



## **ACCESS AGREEMENT**

This agreement made on this **Date:** \_\_\_\_\_ **(date to be completed by DSPS)** between the Wisconsin Department of Safety and Professional Services (hereinafter "DSPS") and (hereinafter "Owner").

**WHEREAS**, the Owner has been qualified by the PECFA bureau as being unable to pay for the removal of underground petroleum storage tanks (hereinafter "tanks") on their property, and

**WHEREAS**, DSPS desires to assist owner in the removal of tanks which may pose a threat to the environment through the use of Petroleum Inspection Funds available for such assistance,

**NOW, THEREFORE**, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, the Department and Recipient agree as follows:

### **Responsibility**

Owner has underground petroleum storage tanks on his/her property which are not in compliance with the administrative code provisions that govern the storage of flammable, combustible and hazardous liquids, Wis. Admin. Chapter SPS 310.

DSPS has the power to issue state orders to have the tanks brought into compliance with SPS 310, or, in the alternative, to remove the tanks from the ground in compliance with Wis. Admin. Code SPS 310.560. These orders have the force of law and failure to comply may result in prosecution by the Wisconsin Department of Justice in circuit court.

If enforcement of state orders is becomes necessary, the Owner will be subject to forfeitures and court costs.

DSPS is making funds available to remove these tanks so that they may comply with Chapter SPS 310 at no current cost to the Owner. In return, DSPS will place a lien on the property in the amount of the costs of the tank removal and site assessment.

The funds will come from the Petroleum Inspection Fund. DSPS will have control of these funds at all time and will pay contractors selected through an approved state bidding process with those funds directly upon completion of the work.

Responsibility for the property, tanks, and/or any future remediation remains with the Owner. DSPS does not assume any responsibility of the Owner.

## **Access to Property**

This agreement will allow DSPS and its agents and contractors to enter Owner's property for the purpose of cleaning and removing underground petroleum storage tanks and conducting a site assessment. Owner will allow needed access and facilitate in any way necessary.

In order for potential contractors to submit a bid proposal, potential contractors will likely desire a site visit. Owner will allow potential contractors access to the property containing the tanks for purposes of bid preparation.

## **Potential Contamination Found**

Under Wis. Admin. Code SPS 310.560, a tank removal is not complete without a site assessment for contamination to the environment. There is a potential that contamination to the environment may be found once the tanks are removed. Cleanup of such contamination would be the responsibility of the Owner. DSPS will assist Owner in efforts to determine whether additional funding may be available, however, costs of remediating contamination ultimately are the responsibility of the Owner.

## **Resources available for Assistance**

If contamination is found, Owner MAY be eligible for resources available to assist with the necessary cleanup. Federal grant funds may be made available for purposes of cleanup. The sites may be eligible for PECFA funding under Wis. Stats. §101.143. However, PECFA funding requires a deductible be paid by the owner. Under §101.143, where need is proven, that deductible may be waived or reduced and a lien placed on the property for that amount.

Depending upon the type of property the tanks on which the tanks are located, brownfields grants may also be available for cleanup of contamination. The DNR may also have some funds available for cleanup.

There is no guarantee that Owner or owner's potentially contaminated property will be eligible for additional funding. Ultimately responsibility for the cleanup of the environment is the responsibility of the Owner.

## **Hold Harmless**

The Department will only contract with certified tank cleaners and removers. To become certified, an applicant must demonstrate that they have contractor liability insurance coverage, including pollution impairment liability coverage of no less than \$1,000,000 per claim and \$1,000,000 annual aggregate. Owner agrees to hold the Department harmless for any damage to the owner's property and pursue any damages with the contractor.

## **WISCONSIN OPEN RECORDS LAW.**

Subject to the following terms, the Department shall safeguard all of the financial statements provided to them by the Recipient:

- a) Except as otherwise required or provided by court order, legal process or applicable Wisconsin law including, without limitation, the Wisconsin Open Records Law, sec. 19.31, Stats., et seq, the Department shall not reveal or disclose any financial information and documents provided by the Recipient to any non-government person or entity without the prior written consent of the Recipient.

