

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

This Participation Agreement is entered into by “Participating Parties” (whose names appear on Appendix A to this Agreement) at the Petroleum Products Corporation (“PPC”) Superfund site located at 3130 Southwest 19th Street, Pembroke Park, Broward County, Florida (“the Site”) as of February 1, 2019.

The premises for this Participation Agreement are:

A. The PPC Site has been the subject of a Superfund response action under an Interim Record of Decision issued by the Environmental Protection Agency (“EPA”) on October 5, 1990. Referred to as Operable Unit #1 (OU1), the response action addresses the removal of oil discharged from a petroleum storage system when PPC’s operations at the Site were ongoing.

B. EPA has been conducting an investigation as part of OU2 for the Site. OU2 is intended by EPA to address used oils that have mixed with Site soils, including peat. It is sometimes referred to as the “Site Source” OU. EPA’s contractors have generated a Remedial Investigation (RI) report, a draft Feasibility Study (FS), and a Human Health Risk Assessment (HHRA). Based on the draft FS, one response action under consideration by EPA for OU2 involves relocating tenants and demolition of certain warehouses. Another response action under consideration would result in relocating tenants and uplifting of certain warehouses temporarily to remove soils beneath them.

C. EPA is also planning to conduct a response action known as OU3, which is the “groundwater” OU, to address the presence in groundwater, if any, of chemicals from the releases from the petroleum storage systems that were operated by PPC. The response action may require active remediation of the groundwater or may be limited to monitoring only since groundwater quality is good beneath the PPC Site.

D. Participating Parties are persons who were alleged to have sold used oil to PPC, and in the case of Broward County also a person which has acquired a portion of the PPC Site through a tax deed. EPA has alleged that Participating Parties are liable under the federal Superfund law, 42 U. S. C. §9607(a), for response costs incurred consistent with the National Contingency Plan, a federal regulation that governs investigation and remediation of facilities put on the National Priorities List (NPL) created by the Superfund law.

E. Participating Parties are all members of the OU1 Participating Party Group (OU1 Group). The OU1 Group operates under a separate agreement. The OU1 Group is implementing the OU1 response action required under the Consent Decree styled United States of America v. Petroleum Products Corporation, et al. The Consent Decree became effective on December 11, 1991.

F. The OU1 Group includes two owners, both Trusts, of warehouses within the boundary of the PPC Site (Trust Owners). The Trusts have asserted to EPA that they

have no liability under the Superfund law based on certain provisions of the law relating to “innocent” purchasers or contiguous landowners. Participating Parties have asked the Trust Owners to share their submissions to EPA, to no avail.

G. Trust Owners also have taken the position at times that the OU1 Group should not be spending OU1 Group funds protecting the interests of the OU1 Group members in relation to EPA’s response actions for OU2 and OU3.

H. Trust Owners have also been ambivalent over their support of OU2 response actions under consideration that would result in the demolition of buildings or the uplifting of buildings. They have, however, suggested that they may have claims relating to the loss of tenant income or rebuilding costs if the response actions described above are undertaken.

I. Participating Parties disagree that the Trust Owners have no Superfund liability. They also disagree that the OU1 Group should stand down as EPA completes NCP requirements for OU2 and OU3. They also do not support the demolition of buildings or the uplifting of buildings because, among other reasons, the HHRA does not demonstrate health risks that would justify such response actions under the NCP.

J. Rather than trying to accommodate further the conflicts with the Trust Owners that go beyond OU1, Participating Parties have decided to form a new Group to protect their interests in ensuring compliance with the NCP by EPA for OU2 and OU3 and in ensuring that liable parties pay their fair share of Site response costs.

K. There are other common interests at stake as well.

1. The PPC Site has qualified for reimbursement of certain remedial action expenses from the Inland Protection Trust Fund (IPTF), created by the Florida Legislature under Chapter 376, Florida Statutes. The State of Florida Department of Environmental Protection (FDEP) administers the IPTF. The FDEP has recognized its substantial obligation to address the remediation of the PPC Site, but it has not yet quantified that obligation in relation to remedial alternatives under consideration by EPA in the draft FS.

