazardous substances. "Solid waste removal" means removal of solid waste from the land surface or excavation of solid waste from below the land surface and removal of the solid waste from the brownfield site. Nothing contained herein is intended to limit the VCTC otherwise available to the PRFBSR under applicable law. General information about the VCTC Program is available at <https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit>. For specific questions regarding the VCTC Program, please contact the Department's Waste Cleanup Program at (850) 245-8958.

8. ADVISORY COMMITTEE

The PRFBSR shall establish an advisory committee pursuant to the requirements of §376.80(4), F.S., for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. The advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. However, if an appropriate local advisory committee already exists, this committee may be used for requesting public participation and for the purposes of complying with this paragraph.

The PRFBSR shall provide the advisory committee a copy of the final proposed draft BSRA, including attachments, and a copy of the executed BSRA. When the PRFBSR submits a site assessment report or the technical document containing the proposed course of action following site assessment to the Department or the local pollution control program for review, the PRFBSR shall hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.

The names, addresses, contact numbers, and applicable affiliation for each advisory committee member is included as **Attachment G**, incorporated herein.

9. INDEMNIFICATION

The PRFBSR shall save and hold harmless and indemnify the Department against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the

Name of PRFBRSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

terms of this BSRA and from the negligent acts or omissions of the PRFBRSR or its employees, agents, contractors, subcontractors, or other representatives, to the extent allowed by law.

10. LIABILITY PROTECTION

The liability protection provided under §376.82, F.S., shall become effective upon execution of this BSRA and shall remain effective, provided the PRFBRSR complies with the terms of this BSRA.

11. TERMINATION

If the PRFBRSR fails to comply with this BSRA, the Department shall notify the PRFBRSR and allow 90 days for the PRFBRSR to return to compliance with the provision at issue or to negotiate a modification to the BSRA with the Department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with this BSRA and a modification cannot be negotiated, the Department shall terminate this BSRA.

The PRFBRSR may terminate this BSRA at any time upon written notice to the Department.

Termination of this BSRA by either party will revoke the immunity provision of §376.82, F.S. [Insert the following if this BSRA places a consent order in abeyance: Upon termination of this BSRA, Consent Order #\_\_\_\_\_ will return immediately to full force and effect.]

12. IMMINENT HAZARD

Nothing herein shall be construed to limit the authority of the Department to undertake any action in response to, or to recover the costs of responding to, conditions at or from the real property described in **Attachment A** that require the Department to take action to abate an imminent hazard to the public health, welfare or the environment.

13. RELEASE OF LIABILITY

Upon successful completion of this BSRA as evidenced by the issuance of a Site Rehabilitation Completion Order (SRCO) for each contaminated site originating from the real property described in **Attachment A**, the PRFBRSR and his or her successors and assigns, shall be relieved from further liability for site rehabilitation as described in paragraph 3.a. of this BSRA to the Department and third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site(s).

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

**[Insert the following paragraph if a Consent Order is applicable: The Department will release the Respondent to Consent Order #\_\_\_\_\_, and its successors and assigns, from its corrective action obligations pursuant to the Consent Order for the real property covered by this BSRA upon issuance of the Brownfield Site Rehabilitation Completion Order issued pursuant to this BSRA.]**

This release of liability is subject to the reopener provisions of §376.82(3), F.S.

14. GOVERNING LAW

This BSRA has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida and any applicable local regulations. Wherever possible, each provision of this BSRA shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this BSRA shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this BSRA. Any action hereon or in connection herewith shall be brought in **[Insert either Leon County or the county where the brownfield site is located]**, Florida.

15. SUBMITTALS

The PRFBSR shall submit one hard (paper) copy or one electronic (digital) copy of any certifications or documentation required in **Paragraph 5** ("Site Contractor") above, and all data, reports, responses, addenda, or modifications to reports and plans required by this BSRA to:

**[Insert name,  
Title, and  
Mailing address of the District's Brownfields Coordinator].**

The Department encourages the submittal of documents for review in an electronic format rather than the submittal of paper copies. All electronic copies of documents shall be in the format listed in Attachment H, incorporated herein. Time frames for the Department's review of technical reports and plans and submittal of documents by the PRFBSR shall be governed by the attached schedule (see **Attachment B**), incorporated herein. After final Department approval of each report or plan, an electronic copy shall be submitted to the Department within 30 days. The electronic copy of the report shall be submitted in the format listed in **Attachment H**.

16. DOCUMENT REVIEW

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

During the site rehabilitation process, if the Department fails to complete the review of a technical document within the time frame specified in this BSRA, with the exceptions of “no further action proposals,” “monitoring only proposals,” and feasibility studies, which must be approved prior to implementation, the PRFBSR may proceed to the next site rehabilitation task. However, the PRFBSR does so at its own risk and may be required by the Department to complete additional work on a previous task.

17. ASSIGNMENT

The PRFBSR shall not assign any rights or responsibilities under this BSRA to any other party without the written consent of the Department and the local government with jurisdiction over the real property described in **Attachment A**. However, the Department shall not withhold its consent to such an assignment if: (a) the proposed assignee meets all of the eligibility criteria under §376.82, F.S.; (b) the proposed assignee has agreed, in writing, to assume all obligations of the PRFBSR under the terms of this BSRA; and (c) the assignment of PRFBSR obligations under any agreement with the local government with jurisdiction over the real property has been approved, in writing, by the local government.

