**Attachment 32A: Exhibit A – Sample FDEP Request Letter to FDOT for Sites with Petroleum Pollutants**

Exhibit A

Sample FDEP Request Letter to FDOT for Sites with Petroleum Pollutants

State of Florida Department of Transportation

RE: FDEP Facility ID #

State Road \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_ County

Dear District \_\_\_\_\_ Secretary:

This Florida Department of Environmental Protection ("FDEP") Request Letter (Request Letter) is in reference to certain real property, the transportation facility ("transportation facility"), whose owner is the State of Florida, Department of Transportation ("FDOT"), situated in the County of \_\_\_\_\_\_\_\_\_\_\_, more particularly described in Exhibit "A" attached hereto and made a part hereof.

Consistent with the Memorandum of Understanding ("MOU") entered into by the FDEP and FDOT on \_\_\_\_\_\_\_\_\_\_\_\_\_\_[date], 2014 this letter requests the FDOT to add a map note (defined in the MOU and referenced below) to its Right of Way ("ROW") map showing the location of petroleum pollutants in the transportation facility. The petroleum pollutants arise from a third party discharger ("discharger") and have either: (1) migrated from the discharger's source property to FDOT's transportation facility, or (2) been discharged by the discharger directly onto the transportation facility. The discharger cannot readily access or remediate the petroleum pollutants in the transportation facility.

FDEP has determined the discharger's petroleum pollutants within the transportation facility are not a risk to human health, public safety, the users or occupants of the transportation facility, or the environment and the requested map note satisfies FDEP's alternative institutional control requirements; thus, the discharger is eligible for risk-based corrective action no further action ("NFA") or a Site Rehabilitation Completion Order ("SRCO") ("closure").

The FDOT and any third party voluntarily containing or removing the petroleum pollutants from the transportation facility are immune from any liability in rendering such assistance. FDEP has determined a map note would provide an additional reference and assist any party working in the transportation facility in performing its due diligence prior to commencing work.

This request for the ROW map note includes one paper and one electronic copy of the following documents:

(i) A written statement by FDEP that the discharger's petroleum pollutants within the transportation facility is not a risk to human health, public safety, the users or occupants of the transportation facility, or the environment;

(ii) FDEP's written determination the proposed ROW map note qualifies as an alternative institutional control and the source property qualifies for the closure;

(iii) A summary of the soil data and groundwater data, in the applicable regulatory units, showing the location of soil and groundwater petroleum pollutants;

(iv) A legal description of the extent of the map note; and

(v) A Specific Purpose Survey, Boundary Survey or Sketch and Description as defined under Chapter 5J-17, F.A.C. tied to the FDOT bearing base, and GPS coordinate information showing the alternative institutional control;

(vi) The transportation facility ROW map prepared according to all FDOT laws, rules, regulations, and procedures, showing the map note;

(vii) Draft property interest transfer agreement memorandum language and draft deed of conveyance language notifying any and all future owners of the map note on the ROW Map, as applicable; and

(viii) An agreement between the discharger and FDOT to indemnify and hold the FDOT harmless for any damage that may occur to the transportation facility.

1. FDEP DETERMINATION
	1. FDEP notifies FDOT that the transportation facility has a discharger's petroleum pollutants flowing from a nearby source property, or spilled on the transportation facility. FDEP has overseen the remediation of soil and groundwater petroleum pollutants caused by the discharger within the source property.

The source property is owned by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("discharger").

The FDEP Facility Identification Number for the discharger's source property is \_\_\_\_\_\_\_

The discharger's facility name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The source property's facility address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. FDEP has determined that the discharger's petroleum pollutants within the transportation facility are not a threat to human health, public safety, the users or occupants of the transportation facility, or the environment.
1. FDEP REQUEST

FDEP requests: (1) FDOT acknowledge by FDOT's Acknowledgment Letter ("Acknowledgment Letter'') the attached ROW Map showing the map note with the location of petroleum pollutants in, on or under the transportation facility and (2) include such map note with any property transfer of the transportation facility.

1. TERM

If it is determined by any regulatory agency or any court of applicable jurisdiction that any provision in this Request letter or the Acknowledgement Letter imposes any requirement expressly addressed in Section 4. Limitations or waives any of the FDOT statutory immunity from liability for the petroleum pollutants then this Request Letter and FDOT Acknowledgement letter shall automatically terminate.