2. As a result of the efforts of the OU1 Group, including litigation, a Special Account exists at EPA for the benefit of the PPC Site. EPA has incurred costs paid for through that Special Account that may be in violation of the NCP. Specifically, the Army Corps of Engineers (Corps) was paid from the Special Account for services to conduct the RI and HHRA. Both the RI report and HHRA are flawed documents because the work of the Corps was unreliable and itself flawed.

L. Participating Parties seek to work together to protect their interests in relation to the selection of an OU2 and OU3 remedy, FDEP’s funding obligations, and addressing EPA’s misfeasance or malfeasance in expending Special Account funds.

M. Appendix B contains the waste-in allocation approved by EPA for generator parties in the OU1 Group and OU1-settling federal agencies. The United States represents 62.31% of the Site waste-in volume and the remaining parties represent 37.69%. Participating Parties have accepted their waste-in allocation as reflected on Appendix B. They have not accounted yet for Broward County's role as an owner for part of the PPC Site but will do so under the terms of this Agreement. They also hope to work cooperatively with the Trust Owners to resolve their allocation without the need for litigation. However, should litigation occur, they want to be a position to protect their interests in an equitable allocation of allowable Site response costs.

N. In entering into this Agreement, Participating Parties do not admit that they have any liability under the federal Superfund law, state law, or the common law, for the damage claims of the United States or the claims of any other person. To the contrary, they specifically deny any such liability. Rather, their interest is in establishing a sensible framework for them to work together in a cost-effective and cooperative manner to achieve the goals set forth above.

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

1. Allocation

For purposes of this Agreement, Participating Parties accept the waste-in volumes shown on Appendix B as their respective generator allocation shares for the PPC Site. Appendix B shall be updated as needed in the event any Participating Party becomes insolvent.

The Group waste-in percentages shall be used for all assessments under this Agreement.

Participating Parties will form an Allocation Committee to address the share of the Trust Owners and Broward County and any other property owner or other person liable for OU2/3 response actions. The Allocation Committee may use OU2/3 Funds to conduct legal or factual research and take other steps as they deem necessary to achieve an equitable allocation in support of a resolution of all contribution claims against the Trust Owners or any other person against whom such claims might exist.

2. Payments

Each Participating Party shall initially pay into trust the amount appearing on Appendix C attached to this Agreement within 45 days of the execution of this Agreement. Payments shall be made to Shook Hardy & Bacon, LLP Trust Account. This trust shall be referred to as the "PPC OU2/3 Trust Fund" ("OU2/3 Fund"). Monies contributed by each Participating Party ("OU2/3 Funds") shall be used for any purpose necessary to meet the obligations or needs of the Participating Parties under this Agreement, including protecting the Participating Parties' interests with respect to selection of an OU2 or OU3 remedy, the conduct of OU2 or OU3 under the terms of any future Consent Decree, satisfaction of

administrative needs of the Participating Parties, payment of Future Response Costs (as defined in any future Consent Decrees), and, should they be imposed, payment of stipulated penalties.

Notwithstanding any other text in this Agreement, should litigation occur, OU2/3 Funds shall not be used to pay litigation costs without the consent of all Participating Parties.

3. Additional Assessments

In the event that additional assessments are required to conduct work required under any future Consent Decrees (“Work”), or to conduct other work approved by Participating Parties under this Agreement, seventy-five percent (75%) of the voting power represented at the time of the vote is required to approve such additional assessments. Once approved, Participating Parties shall contribute additional funds. Payments shall be made within 30 days after the assessment is approved by the Participating Parties.

Each Participating Party’s assessment shall be determined by multiplying each Participating Party’s Group waste-in percentage shown on Appendix B times the total amount of the assessment.