18. WAIVER

By entering into this BSRA, the PRFBSR waives its right to challenge the contents of this BSRA in an administrative hearing afforded by §120.569 and §120.57, F.S., or an appeal afforded by the terms of §120.68, F.S. This BSRA does not deny the PRFBSR a right to challenge the Department’s actions taken pursuant to this BSRA. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this BSRA, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

19. EFFECTIVE DATE AND ADMINISTRATIVE HEARING

This BSRA (Order) is final and effective on the date of execution unless a timely petition for an administrative hearing is filed under §§120.569 and 120.57, F.S., within 21 days after the date of receipt of notice of agency action. Upon the timely filing of such petition, this BSRA will not be effective until further order of the Department. The liability protection for the PRFBSR pursuant to §376.82(2), F.S., becomes effective upon execution of the BSRA. The procedures for petitioning a hearing are set forth below.

Please be advised that mediation of this decision pursuant to §120.573, F.S., is not available.

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

**How to Request an Extension of Time to File a Petition for Hearing:**

For good cause shown, pursuant to Rule 62-110.106(4), F.A.C., the Department may grant a request for an extension of time to file a petition for hearing. Such a request shall be filed with (received by) the Agency Clerk of the Department in the Office of the General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this BSRA. Petitioner shall mail a copy of the request to the PRFBSR at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be made.

**How to File a Petition for Administrative Hearing:**

A person whose substantial interests are affected by this BSRA may petition for an administrative proceeding (hearing) under §§120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed with (received by) the Agency Clerk of the Department in the Office of the General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this BSRA. Petitioner shall mail a copy of the petition to the PRFBSR at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right to request an administrative proceeding under Chapter 120, F.S.

Pursuant to §120.569(2), F.S., and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

1. The name, address, any e-mail address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the PRFBSR's name and address; the Department's Brownfield Area and Brownfield Site Identification Numbers; and the name and address of the Brownfield Site; the name and address of each agency affected;
2. A statement of when and how each petitioner received notice of the Department's action or proposed action;
3. An explanation of how each petitioner's substantial interests will be affected by the Department's action or proposed action;
4. A statement of the disputed issues of material fact, or a statement that there are no disputed facts;

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

5. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;

6. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

7. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this BSRA. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

20. JUDICIAL REVIEW

Except for the PRFBSR, any party has the right to seek judicial review of this BSRA under §120.68, F.S., by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department in the Office of the General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The notice of appeal must be filed within **30** days after this BSRA is filed with the clerk of the Department (see below).

21. CONTACTS FOR GENERAL AND LEGAL QUESTIONS

Any questions about the content of this BSRA, the Department's review of the BSRA, or technical questions should be directed to the Department's District Brownfields Coordinator at:

**[Insert District's Brownfields Coordinator name,  
Mailing address, Email address,  
Phone number]**

or to the PRFBSR's representative at:

**[Insert PRFBSR's representative name,**

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

**Mailing address, Email address,  
Phone number].**

Questions regarding legal issues should be referred to the Department's Brownfields Program Attorney in the Office of General Counsel at (850) 245-2242. Contact with any of the above does not constitute a petition for administrative hearing or request for an extension of time to file a petition for administrative hearing.

22. ENTIRETY OF AGREEMENT

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

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Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

IN WITNESS WHEREOF, each of the parties has made and executed this Brownfield Site Rehabilitation Agreement on the date set forth for each signature of each representative below: **{Insert Director's name here}**, Director **{Insert appropriate DEP District}** District, State of Florida Department of Environmental Protection, and **{Insert PRFBSR's name here}**, the Person Responsible for Brownfield Site Rehabilitation, signing by and through **{Insert individual signatory's name if signing for PRFBSR Company or Entity. Please ensure the person signing has the authority to sign on behalf of the entity; see link to FDEP's signature authority memo for more information https://floridadep.gov/ogc/ogc/documents/example-signature-blocks-and-certifications}**, duly authorized to execute same.

PERSON RESPONSIBLE FOR  
BROWNFIELD SITE REHABILITATION

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
(PRFBSR Authorized Signatory)

By: \_\_\_\_\_  
Director, {insert DEP District} District

\_\_\_\_\_  
(Print Signatory's Name & Title)

\_\_\_\_\_  
(Print Director's Name)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Address)

Approved as to form and legality:

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
FDEP Brownfields Program Attorney

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Print FDEP Attorney's Name)

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

\_\_\_\_\_  
Clerk (or Deputy Clerk)

Date: \_\_\_\_\_

cc: FDEP Brownfields Program Attorney  
Justin Cross, FDEP Government Analyst, Brownfields Program  
Megan R. Johnson, FDEP ESIII, Brownfields Program  
Kelly Crain, FDEP Brownfields Program Manager  
{Insert Name of Brownfields District Coordinator, FDEP}

Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

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Name of PRFBSR  
Brownfield Site Rehabilitation Agreement  
Brownfield Site ID # BFXXXXXXXXXX

List of Attachments

- |              |  |
|--------------|--|
| Attachment A | Local Government Resolution for the Brownfield Area and Map and Legal Description of the Brownfield Site |
| Attachment B | Brownfield Site Rehabilitation Schedule  |
| Attachment C | Site Access Agreement  |
| Attachment D | Certification of Redevelopment Agreement   |
| Attachment E | Contractor Certification Form  |
| Attachment F | Quality Assurance Certificate  |
| Attachment G | Advisory Committee Members   |
| Attachment H | Format for Submittal of Technical Documents  |
| Attachment I | Publication of Notice <i>{Optional; delete if not published.}</i>  |

**Delete the instructions (after the attachment title) on each attachment page before finalizing the document.**

BROWNFIELD SITE REHABILITATION AGREEMENT  
INSTRUCTIONS

For electronic copies of the latest Florida Brownfields Redevelopment Program Guidance Manual and examples of various forms used within the BSRA, visit the Website address:

<https://floridadep.gov/waste/waste-cleanup/content/brownfields-program>

**INDEX**

<b>Section</b>	<b>Title of Attachment</b>	<b>Reference Page in Instructions</b>
1	Local Government Resolution For The Brownfield Area and Map and Legal Description of the Brownfield Site	i
2	Brownfield Site Rehabilitation Schedule (Suggested Time Frames)	ii
3	Site Access Agreement	v
4	Certification of Redevelopment Agreement	viii
5	Contractor Requirement Form	ix
6	Quality Assurance Certificate	xi
7	Advisory Committee Members	xii
8	Format of Submittal of Technical Documents	xiii
9	Publication of Notice (Optional)	xivi

**SECTION 1: ATTACHMENT A - - LOCAL GOVERNMENT RESOLUTION FOR THE BROWNFIELD AREA AND MAP AND LEGAL DESCRIPTION OF THE BROWNFIELD SITE**

**Attachment A** shall include a copy of the local government resolution, including the resolution's attachments, that designated the brownfield area pursuant to §376.80, F.S. **Attachment A** shall also include a map and legal description of the brownfield site. The map of the brownfield site shall clearly delineate the boundaries of the brownfield site. The number of acres shall also be recorded. The information provided in the attachment shall be compatible with the Department's Geographic Information System (GIS).

## SECTION 2: ATTACHMENT B - - BROWNFIELD SITE REHABILITATION SCHEDULE

1. The PRFBSR who wishes to conduct cleanup pursuant to the Brownfields Redevelopment Act must propose a brownfield site rehabilitation schedule as required by §376.80(5)(a), F.S. The schedule shall address each of the contamination assessment and remedial action tasks including milestones for completion of each task, submittal of technical reports and rehabilitation plans and the Department's or delegated local program's review time frames for review of reports or plans. The approved schedule shall be submitted as **Attachment B** and incorporated into the BSRA. All contamination assessment and remedial action tasks set forth therein shall be conducted in a timely manner and in accordance with the approved schedule for site rehabilitation.
2. Table I on the following page contains examples of submittals or suggested review time frames for reports, as applicable, submitted by the PRFBSR for review by the Department or by the delegated local program and initiation of applicable activities by the PRFBSR. **Table I schedule may be modified to more accurately represent the site activities.** However, the PRFBSR's actions or document submittal time frames shall not exceed the time frames in Chapter 62-780, F.A.C., without Department or delegated local program approval.

**Attachment B Table I**  
**{Suggested} Brownfield Site Rehabilitation Schedule**

Type of Report or Activity	PRFBSR Action or Submittal Time Frames	Department Review or Comment Time frames
Notice of Interim Source Removal Action or Emergency Response Action situations.	Within 24 hours of initiation of the action.	No comment required.
Interim Source Removal Proposal	When seeking approval before implementation of an alternative product recovery method, groundwater recovery, soil treatment or disposal technique (see Rule 62-780.525, F.A.C.)	Within 30 days of receipt.
Interim Source Removal Plan	When seeking approval before implementation of an alternative product recovery method, groundwater recovery, soil treatment or disposal technique (62-780.525, F.A.C.)	Within 30 days of receipt.
Interim Source Removal Status Report	Within 60 days of completion of source removal activities and every 60 days thereafter or when the field activity is terminated, whichever occurs first.	No comment required.
Interim Source Removal Report	Within 60 days of completion of interim source removal activities.	Within 60 days of receipt.
Site Rehabilitation Plan (SRP) or Combined Document; (Optional submittal) (See Rule 62-780.450, F.A.C.)	Optional: SRP submitted within 270 days of executing BSRA. May include multiple tasks.	Within 60 days of receipt.
Site Assessment Report (SAR)	SAR submitted within 270 days of executing BSRA.	Within 60 days of receipt.
Risk Assessment Report (RAR)	Optional: (within 60 days of SAR approval.)	Within 90 days of receipt.
No Further Action (NFA) Proposal	When the site meets the criteria for NFA (See Rule 62-780.680, F.A.C.).	Within 60 days of receipt.
Well Survey and Sampling Results pursuant to paragraph 62-780.600(3)(h), F.A.C.	Within 60 days of discovery of contamination beyond the property boundaries	Within 60 days of receipt.
Natural Attenuation with Monitoring (NAM) Plan	When the site meets the criteria for Natural Attenuation with Monitoring (See Rule 62-780.690, F.A.C.).	Within 60 days of receipt.
Natural Attenuation with Monitoring (NAM) Report	Within 60 days of sample collection.	No comment required.
Remedial Action Plan (RAP)	Within 90 days of approval of a SRP, SAR or RAR.	Within 60 days of receipt.
As-Built Drawings	Within 120 days of initiating operation of the active remediation system.	No comment required.
Initiate Operation of Active Remedial Action	Within 120 days of RAP approval.	No comment required.
Proposals submitted pursuant to subsection 62-780.700(14), F.A.C.	Optional during active remediation	Within 60 days of receipt
Remedial Action Status Report (Monthly or quarterly status reports may be required for submittal - - depending on site conditions and Advisory Committee.)	Within 60 days of the anniversary date of initiating operation of active remediation system.	No comment required.

