

**AGREEMENT FOR SITE REHABILITATION FUNDING ALLOCATION
FOR A PETROLEUM CONTAMINATED SITE WITH BOTH
ELIGIBLE AND NON-ELIGIBLE CONTAMINATION**

This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter "Department"), whose address is 2600 Blair Stone Road, Tallahassee, Florida 32399 and the City of Gainesville, (hereinafter "Participant") whose address is City of Gainesville, Gainesville Regional Utilities, P.O. Box 147117, Gainesville, FL 32614-7117, to perform cleanup on a cost share basis of certain contamination identified as originating at 710 S.E. 2nd Street, Gainesville, Florida, FDEP Facility I.D. # 018518101 ("site").

WHEREAS, petroleum contamination originating at and migrating from the site has been determined to be eligible for restoration coverage under the Early Detection Incentive (EDI) program pursuant to Section 376.3071(9), Florida Statutes ("F.S."), for the discharge discovered on August 30, 1988;

WHEREAS, in accordance with Section 376.30711, F.S., the Department is authorized to provide state funding assistance at sites determined eligible for EDI, based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S. and Chapter 62-771, Florida Administrative Code;

WHEREAS, coal tar contamination from the former Gainesville Manufactured Gas Plant has been identified to be commingled with the eligible petroleum contamination;

WHEREAS, it is necessary for the Participant, and desirable for the Department, to address the cleanup of the ineligible coal tar contamination that has occurred at a site with existing petroleum contamination determined to be eligible under Section 376.3071(9), F.S.;

WHEREAS, it is appropriate for persons assuming responsibility for cleanup of such discharges to share the costs associated with managing and conducting cleanup of those discharges upon application to the Department and in accordance with a priority established for such cleanup in negotiated site rehabilitation agreements;

WHEREAS, consistent with Sections 376.3071(5) and 376.30711, F.S., and the rules and guidance adopted thereunder, the Department, in consultation with the Participant and based on the GEI Consultants, Inc. August 6, 1999 report entitled "Delineation of Soil Exceeding Petroleum Contamination Site Cleanup Criteria, Former Gainesville Manufactured Gas Plant Site", has agreed to a funding allocation arrangement as described in this agreement; and

WHEREAS, the Participant and the Department desire to enter into an Agreement to share the costs of site rehabilitation as set forth below in order to effect

site rehabilitation pursuant to Sections 376.30711 and 376.30713, F.S., and Chapter 62-770, Florida Administrative Code ("F.A.C.").

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

GENERAL.

1. The Parties will each contract separately with the site rehabilitation contractor (the "Designated Contractor") to effect site rehabilitation. The Participant agrees to cause the Designated Contractor to submit work plans and related documents to the Department requesting approval for the site rehabilitation strategy. The Department will review such proposals promptly in accordance with the internal procedures of the Preapproval Program and will issue work orders directly to the Designated Contractor for implementation of the approved site rehabilitation strategy. Such work orders will be effective upon execution of the work order by the Department and the Designated Contractor.
2. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapter 62-770, F.A.C. All other terms and conditions, including payments by the Department of its cost share under this Agreement, shall be construed in conformance with the provisions of Sections 376.30711 and 376.30713, F.S. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Section 287.058, F.S.
3. The limitations and provisions governing the EDI Program as set forth in Section 376.3071, F.S., shall continue to apply. By entering into this Agreement, the Participant is bound by the terms of this Agreement.
4. The Participant understands that during the course of site rehabilitation the Department may, based upon applicable Florida Statutes, and rules and guidance of the Department, revise the site rehabilitation strategy due to technical or cost considerations. Any changes made by the Department to the site rehabilitation strategy which will not increase the Participant's allocation of total cleanup costs specified in Paragraphs 6 and 7 may be made unilaterally by the Department and will not require the Participant's consent. However, in this event the Participant may elect, upon the Department's consent, to continue a more costly or aggressive site rehabilitation strategy at the Participant's sole cost and expense, and the Department's obligation to cost share under this Agreement shall be suspended until such time as the Parties can mutually agree upon the appropriate future site rehabilitation strategy and costs. Changes proposed by the Department to the site rehabilitation strategy which would increase the Participant's allocation

of total cleanup costs in excess of the proportion contemplated in Paragraph 6 will be made only with the Participant's consent.