1. LIMITATIONS
	1. Any work performed in petroleum pollutants is regulated by FDEP through existing governmental law and this FDEP Request Letter, any FDOT Acknowledgement letter, and any map note are only an additional reference showing the location of petroleum pollutants in the transportation facility for any party to use during its due diligence prior to working within the transportation facility.
	2. Nothing in this Request Letter and/or any related Acknowledgement Letter shall operate to create any safety or environmental compliance requirements on FDOT or any third party working in the transportation facility.
	3. Nothing in this Request Letter or any related Acknowledgement Letter shall operate to create or vest any property right, any right, title, interest or estate in the transportation facility in or to the FDEP, the discharger, or to any third parties.
	4. Nothing in this Request Letter or any related Acknowledgement Letter shall prohibit, limit or interfere with FDOT's rights or impose any additional safety or environmental compliance requirements on FDOT for any acquisition, use, design, construction, operation, maintenance, utility work, or issuance of any permit to use or do work within the transportation facility including the petroleum pollutants.
	5. Nothing in this Request Letter or any related Acknowledgement Letter imposes any additional safety or environmental compliance requirements on the FDOT or imposes any liability on FDOT arising from the petroleum pollutants discharge.
	6. Nothing in this Request Letter or any related Acknowledgment Letter shall obligate the FDOT to remediate the discharger's petroleum pollutants in, on or under the transportation facility.
	7. Nothing in this Request Letter or any related Acknowledgment Letter shall require the FDOT to remediate the source property.
	8. Nothing in this Request Letter shall be interpreted as imposing liability on FDOT for any third party work in the transportation facility.
2. TRANSPORTATION FACILITY TRANSFERS
	1. Lease of the transportation facility

Prior to the entry into a lessee/lessor relationship with respect to the transportation facility, FDOT agrees to send the lessee a copy of the ROW map with the map note.

* 1. Conveyance of the transportation facility
		1. FDOT will notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the portion of transportation facility that includes a map note on the ROW map.
		2. Transfer by Map.

FDOT's conveyance of transportation facility by map transfer shall include a reference to the map note on the map.

* + 1. Transfer by Roadway Jurisdictional Transfer

FDOT's conveyance of transportation facility by roadway jurisdictional transfer pursuant to section 335.0415, F.S., shall include a reference to ROW Map and map note.

* + 1. Transfer by deed

FDOT's conveyance by deed or other written transfer shall include "By acceptance of this transfer, the grantee hereby agrees it has received the ROW map with the map note showing the location of the petroleum pollutants."

1. REVOCATION OF REQUEST

If the closure is not issued to the discharger within thirty (30) days of FDEP's receipt of FDOT's Acknowledgement Letter, then FDEP shall revoke this Request Letter and send written notice of the revocation to FDOT.

1. MODIFICATION OF THE MAP NOTE

The MOU's modification of map note section shall apply to this Request Letter.

1. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of this Request on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

1. DISPUTE RESOLUTION AND VENUE

The MOU's dispute resolution and venue section shall apply to this Request Letter.

1. RIGHT OF ENTRY

The MOU's right of entry section shall apply to this Request Letter.

1. FILING AND RECORDING

FDEP shall file this Request Letter and the ROW Map with the map note in the discharger's facility's file on the FDEP OCULUS database.

1. ACKNOWLEDGMENT
	1. Upon written acknowledgment by FDOT of this Request Letter, FDEP shall issue the closure to the discharger, and shall provide the discharger with this Request Letter and FDOT's Acknowledgment Letter. FDEP shall provide FDOT with a copy of the closure.
	2. If the closure is not issued to the discharger within thirty (30) days of FDEP's receipt of FDOT's Acknowledgement Letter, then the FDEP shall revoke this Request Letter and the map note and send written notice of the revocation to FDOT.
2. SOVEREIGN IMMUNITY AND LIMITATIONS ON LIABILITY
	1. Nothing in this Request Letter shall be deemed or otherwise interpreted as waiving either FDOT or FDEP sovereign immunity protections, or as increasing the limits of liability set forth in section 768.28, F.S. (2013).
	2. Nothing in this Request Letter shall be deemed or otherwise interpreted as waiving FDOT's limits of liability set forth in sections 376.305, 334.27(2), F.S. (2013). Nothing in this Request Letter shall be interpreted as waiving section 335.10(3), F.S. Nothing in this Request Letter shall be interpreted as imposing liability on FDOT for any third party work in the transportation facility.

Sincerely,

cc: Florida Department of Transportation District \_\_\_\_\_\_ Right of Way Property Administrator

 Florida Department of Transportation District \_\_\_\_\_\_ Mapping Administrator

Florida Department of Transportation District \_\_\_\_\_\_ Environmental Management Office Administrator

 Florida Department of Transportation District \_\_\_\_\_\_\_ Contamination Impact Coordinator

 Florida Department of Transportation District \_\_\_\_\_\_\_ Chief Counsel