Type of Report or Activity	PRFBSR Action or Submittal Time Frames	Department Review or Comment Time frames
Post Active Remediation Monitoring (PARM) Plan	When the site meets the criteria for NFA (see Rule 62-780.680) or Leveling-Off [see Rule 62-780.700(18)]	Within 60 days of receipt.
Post Active Remediation Monitoring (PARM) Report	Within 60 days of sample collection.	No comment required.
Leveling Off Determination	Within 60 days of sample collection.	Within 60 days of receipt.
Post Active Remediation Monitoring (PARM) Plan resampling proposal (Rule 62-780.750(4)(e), F.A.C.	Within 60 days of sample collection.	Within 60 days of receipt.
Site Rehabilitation Completion Report (SRCR)	Within 60 days of the final sampling event. If SRCR not approved then submit modifications, etc., within 60 days of Department's response.	Within 60 days of receipt. If the brownfield site meets the requirements of Chapter 62-780, F.A.C., for the issuance of an SRCO, then an SRCO will be issued.
Pilot Study Work Plan	When seeking approval before implementation of a Pilot Study pursuant to Rule 62-780.700(2), F.A.C.	Within 60 days of receipt.
Notices for Field Activities except for Start of Interim Source Removal or Emergency Response Action situations.	Within seven (7) days but not less than 24 hours prior notice to the Department to perform field activity.	No comment required.
Submittal to the Department of addenda, responses, or modification to plans or reports, pursuant to Chapter 62-780, F.A.C.	Within 60 days of receipt of the Department's response.	Within the same time frame for review of the original submittal.
Submittal of Form and Actual Notice required in subsection 62-780.220(2), F.A.C.	See text of rule for "Initial Notice of Contamination Beyond Property Boundaries" in subsection 62-780.220(2), F.A.C.	No comment required.
Submittal of Actual and Constructive Notice required in subsection 62-780.220(3), F.A.C.	See text of rule for "Subsequent Notice of Contamination Beyond Source Property Boundaries for Establishment of a Temporary Point of Compliance (TPOC)" in subsection 62-780.220(3), F.A.C.	No comment required.
Submittal of Notice required in subsection 62-780.220(7), F.A.C.	See text of rule for requirement that PRFBSR provide notice of Department's intent to approve site closure using institutional controls, institutional and engineering controls, or alternative cleanup target levels.	No comment required.

### **SECTION 3: ATTACHMENT C - - SITE ACCESS AGREEMENT**

The PRFBSR shall provide the Department or the delegated local program with original copies of any site access agreement entered into between the PRFBSR and the owner(s) of all the individual parcels comprising the Brownfield site subject to this BSRA. These site access agreement(s) shall be incorporated as **Attachment C** and include acknowledgement that representatives from the Department shall be allowed access to the property upon request. A model of the Site Access Agreement is shown on the following page. This model must be used to grant site access for the Department, however, the agreement may be modified based on site-specific circumstances. **Please ensure the person signing the site access agreement has the necessary legal authority to sign on behalf of the entity.** **For more information, see the following link to the Department's signature authority guidance:** **<https://floridadep.gov/ogc/ogc/documents/example-signature-blocks-and-certifications>**.

**SITE ACCESS AGREEMENT  
PERMISSION TO ENTER PROPERTY  
BROWNFIELDS REDEVELOPMENT PROGRAM**

1. \_\_\_\_\_, the real property owner (“undersigned” or “owner”), hereby grants permission to the State of Florida, Department of Environmental Protection (“Department”) and its agents and subcontractors to enter the undersigned’s property (“the property”) located at \_\_\_\_\_ as described in **Attachment A** attached to the Brownfield Site Rehabilitation Agreement (“BSRA”) for the brownfield site assigned the Brownfield Site Identification Number {**Insert Brownfield Site Identification Number here.**}, beginning on the date of execution of the BSRA and ending on such date as deemed appropriate by the Department or the successful completion of the BSRA, whichever occurs first.
2. This permission is contemplated to be used for the following activities that may be performed by the Department, its agents, representatives or subcontractors:
  - a. Having access to areas where contamination may exist.
  - b. Investigation of soil and groundwater including, but not limited to, the installation of groundwater monitoring wells, the use of geophysical equipment, the use of an auger for collection of soil and sediment samples, the logging of existing wells, videotaping, preparation of site sketches, taking photographs, any testing or sampling of groundwater, soil, surface water, sediments, air, and other materials deemed appropriate by the Department and the like.
  - c. Removal, treatment and/or disposal of contaminated soil and water, which may include the installation of recovery wells or other treatment systems.
3. Upon completion of the investigation, the Department will restore the property as near as practicable to its condition immediately prior to the commencement of such activities.
4. The granting of this permission by the undersigned is not intended, nor should it be construed, as an admission of liability on the part of the undersigned or the undersigned’s successors and assigns for any contamination discovered on the property.
5. The Department, its agents, representatives or subcontractors may enter the property during normal business hours and may also make special arrangements to enter the property at other times after agreement from the undersigned.
6. The Department acknowledges and accepts any responsibility it may have under applicable law (Section 768.28, Florida Statutes) for damages caused by the acts of its employees acting within the scope of their employment while on the property.
7. In exercising its access privileges, the Department will take reasonable steps not to interfere with the Owner’s operations, or the remediation and redevelopment activities pursuant to the BSRA.

\_\_\_\_\_  
Signature of Real Property Owner

\_\_\_\_\_  
Signature of Witness

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title, if applicable \_\_\_\_\_

\_\_\_\_\_  
Date

**Site Access Agreement**

**Brownfield Site ID #:** \_\_\_\_\_

**{Date}**

**Page \_\_\_ of \_\_\_ (refer to the number of pages in the site access agreement).**

Accepted by the Department by the following authorized agent:

\_\_\_\_\_  
Signature of Department representative

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Title of Department representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date

#### **SECTION 4: ATTACHMENT D - - CERTIFICATION OF REDEVELOPMENT AGREEMENT**

The PRFBSR must certify that it has consulted with the local government with jurisdiction over the brownfield area about the proposed redevelopment of the brownfield site, that the local government is in agreement with or approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. The PRFBSR must document this certification by including one of the following as **Attachment D** of the BSRA:

- Reference to or a copy of a legally recorded or officially approved land use or site plan, a development order or approval, a building permit, or a similar official document issued by the local government that reflects the local government's approval of proposed redevelopment of the brownfield site;
- A copy of the local government resolution designating the brownfield area that contains the proposed redevelopment of the brownfield site; or
- A letter from the local government that describes the proposed redevelopment of the brownfield site and expresses the local government's agreement with or approval of the proposed redevelopment.