TERM OF AGREEMENT.

5. This Agreement is effective on the date of execution and shall be in effect until site rehabilitation of the petroleum contamination subject of this Agreement has been completed as evidenced by the issuance of a Site Rehabilitation Completion Order (SRCO) or SRCO with Conditions by the Department. The Agreement may be terminated earlier upon mutual agreement of the Parties.
6. The cost share allocation and ratio shall be allocated between the Department and Participant as follows:
 - a. The Department shall pay the entire cost, \$14,201.66 of the RAP modification as proposed by GEI Consultants, Inc./Atlantic in their work order submitted to Alachua County Environmental Protection Department dated November 10, 1999.
 - b. Transportation and/or treatment costs of the first 7,250 cubic yards of soils excavated or treated from within the petroleum footprint ("Footprint") as indicated in Exhibit A shall be borne 100% by the Department except as otherwise provided in Paragraphs 7 and 8 below. The Footprint was defined by GEI Consultants, Inc. in their August 6, 1999 report entitled "Delineation of Soil Exceeding Petroleum Contamination Site Cleanup Criteria, Former Gainesville Manufactured Gas Plant Site." The Participant shall be responsible for the transportation and/or treatment costs for all non-eligible contaminated soil that may exist outside of the Footprint.
 - c. All other tasks implemented that pertain to the soil and groundwater remediation at the site pursuant to the approved site rehabilitation strategy shall be allocated as follows: Department - 73%, Participant - 27%.
7. Participant shall be responsible for any incremental treatment cost for soils excavated within the Footprint defined in Paragraph 6(b) above that exceed the Department's standard cost for treatment of petroleum contaminated soils. The parties will agree in advance on the Department's current approved costs for the treatment technology that is ultimately determined to be the appropriate remedy at this site for petroleum contaminated soils. To the extent that the actual treatment technology results in charges in excess of that unit cost for any reason, or alternate treatment methods are required due to non-eligible contamination, Participant shall be responsible for the incremental unit costs.
8. During the course of remediation it may be possible to ascertain a distinctly different cleanup endpoint for eligible and non-eligible contamination, which would

also result in a need to reassess the cost share ratio. The Parties agree to reevaluate the cost share agreement at any time during the course of remediation when it becomes evident of a growing disparity of cleanup timeframes or costs for eligible and non-eligible contamination.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

9. In accordance with Sections 376.3071, F.S., and Paragraph 1 of this Agreement, the Department will negotiate work orders with the Designated Contractor, and will thereby be responsible to the Designated Contractor solely for the Department's percentage of its cost share as specified in the work order.
10. The Department will review and approve site rehabilitation activities in accordance with the terms of the work orders and Chapter 62-770, F.A.C., and shall make copies of such documents available to the Participant. The Participant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or issuance of work orders under this Agreement.
11. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

COVENANTS AND REPRESENTATIONS OF THE PARTICIPANT.

12. The Participant further represents that it is a municipal corporation in the State of Florida and has the capacity to enter into this Agreement and is able to fully perform its duties under this Agreement.

TERMINATION OF AGREEMENT AND REMEDIES FOR BREACH OF AGREEMENT.