4. Project Coordinator

Participating Parties may designate one or more persons to administer OU2/3 Funds on behalf of Participating Parties (“Project Coordinator”). Such coordinators may be employees or agents of the Participating Parties or common counsel. Subject to the determination of the Participating Parties, they may be given the authority to direct and to manage the compliance by Participating Parties with any future Consent Decrees, retain consultants to perform Work, approve disbursements of OU2/3 Funds for the Work, call meetings and make periodic reports to Participating Parties on the progress of the Work, the status of OU2/3 Funds, and the status of FDEP’s compliance with its obligations to fund OU2/3 costs from the IPTF.

5. Additional Participating Parties

Additional parties may become signatories to this Agreement upon such conditions as may be determined by the Participating Parties. Each such additional party shall execute this Agreement, and shall simultaneously pay into the OU2/3 Fund the amount agreed to by the additional party and the Participating Parties.

6. Federal Participating Parties

Participating Parties may enter into an agreement with agencies of the Department of Defense, or other federal agencies, to allow their participation with Participating Parties in the joint funding of OU2 or OU3, or other work conducted under this Agreement. Participating Parties may designate a person to execute such an agreement as their authorized representative. Contributions made by agencies of the Department of Defense, or other federal agencies, shall be shown on Exhibit A and shall be taken into account for other purposes under this Agreement as if these agencies were signatories to this Agreement.

7. Decisions of Participating Parties

Participating Parties shall endeavor to reach a consensus on any decision that must be made by Participating Parties under this Agreement or to satisfy the terms of any future Consent Decree. To the extent that a consensus cannot be reached, each Participating Party shall have a vote equal to its Group waste-in percentage as shown on Appendix B, as long as the Participating Party has paid any outstanding contributions. No Participating Party may vote unless all contributions required of the Participating Party have been paid as of the time of the vote. Thirty percent of the voting power, in person or by proxy, of Participating Parties who have paid all outstanding assessments, shall constitute a quorum where votes are taken at a meeting of the Participating Parties. Except as otherwise provided in this Agreement, a majority vote of the voting power represented at the time of the vote is required to decide issues put to a vote by Participating Parties.

8. Meetings

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

9. Cooperation

Each Participating Party will cooperate with each other to facilitate the completion of Work in a timely and cost-effective manner. Each Participating Party also will act in the best interests of the Participating Parties as a Group, should any Participating Party have individual contacts with EPA or FDEP or any other person who has a connection to the Site of any kind.

10. Committees

Beyond the Allocation Committee referenced above, Participating Parties will form a Technical Committee and may form any other committees as they see fit to carry out the purposes of this Agreement. Committees may use OU2/3 Funds to carry out their work as the Participating Parties deem appropriate. A person who serves on a Committee shall not have any personal liability for good faith participation on a Committee.

11. Documents

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

12. Denial of liability

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

13. Privilege and Nondisclosure

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

14. Successors and Assigns

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

15. Allocation in the Event of Default

A majority of the voting power of Participating Parties shall have the authority to declare any Participating Party to be in default under this Agreement where said Member has failed to satisfy any obligation in a timely manner. In the event that a Participating Party is declared in default, the remaining Participating Parties shall pay their proportionate share of the defaulting Participating Party's share within 14 days after the declaration of default. Such payment does not waive any rights such Participating Parties may have against the defaulting Participating Party or its successors or assigns. A defaulting Participating Party is not entitled to the return of any funds paid under this Agreement.

16. Waiver and Release of Liability

No Participating Party or its representative, nor any person or entity authorized to act on behalf of Participating Parties, shall be liable to any Participating Party for any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment incurred or arising as a result of any acts or omissions taken or made pursuant to this Agreement. Nothing in this Agreement shall constitute a waiver or release of any contribution or indemnification claim or potential claim by one Participating Party against any other Participating Party. This paragraph shall survive the termination of this Agreement.