If the local government with jurisdiction over the site is also the PRFBSR, then the PRFBSR only needs to submit documentation that describes the redevelopment. However, please include a statement in **Attachment D** that indicates that the PRFBSR and the local government with jurisdiction are the same entity.

## **SECTION 5: ATTACHMENT E - - CONTRACTOR CERTIFICATION FORM**

The PRFBSR must ensure that any contractor performing site rehabilitation program tasks at or for the real property described in **Attachment A** has provided documentation and certification to the Department or to the delegated local program that the contractor meets the requirements of **Paragraph 5, Site Contractor**, of the BSRA. These requirements include all certification and licensing requirements and implementation of the Standard Operating Procedures (SOPs) for field sampling in accordance with Chapter 62-160, F.A.C. (A link to Chapter 62-160, F.A.C., is provided in the Attachment F instructions below). The Contractor Certification Form (CCF) shall be completed and submitted to the District Brownfields Coordinator or to the delegated local program Brownfields Coordinator. The completed CCF shall be submitted as **Attachment E**.

If at the time of execution of the BSRA, the identity of a contractor is not known, the PRFBSR shall ensure that the required CCF is submitted to the Department or to the delegated local program prior to the contractor performing site rehabilitation program tasks at the site. The contractor is defined as the contractor responsible for performing the site rehabilitation program tasks at or for the real property described in **Attachment A**. The contractor may subcontract to other licensed contractors. See §489.113(9), F.S., for additional information.

**CONTRACTOR CERTIFICATION FORM**  
**Brownfields Redevelopment Program**

Contractor Name \_\_\_\_\_ Date: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Brownfield Site ID #: \_\_\_\_\_

<b>Contractor Certifies by Checking All Appropriate Boxes:</b>		<b>Yes</b>	<b>No</b>
1.	It meets all certification and license requirements imposed by law.	<input type="checkbox"/>	<input type="checkbox"/>
2.	It performs or contracts laboratory analysis pursuant to National Environmental Laboratory Accreditation Program certification requirements and performs or contracts field-sampling work in accordance with the Standard Operating Procedures for Field Activities pursuant to Chapter 62-160, Florida Administrative Code.	<input type="checkbox"/>	<input type="checkbox"/>
3.	It complies with all applicable OSHA regulations.	<input type="checkbox"/>	<input type="checkbox"/>
4.	Has the capacity to perform the majority of the site rehabilitation program tasks pursuant to a brownfield site rehabilitation agreement or supervise the performance of such tasks by licensed subcontractors in accordance with Section 489.113(9), Florida Statutes (F.S.).	<input type="checkbox"/>	<input type="checkbox"/>

The person named below by signing as an "Officer of the Company" hereby certifies to the Florida Department of Environmental Protection (FDEP) that the Contractor named above meets the requirements for contractors participating in the Brownfields Redevelopment Program [Section 376.80(6), F.S.]:

\_\_\_\_\_  
Signature of Officer of the Company and Date Signed      Print Name of Officer of the Company

\_\_\_\_\_  
Title of Officer of the Company

Contractors must immediately notify the FDEP (Brownfields District Coordinator, delegated local program) of any change in the above criteria. The FDEP may order a suspension or cessation of work for failure of a contractor to maintain their required certification.

## **SECTION 6: ATTACHMENT F - - QUALITY ASSURANCE CERTIFICATE**

The PRFBSR shall submit to the Department or the delegated local program documentation as **Attachment F**, showing that a NELAP-recognized accrediting authority (in Florida, the Department of Health, Environmental Laboratory Certification Program) has accredited the laboratory(s) performing analyses. Analytical methods capable of meeting the cleanup target levels in Chapter 62-780, F.A.C., shall be used for all analyses. The PRFBSR does not need to provide, for the BSRA, a list of contaminants to be tested.

For comprehensive information about the Chapter 62-160, F.A.C., a link to the Department's field Standard Operating Procedures, and for the complete text of Chapter 62-160, F.A.C., visit:

<https://floridadep.gov/dear/quality-assurance>

The Department or the delegated local program reserves the right to reject any results generated by the PRFBSR if any organization performs an activity that is not specifically approved in accordance with Chapter 62-160, F.A.C., if there is reasonable doubt as to the quality of the data or method used, if the sampling was not performed in accordance with the approved SOPs, if analysis was not performed in accordance with NELAP accreditation, or if the SOPs or NELAP accreditation of any organization expires.

## SECTION 7: ATTACHMENT G - - ADVISORY COMMITTEE MEMBERS

Local governments or PRFBSRs must establish an advisory committee or use an existing advisory committee that has formally expressed its intent to address redevelopment of the specific brownfield area for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice. Such advisory committee should include residents within or adjacent to the brownfield area, businesses operating within the brownfield area, and others deemed appropriate. The names, addresses, and contact numbers for all Advisory Committee members shall be included in **Attachment G**. In addition, for each committee member please indicate whether that person is a resident within or adjacent to the brownfield area, owns or operates a business within the brownfield area, or whether the person is a member of an existing local government advisory committee. The PRFBSR must notify the advisory committee of the intent to rehabilitate and redevelop the site before executing the BSRA, and provide the committee with a copy of the draft plan for site rehabilitation which addresses elements required by §376.80(5), F.S. This includes disclosing potential reuse of the property as well as site rehabilitation activities, if any, to be performed.