13. This Agreement may be terminated by either Party for material breach of obligations. Material breach means substantial failure to comply with the terms and conditions of this Agreement. A Party terminating the Agreement shall give written notice of the breach to the other Party within 14 days of discovery of facts giving rise to the breach. Such notice shall be of sufficient detail so that the Party allegedly in breach can formulate a remedy. If the breach is remedied within 15 days of the notice, the Agreement shall remain in effect. If the breach is not remedied within 15 days of the notice, the Agreement may be terminated within 15 days of the close of the 15-day remedy period. In the event that the Department determines, in its sole discretion, that the Participant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity including, but not limited to, suit for specific performance and/or cost recovery pursuant to Chapter 376.3071(7), F.S. In the event that the Department is in breach of this Agreement, then the Participant reserves the right to exercise all such remedies at law and equity.

14. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Participant to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, F.S., and made or received by the Participant in conjunction with this Agreement.

NOTICES.

15. Any notice or written communication required or permitted hereunder between the Parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, or delivered in person to the appropriate Party Representative, as designated below. The Department shall give reasonable notice (and not less than any specifically required under this Agreement) of its inspection of documents, conduct of audits, review of files, request for information, request for copies or otherwise relating to the exercise of such rights as referred to in this Agreement. Party Representatives are as follows:

For the Department:

Michael Ashe, Chief
Bureau of Petroleum
Storage Systems
Department of Environmental
Protection
2600 Blair Stone Road, MS 4575
Tallahassee, Florida 32399-2400
Phone (850) 488-3935

For the Participant:

Ms. Yolanta Jonynas
Gainesville Regional Utilities
P.O. Box 147117 (Dept. A136)
Gainesville, FL 32614-7117
Phone (352) 334-3400 ext. 1284

Each Party shall have the right to change its Representative upon 10 days written notice to the other Party.

OWNERSHIP OF EQUIPMENT.

16. Upon completion of site rehabilitation, the Parties shall cause an inventory to be performed of any equipment purchased by the Parties as part of the shared costs. The Parties shall then mutually agree upon an appropriate division of such equipment based upon their respective proportionate share of payment of the shared costs. During the term of this Agreement, any equipment purchased by the Parties shall only be used at the site which is the subject of this Agreement or other sites where the Parties have an executed Funding Allocation Agreement. Equipment or machinery owned solely by a Party or purchased or leased directly by a Party (other than a shared cost) shall remain the property of that Party.

AMENDMENTS.

17. No amendment to this Agreement shall be effective unless in writing and signed by the Parties.

ASSIGNMENT.

18. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party.

CHOICE OF LAW/FORUM.

19. The Parties hereby agree that any and all actions or disputes arising out of this Agreement shall be governed by the laws of the State of Florida; and any such actions shall be brought in Leon County, Florida.

ENTIRE AGREEMENT.

20. It is hereby understood and agreed that this Agreement states the entire agreement and understandings between the Parties, and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement.

NO ADMISSION OF LIABILITY.

21. This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any party, by the Parties as between themselves or by any other person or entity not a Party. However, nothing in this Paragraph whatever is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of this Agreement against either Party to this Agreement by the other Party to this Agreement.

FOR THE PARTICIPANT:

City of Gainesville d/b/a
Gainesville Regional Utilities

By: _____
Michael L. Kurtz
Title: General Manager for Utilities

Date: _____

Approved as to form and legality

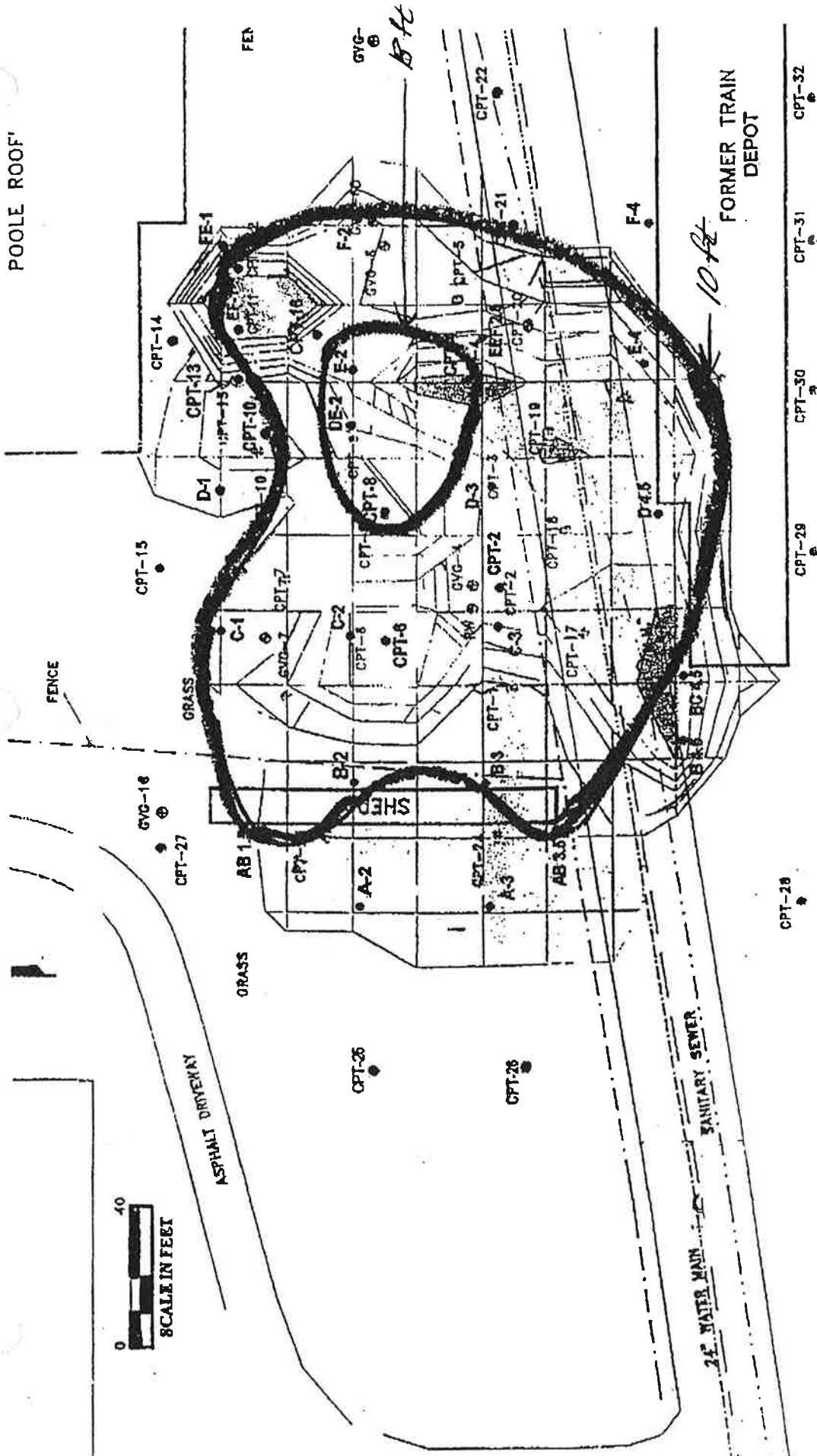
By: _____
Utilities Attorney
City of Gainesville

FOR THE DEPARTMENT:

Florida Department of
Environmental Protection

By: _____
Title: _____

Date: _____



	GBI Consultants, Inc. ATLANTA ENVIRONMENTAL DIVISION
	Figure 2
	Extent of Petroleum Impacted Soil
	Gainesville Former MGP Site

10 foot depth b/s
 18 foot depth b/s

Legend	
	GEL Soil Sampling Location
	Handax Cone Penetrometer Location
	Handax Cone Penetrometer/GEL Soil Sampling Location
	Extent of Petroleum Contaminated Soil

AVG-17

CPT-28

CPT-29 CPT-30 CPT-31 CPT-32

10 ft FORMER TRAIN DEPOT