17. Notice

All notices, bills, invoices, reports, and other communications with a Participating Party shall be sent to the representative designated by the Participating Party beneath the Participating Party's signature at the end of this Agreement. Each Participating Party shall have the right to change its representative upon ten (10) days written notice to a Project Coordinator or to any other person designated by Participating Parties to receive such information.

18. Effective Date

The effective date of this Agreement shall be the date first stated above.

19. Termination

This Agreement shall terminate upon the termination of any future Consent Decree pertaining to OU2/3 or upon the vote of 80% of the voting power.

20. Amendments

This Agreement may be amended only by unanimous agreement of the Participating Parties.

21. Severability

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

22. Entire Agreement

This Agreement constitutes the entire understanding of the Participating Parties with respect to its subject matter and supersedes all prior agreements or understandings, whether oral or written, among or between Participating Parties, except for the agreement entered into by Participating Parties to fulfill obligations in respect of OU1.

23. Applicable Law

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

24. Separate Documents

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

25. Nature of Agreement

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

26. Periodic Accounting Reports

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

27. Waiver of Conflict of Interest

With respect to lawyers or law firms who are engaged by Participating Parties (“Common Counsel”) for Participating Parties, each Participating Party agrees that: (1) it will not claim or assert that, based solely on Common Counsel’s past or present representation of a Participating Party, Common Counsel has a conflict of interest in performing legal services for Participating Parties; (2) it will not claim or assert that, based solely on Common Counsel’s representation of Participating Parties under the terms of this Agreement, Common Counsel has a conflict of interest in connection with any representation of any other person or entity in any other matter involving a Participating Party; (3) it will not claim or assert that, based solely on Common Counsel’s representation of Participating Parties, Common Counsel has a conflict of interest in any future representation of any person or entity unless the subject matter relating to said representation arises out of or is connected to the PPC Site and involves or could involve any confidential facts or information obtained from the Participating Party during the term of this Agreement; (4) in the event that any conflict develops in the performance of work by Common Counsel for Participating Parties as a whole and the legal services authorized by any Participating Party that has retained Common Counsel, the Participating Party consents to Common Counsel’s continued performance of the work for the Participating Parties as a whole.

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

Dated: _____

Participating Party: Broward County, Florida

By: _____
Mark D. Bogen, Mayor

Designated Representative For Receipt of Notice and Invoices:

Name: Michael C. Owens, Senior Assistant County Attorney

Address: 115 S. Andrews Avenue, Suite 423
Ft. Lauderdale, Florida 33301

Telephone Number: 954-357-7600

Facsimile Number: 954-357-7641

E-Mail Address: mowens@broward.org

Approved as to form by
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Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By /s/ Michael C. Owens 05/23/19
Michael C. Owens (Date)
Senior Assistant County Attorney

By /s/ Maite Azcoitia 05/23/19
Maite Azcoitia (Date)
Deputy County Attorney

Appendix A

Anthony Abraham Chevrolet
Avis Inc
Bill Ussery Motors
Bridgestone/Firestone
Broward County
Chevron/Bruning Paint
City of Miami
Cliff Berry Co
Coastal Fuels
Connor Brown Cadillac
CSX Transportation, Inc.
Dade County
Ed Morse Chevrolet
Exxon/Mobil
Florida Power & Light
Ft. Lauderdale Lincoln Mercury
Goodyear
Greyhound
Hollywood Chrysler Plymouth
Hollywood Lincoln Mercury
Miami Lincoln Mercury
Pompano Lincoln Mercury
Ryder Truck Rental
Safety Kleen
Sears
South Motors
Steve Moore/Benz Chevrolet
Tropical Chevrolet Inc
Wallace Ford/Truck