The advisory committee shall have the opportunity to review any proposed redevelopment agreement prepared pursuant to §376.80(5)(i), F.S., and provide comments, if appropriate, to the board of the local government with jurisdiction over the brownfield area. The advisory committee shall be provided a copy of the executed brownfield site rehabilitation agreement. When the PRFBSR submits a site assessment report or the technical document containing the proposed course of action following site assessment to the department or the local pollution control program for review, the PRFBSR must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment.

**SECTION 8: ATTACHMENT H - - FORMAT FOR SUBMITTAL OF TECHNICAL DOCUMENTS**

1. One hard copy or one electronic copy of each report or proposal and final reports shall be submitted to the Department or to the delegated local program.
2. Where an electronic format exists of the records it shall be used to transmit the data, file, report, document, map, plans, picture, record, or any other object that may be available in an electronic format. Electronic records shall be kept in industry standard non-proprietary formats: TIFF, GIF, JPEG, PDF, or in Microsoft Word, Microsoft Excel, and Microsoft Access not older than one (1) release behind the current.
3. Data requested shall be transmitted using available media such as E-mail, Compact Disc (CD), or File Transfer via an FTP site. Additional formats may be considered at the time of the request.
4. After final approval of each report, an electronic copy and one hard copy shall be submitted within 30 days.
5. The media shall include a file directory and specify the "naming convention".
  - (a) Final reports (any text files) must be in one of the approved formats.
  - (b) Site maps and surveys shall be in TIFF, JPEG or ".pdf" format.
  - (c) Site-specific GIS data tables shall be in Excel or text (tab delimited) format.
  - (d) The cover of the media shall include the Site Name, Designated Brownfield Area, Date and Type of Report(s).  
The left inside cover of the media should list all the files located on the media.

**OPTIONAL ATTACHMENT I: PUBLICATION OF NOTICE (Optional for PRFBSR; if the PRFBSR chooses to publish notice, a copy of the notice should be attached to the BSRA)**

If the PRFBSR wishes to publish notice of site rehabilitation activities once the PRFBSR and the Department or the delegated local program have executed the BSRA, the Department recommends that the following notice be used. The notice may be published in a newspaper of daily circulation in the city and county where the site rehabilitation activities are taking place.

**MODEL NOTICE**

**STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF BROWNFIELD SITE REHABILITATION AGREEMENT**

The Department of Environmental Protection (or insert the appropriate delegated local program) gives notice of agency action of entering into a Brownfield Site Rehabilitation Agreement (hereinafter "BSRA") with (insert name of PRFBSR) \_\_\_\_\_ pursuant to § 376.80(5), Florida Statutes (F.S.). The BSRA addresses the \_\_\_\_\_ activities in the vicinity of (insert addresses of site listed in BSRA) \_\_\_\_\_. This BSRA is made available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays at the Florida Department of Environmental Protection, (insert FDEP District's mailing address) \_\_\_\_\_.

A person whose substantial interests are affected by this BSRA may petition for an administrative proceeding (hearing) under §§120.569 and 120.57, F.S. The Petition must contain the information set forth below and must be filed with (received by) the Agency Clerk of the Department in the Office of the General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. The Petitioner shall mail a copy of the petition at the time of filing to the District Office named above at the address indicated and a copy to the Person Responsible for Brownfields Site Rehabilitation ("PRFBSR") listed in the BSRA. Failure to file a petition within this time period shall constitute a waiver of any right to request an administrative proceeding under Chapter 120, F.S.

Pursuant to §120.569(2), F.S., and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

1. The name, address, any e-mail addresses, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the PRFBSR's name and address; the Department's Brownfield Area and Brownfield Site Identification Numbers; the name and address of the Brownfield Site; and the name and address of each agency affected;

2. A statement of when and how each petitioner received notice of the Department's action or proposed action;
3. An explanation of how each petitioner's substantial interests will be affected by the Department's action or proposed action;
4. A statement of the disputed issues of material facts, or a statement that there are no disputed facts;
5. A concise statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;
6. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
7. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

If a Petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by the Department in the BSRA. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject BSRA have the right to petition to become a party to the proceeding. This BSRA is final and effective on the date of execution. Timely filing a petition for administrative hearing postpones the date this BSRA takes effect until the Department issues either a final order pursuant to an administrative hearing or an Order Responding to Supplemental Information provided to the Department pursuant to meetings with the Department.

**Attachment C**

**Memorandum of Agreement between Florida Department of Environmental  
Protection and the United States Environmental Protection Agency**

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**I. PURPOSES**

- A. The Florida Department of Environmental Protection ("FDEP") and Region 4 of the United States Environmental Protection Agency ("Region 4") (collectively "the Agencies"), enter into this Memorandum of Agreement ("MOA") to:
1. Define the roles and responsibilities of Region 4 and FDEP to facilitate FDEP's implementation of the Florida Brownfield Redevelopment Act ("Act"), Sections 376.77 - 376.85, Florida Statutes ("F.S."), and the Brownfield Cleanup Criteria Rule, Chapter 62-785, Florida Administrative Code ("F.A.C."), more commonly known as the Brownfield Redevelopment Program ("BP");
  2. Recognize the BP for grant funding eligibility purposes pursuant to § 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., ("CERCLA");
  3. Express how the Agencies generally intend to exercise their respective authorities at Brownfield sites which, for the purposes of this MOA, are defined as sites that have executed a Brownfield Site Rehabilitation Agreement ("BSRA"), as defined in the Act;
  4. Promote the Federal "One Cleanup Program" initiative by working together to achieve cleanups that protect human health and the environment by making greater use of available State and Federal authorities; sharing science and technological approaches; and selecting the optimum programmatic tools to increase the pace, effectiveness, efficiency, and quality of cleanups;
  5. Facilitate the cleanup and beneficial reuse of Brownfield sites in Florida by maximizing the use of existing infrastructures, thereby conserving and minimizing development of green spaces and pristine open areas;
  6. Provide opportunities for the Agencies to exercise their authorities under CERCLA and Chapters 376 and 403, F.S., and use their resources to ensure appropriate Brownfield site rehabilitation tasks, as defined in the Act, are mutually complementary and are not duplicative; and
  7. Provide coordinated and consistent technical assistance and information to promote informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, local units of government, and elected officials.
- B. The Agencies believe the revitalization of existing contaminated or potentially contaminated Brownfield sites will provide significant benefits to the environment, public health, and the economies of affected local communities.