- b) If the Recipient believes or contends that any financial statements provided hereunder qualify as “trade secrets” exempt from disclosure under the Wisconsin Open Records Law, the Recipient shall:
- (i) Fill out a standard trade secrets designation form to be provided by the Department, designating specific information or documents as “trade secrets” and agreeing to defend and indemnify the Department, and to hold them harmless in the event of any future open records request asking for copies of such documents; and
  - (ii) Provide the Department with two copies of such information -- a clean copy and a copy with the “trade secret” information redacted--for the Department’s files.

**ENTIRE AGREEMENT.**

This Agreement and exhibits contain the entire Agreement of the parties concerning the Recipient's obligations under the terms and conditions of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Recipient and the Department.

**CHOICE OF LAW.**

**THIS AGREEMENT IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN.** If any provisions of the Agreement shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions thereof.

**VENUE; JURISDICTION.**

Any judicial action relating to the construction, interpretation, or enforcement of this Agreement, or the recovery of any principal, accrued interest, court costs, attorney’s fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **THE RECIPIENT HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES THAT THE RECIPIENT OTHERWISE MIGHT HAVE RELATING THERETO.**

**WAIVER OF RIGHT TO JURY TRIAL.**

**THE RECIPIENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN THE DEPARTMENT AND THE RECIPIENT CONCERNING THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT, OR THE RECOVERY OF ANY PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEY’S FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE RECIPIENT HEREUNDER.**

**MISCELLANEOUS.**

- a) Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which shall remain in full force and effect to govern the parties’ relationship.
- b) Department Not A Joint Venture Or Partner. The Department shall not, under any circumstances, be considered or represented to be a partner or joint venture of the Recipient or any beneficiary thereof.

- c) Documents. All documents required to be delivered contemporaneously with the execution and delivery of this Agreement are expressly made a part of this Agreement as though completely herein, and all references to this Agreement herein shall be deemed to refer to and include all such documents.
- d) Agreement Controlling. In the event of any conflict or inconsistency between the Agreement and the exhibits hereto, the terms of this Agreement shall control.

**CAPTIONS.**

The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

**AUTHORITY TO SIGN DOCUMENT.**

The person(s) signing this Agreement on behalf of the Recipient certifies and attests that the Recipient's respective Articles of Incorporation, By Laws, Charter, Corporate or other Resolutions, and/or other related documents give full and complete authority to bind the Recipient, on whose behalf they are executing this document.

Recipient assumes full responsibility and holds the Department harmless for any and all payments made or any other actions taken by Department in reliance upon the above representation. Recipient agrees to indemnify Department against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by Department resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses. Recipient has read, fully understands and agrees to all of the terms and conditions in this Agreement and the related attachments.

**IN WITNESS WHEREOF**, the Department and the Recipient have executed and delivered this Access Agreement effective the date set forth next to the Department's signature below.

**Reg Objs Facility #:** \_\_\_\_\_

**For the property located at:**

Street Address of Tank \_\_\_\_\_

City and Zip \_\_\_\_\_

**WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

By: \_\_\_\_\_  
Michael Fehrenbach, Bureau Director Date \_\_\_\_\_

**<<RECIPIENT>>**

By: \_\_\_\_\_  
owner Date \_\_\_\_\_

By: \_\_\_\_\_  
co-owner Date \_\_\_\_\_

Notices to the Recipient hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed to the following person and address or such other person and address as the Recipient may designate in writing:

\_\_\_\_\_  
Attention to:

\_\_\_\_\_  
Company:

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

\_\_\_\_\_  
City, State, Zip:

Notices to the Department hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed as follows:

Mike Fehrenbach  
Bureau of Petroleum Products and Tanks  
201 West Washington Avenue  
P.O. Box 7837  
Madison, WI 53707-7837