Appendix B

Party	Site Waste-in Volume (gal)	Site Waste-in Percentage	Group Waste-in Percentage
Anthony Abraham Chevrolet	60,000	0.45%	1.20%
Avis Inc	27,915	0.21%	0.56%
Bill Ussery Motors	104,000	0.78%	2.07%
Bridgestone/Firestone	147,866	1.11%	2.95%
Broward County	214,050	1.61%	4.27%
Chevron/Bruning Paint	69,717	0.52%	1.39%
City of Miami	83,055	0.62%	1.66%
Cliff Berry Co	44,250	0.33%	0.88%
Coastal Fuels	294,893	2.22%	5.88%
Connor Brown Cadillac	383,000	2.88%	7.64%
CSX Transportation, Inc.	181,579	1.37%	3.62%
Dade County	1,199,885	9.02%	23.93%
Ed Morse Chevrolet	103,200	0.78%	2.06%
Exxon/Mobil	47,160	0.35%	0.94%
Florida Power & Light	364,775	2.74%	7.28%
Ft. Lauderdale Lincoln Mercury	91,900	0.69%	1.83%
Goodyear	171,101	1.29%	3.41%
Greyhound	482,500	3.63%	9.62%
Hollywood Chrysler Plymouth	8,880	0.07%	0.18%
Hollywood Lincoln Mercury	58,200	0.44%	1.16%
Miami Lincoln Mercury	75,660	0.57%	1.51%
Pompano Lincoln Mercury	60,075	0.45%	1.20%
Ryder Truck Rental	148,954	1.12%	2.97%
Safety Kleen	306,900	2.31%	6.12%
Sears	188,468	1.42%	3.76%
South Motors	15,080	0.11%	0.30%
Steve Moore/Benz Chevrolet	7,600	0.06%	0.15%
Tropical Chevrolet Inc	47,925	0.36%	0.96%
Wallace Ford/Truck	25,130	0.19%	0.50%
Subtotal without Settling Federal Agencies (SFAs)	5,013,718	37.69%	100%
Settling Federal Agencies:			
U.S. Air Force	406,600	3.06%	
U.S. Coast Guard	283,640	2.13%	
U.S. DRMS	25,000	0.19%	
U.S. Navy	7,573,415	56.93%	
Subtotal SFAs	8,288,655	62.31%	
Total Site Waste-in Volume	13,302,373	100.00%	

Appendix C

Party	Group Waste-in Percentage	Initial Assessment
Anthony Abraham Chevrolet	1.20%	\$1,200.00
Avis Inc	0.56%	\$560.00
Bill Ussery Motors	2.07%	\$2,070.00
Bridgestone/Firestone	2.95%	\$2,950.00
Broward County	4.27%	\$4,270.00
Chevron/Bruning Paint	1.39%	\$1,390.00
City of Miami	1.66%	\$1,660.00
Cliff Berry Co	0.88%	\$880.00
Coastal Fuels	5.88%	\$ 5,880.00
Connor Brown Cadillac	7.64%	\$7,640.00
CSX Transportation, Inc.	3.62%	\$3,620.00
Dade County	23.93%	\$23,930.00
Ed Morse Chevrolet	2.06%	\$2,060.00
Exxon/Mobil	0.94%	\$940.00
Florida Power & Light	7.28%	\$7,280.00
Ft. Lauderdale Lincoln Mercury	1.83%	\$1,830.00
Goodyear	3.41%	\$3,410.00
Greyhound	9.62%	\$9,620.00
Hollywood Chrysler Plymouth	0.18%	\$180.00
Hollywood Lincoln Mercury	1.16%	\$1,160.00
Miami Lincoln Mercury	1.51%	\$1,510.00
Pompano Lincoln Mercury	1.20%	\$1,200.00
Ryder Truck Rental	2.97%	\$2,970.00
Safety Kleen	6.12%	\$6,120.00
Sears	3.76%	\$3,760.00
South Motors	0.30%	\$300.00
Steve Moore/Benz Chevrolet	0.15%	\$150.00
Tropical Chevrolet Inc	0.96%	\$960.00
Wallace Ford/Truck	0.50%	\$500.00
Total	100%	\$100,000.00