Florida MOA for  
Brownfields Redevelopment Program  
October 2005

- C. This MOA supersedes the Superfund MOA between Region 4 and FDEP dated December 2, 1999. This MOA does not replace or amend the Resource Conservation and Recovery Act ("RCRA") MOA for Florida's authorized RCRA program.
- D. This MOA does not in any way grant or otherwise create any rights, obligations, responsibilities, expectations, or benefits for any party, and does not in any way alter either Agency's authority under State or Federal law.

## II. APPLICABILITY OF THE MOA

A. This MOA applies to those Brownfield sites:

- 1. Eligible to participate in FDEP's Brownfields Redevelopment Program, and
- 2. Identified or described under Section 376.82(1)(a) F.S., and which:
  - i. have received a Site Rehabilitation Completion Order ("SRCO") or a "No Further Action" Order from FDEP; or
  - ii. are implementing a BSRA in accordance with the Act.

B. Notwithstanding a Brownfield site's eligibility to participate in the BP, the Agencies agree that this MOA shall not apply to:

- 1. Any site where a hazardous ranking package has been submitted to EPA Headquarters, after consultation with FDEP, proposing its inclusion on the National Priorities List;
- 2. A site that is subject to a formal enforcement action or was issued a notice of violation by any federal or state agency regarding contamination at a site described in an executed BSRA, and action has not been taken to remedy the alleged violations to the issuing agency's satisfaction;
- 3. Sites that have been proposed in the Federal Register to be placed on the National Priorities List (however, sites that are proposed to be placed on the National Priorities List, but which are determined not to be appropriate for listing, will become eligible if not otherwise ineligible); or
- 4. Sites that have been placed on the National Priorities List (however, such sites become eligible if they are subsequently removed from the National Priorities List and are not otherwise ineligible).

## III. CERCLA FINDINGS AND AGREEMENT

- A. Region 4 has reviewed and evaluated the BP and has determined that the BP, as implemented under this MOA, includes each of the four elements of a state response program as described in CERCLA § 128(a)(2) and that it maintains a public record as described in CERCLA § 128(b)(1)(C).
- B. Maintenance of CERCLA § 128(a)(2) Elements and Public Record:

Florida MOA for  
Brownfields Redevelopment Program  
October 2005

FDEP agrees to maintain all four elements of a state response program as described in CERCLA § 128(a)(2). FDEP also agrees to maintain and to make available to the public, a record of sites addressed under the BP, as described in CERCLA § 128(b)(1)(C). Generally, the four elements are:

1. Timely survey and inventory of Brownfield sites in the State;
2. Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that a response action (site rehabilitation) will protect human health and the environment; and be conducted in accordance with applicable Federal and State law, and that if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, ensure that the necessary response actions are completed;
3. Mechanisms and resources to provide meaningful opportunities for public participation, as described in CERCLA § 128(a)(2)(C); and
4. Mechanisms for approval of every cleanup plan and a requirement for verification by and certification or other similar documentation from FDEP that the response action is complete.

#### IV. CERCLA IMPLEMENTATION

- A. The Agencies will work in a coordinated manner to avoid to the maximum extent possible duplication of effort at sites, and to ensure that site remediation continues in a timely fashion. FDEP will notify Region 4 when sites are being addressed under the BP pursuant to an executed BSRA. If a site listed in the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS") is being addressed under the BP, Region 4 plans to code that site in CERCLIS to reflect that site's status. Once Region 4 agrees that all response actions at the site are complete, Region 4 plans to archive those sites remediated under the BP and for which FDEP has issued a SRCO. At a minimum, the Agencies will discuss the status of sites annually.
- B. CERCLA § 128(b) provides limitations regarding certain federal enforcement actions at "eligible response sites", as defined in CERCLA § 101(41), that are being addressed in compliance with a state program, where
  1. There is a release or threatened release of a hazardous substance, pollutant, or contaminant and a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment; and
  2. FDEP maintains, updates, and makes available to the public a record of sites pursuant to CERCLA § 128(b)(1)(C).

These limitations operate as a matter of law and are subject to the exceptions listed in CERCLA § 128(b)(1)(B).

Florida MOA for  
Brownfields Redevelopment Program  
October 2005

Thus, subject to the exceptions listed in CERCLA §128(b), Region 4 does not plan on or anticipate taking an administrative or judicial enforcement action under CERCLA §§ 106(a) or 107(a) against a person that is addressing a "specific release" at an eligible response site in compliance with the BP.

C. Generally, Region 4 does not plan on or anticipate taking removal or remedial action under CERCLA, 42 U.S.C. § 9601, *et seq.*, at a site addressed by this MOA that is not an "eligible response site" as defined in CERCLA § 101(41) while that site remains in compliance with the BP, an executed BSRA, and the terms of any agreement with FDEP, or when a site investigation or a site remediation has been completed in accordance with the BP and the FDEP has issued a SRCO for the site, unless:

1. The person responsible for brownfield site rehabilitation ("PRFBSR") fails or refuses to complete the necessary site rehabilitation in a timely manner, including operation and maintenance or long-term monitoring, and FDEP is unable to ensure completion of the site rehabilitation at the site;
2. Region 4 determines that the site may present an imminent and substantial endangerment to human health and the environment; or
3. Following issuance of the SRCO by the FDEP, Region 4 or FDEP determine that conditions at the site (including those previously unknown to FDEP and Region 4, or those which result from a failure to maintain land use restrictions, institutional and/or engineering controls) indicate that the site is no longer protective of human health and the environment or suitable for the authorized or current use.

D. If a PRFBSR does not complete or refuses to complete the site rehabilitation in accordance with the BSRA, including any required operation and maintenance or long term monitoring activities, FDEP shall ensure that necessary response actions are taken to protect human health and the environment and are completed in a timely manner. Furthermore, FDEP will prioritize the site in its normal course and take all necessary actions at the site as appropriate, considering the risk posed by the site, funds available to FDEP, and other factors. Notwithstanding the terms of this Paragraph, Region 4 reserves its right to initiate a response action as specified in Paragraph IV.C. above.

E. FDEP will continue to demonstrate, through the reporting requirement of Paragraph VII. of this MOA, that the BP has adequate resources to ensure that site rehabilitation are conducted in an appropriate and timely manner, and that meaningful outreach efforts are made to the public.

## **V. SITES REGULATED UNDER RCRA**

A. Region 4's relationship with FDEP regarding RCRA facilities eligible for the BP will be conducted in accordance with the RCRA MOA, under 40 C.F.R. § 271.8, and other provisions governing the authorized program under RCRA Subtitle C.

B. Region 4 recognizes that FDEP can determine whether to take State action at RCRA facilities under its State law and consistent with the provisions governing the State's authorized program.

Florida MOA for  
Brownfields Redevelopment Program  
October 2005

- C. Region 4 also recognizes that those RCRA sites which participate in the BP may qualify for the economic and regulatory benefits specific to the Act.

## VI. PROTECTIVENESS

- A. Pursuant to the Act, the BP shall ensure that site rehabilitation protects human health and the environment. Upon the assessment of a site, the FDEP should determine, consistent with applicable Federal and State law, whether, and to what extent, the contamination at the site might pose a threat or potential threat to public health, safety, and welfare or the environment. For purposes of the BP, the FDEP shall determine whether cleanup target levels are achieved as set forth in Chapters 62-777 and 62-785, F.A.C., and Chapter 62-730, F.A.C., as amended, if applicable, and are consistent with reasonably anticipated reuse and/or development plans. Further, the PRFBSR shall comply with Federal law as applicable.
- B. FDEP will require use restrictions to be filed (recorded) in the Official Records of the County in Florida where the site is located and where the PRFBSR uses such restrictions as institutional controls.
- C. FDEP will ensure that any filed use restrictions (institutional controls) are tracked in its Institutional Controls Registry in accordance with established BP procedures. The Institutional Controls Registry is available at [www.depmap1.dep.state.fl.us/website/icr](http://www.depmap1.dep.state.fl.us/website/icr).

## VII. REPORTING

In addition to complying with the public record reporting requirements described in CERCLA § 128(b)(1)(C), FDEP will provide or make available to Region 4 information regarding participants in the BP that are addressed under this MOA. On an annual basis the FDEP will report or make available to Region 4 the following:

1. The number, names, and types of sites that have executed a BSRA and the status of site rehabilitation at those sites;
2. Sites that received SRCOs from the FDEP in the previous calendar year; and
3. Other reporting requirements contained in the CERCLA § 128(a) State Response Program funding agreement between FDEP and Region 4.

## VIII. MODIFICATION

- A. The Agencies shall keep each other informed of any relevant proposed modifications to its statutory or regulatory authority, forms, or procedures. This MOA shall be revised upon mutual agreement and as necessary by the adoption of such modifications. If the Act or implementing Florida Legislation is modified to the extent that amendments to this MOA are necessary, and no mutual agreement can be reached regarding modification of this MOA, this MOA shall terminate within sixty (60) days of the effective date of the modifications to the Act or Florida Legislation. The Agencies will review the MOA annually. If either Region 4 or FDEP have concerns regarding implementation of the MOA, they will notify the other party of those concerns. In the event a mutual agreement cannot be reached to resolve the issue, following sixty (60) days written notice, either party can terminate this MOA. A modification must be in writing and signed by the signatories or their designees to become effective.

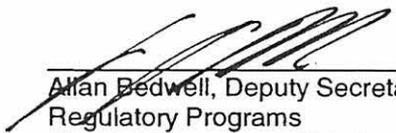
Florida MOA for  
Brownfields Redevelopment Program  
October 2005

B. This MOA has been developed by mutual cooperation and consent of both Agencies.

**IX. RESERVATION OF RIGHTS**

Nothing in this MOA affects or limits the authority or ability of FDEP or Region 4 to undertake any action authorized by law. FDEP and Region 4 retain any and all rights and authorities that they have, including but not limited to legal, equitable, or administrative rights, and specifically including the authority to conduct, direct, oversee, and/or require environmental response actions in connection with any entity or site that participates in the BP.

For Florida Department of Environmental Protection

  
\_\_\_\_\_  
Allan Bedwell, Deputy Secretary  
Regulatory Programs  
Florida Department of Environmental Protection

11-1-05  
Date

Approved as to form and legality:

  
\_\_\_\_\_  
Lisa M. Duchene  
FDEP Brownfields Program Attorney

10-20-05  
Date

  
\_\_\_\_\_  
Augusta P. Roman  
FDEP RCRA Program Attorney

10-21-05  
Date

For the U.S. Environmental Protection Agency, Region 4

  
\_\_\_\_\_  
J. I. Palmer, Jr.  
Regional Administrator  
U.S. Environmental Protection Agency, Region 4

NOV 28 2005  
Date