

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is by and between the State of Florida Department of Environmental Protection ("FDEP") and the State of Florida Department of Transportation ("FDOT"). The purpose of this MOU is to memorialize the partnership between FDEP and FDOT for addressing discharges of petroleum pollutants from off-site source properties to state transportation facilities.

FDEP acknowledges that FDOT invests in world class transportation projects which enable Florida to be a global hub for trade and commerce and provide employment and economic benefits for the State of Florida. To this effect, and depending on the availability of funds in the Inland Petroleum Trust Fund or other approved trust fund authorized by law, FDEP has offered to prioritize for assessment and, where warranted, remediation, petroleum pollutants (defined in the MOU) emanating from a discharge located in a discharger's ("discharger") trust fund-eligible source property ("source property") into, onto or under transportation facilities, in advance of regionally economically significant transportation projects such as major future corridor expansions, Statewide Corridors, or Designated Strategic Intermodal System (SIS) Highway Corridor or other significant projects of mutual agreement.

Additionally, FDEP has determined there may be circumstances when a discharger's petroleum pollutants satisfy FDEP requirements for a risk based corrective action no further action (NFA) or a Site Rehabilitation Completion Order (SRCO) and are not a risk to the human health, public safety, the users or occupants of the transportation facility, or the environment and such discharges will naturally attenuate. FDEP has requested FDOT's assistance in establishing a procedure for the discharger who cannot readily access or remediate its petroleum pollutants that have spilled upon or migrated from the discharger's source property to FDOT's transportation facility. Such procedure would require a discharger to petition FDEP to request a note on the FDOT right of way map ("map note") showing the location of the petroleum pollutants in the transportation facility. Pursuant to section 376.305(4), Fla. Stat., the FDOT and any third party voluntarily containing or removing the discharger's petroleum pollutants from the transportation facility is immune from 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. FDEP has determined that the map note and recordation as described in Section 6 satisfies the multi-layered approach for an alternative institutional control.

## **RECITALS**

A. Section 403.061(21), Fla. Stat. (2013), authorizes FDEP and section 334.044(7), Fla. Stat. (2013), authorizes FDOT to enter into this MOU; and

B. FDEP and FDOT recognize that petroleum pollutants present in soil and groundwater are potentially detrimental to the public health and the environment; and

C. For the purpose of this MOU the phrase "petroleum pollutants" includes oil of any kind and in any form, natural gas, liquid fuel commodity made from petroleum, including all forms of fuel known or sold as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products and derivatives thereof, excluding liquefied petroleum gas; and

D. For the purpose of this MOU, the term "discharge" includes but is not limited to, any spilling, leaking, seeping, misapplying, pouring, emitting, emptying, releasing or dumping of any petroleum pollutant which occurs and which affects the transportation facility; and "discharger" means the responsible party who has control, dominion, or responsibility over the petroleum or petroleum products at the time of the discharge into the environment; and

E. The "right-of-way" ("ROW") is land in which FDOT owns the fee or has an easement devoted to or required for use as a transportation facility, section 334.03(21), Fla. Stat. (2013); and

F. A "transportation facility" is any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part with public funds ...including property or property rights, real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place, section 334.03(30), Fla. Stat. (2013);

G. A "road" is a way open to travel by the public, including, but not limited to, a street, highway, or alley including associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith, section 334.03(22), Fla. Stat. (2013); and

H. The "roadway" is the portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately, but not to all such roadways collectively, section 316.003(42), Fla. Stat. (2013); and

I. The FDOT may not sell a property interest in land which the FDOT has determined it needs for the construction, operation, and maintenance of FDOT's transportation facility, see 337.25(4), Fla. Stat. (2013);

J. FDOT has the duty to plan proposed transportation facilities and to construct, maintain, and operate such facilities, section 334.044(13), Fla. Stat. (2013); and FDOT permits third party work within the transportation facilities, sections 334.044(13), (14), and (15), and section 337.406, Fla. Stat. (2013);

K. FDEP's rules and regulations govern the actions taken in response to the discovery of polluted soil and water, see sections 376.30701, 376.3071(5)(b), 376.3078(4), and 376.81, Fla. Stat. (2013); and FDEP is authorized to require the investigation, removal, disposal, and risk-based management of pollutants throughout Florida, see section 376.305(1), Fla. Stat. (2013); and

L. If any person discharging pollutants fails to immediately undertake to contain, remove, and abate the discharge then the FDEP may undertake the removal of the discharge; see section 376.09 Fla. Stat. (2013); FDEP is empowered to keep an accurate record of the costs and expenses incurred for the removal of prohibited discharges, diligently pursue the recovery of any sums from the person responsible, and bring an action to enforce the liabilities caused by a discharge, sections 376.30-376.317; and

M. FDOT is immune from any liability for rendering assistance in containing or removing any petroleum pollutant discharged or spilled on the transportation facility; see section 376.305(4),

Fla. Stat.; and FDOT is exempted from any liability imposed by Chapter 376 or 403, Fla. Stat., for pre-existing soil or groundwater petroleum pollutants due solely to FDOT's ownership of the transportation facility, see section 337.27(4), Fla. Stat. (2013); and

N. Section 335.10(3), Fla. Stat. (2013), imposes civil liability on any person by reason of his or her wrongful act who causes actual damage to FDOT roads; and section 376.205, Fla. Stat. (2013), authorizes the FDOT to bring a cause of action against a responsible party for damages resulting from spills and discharges; and

O. FDEP has determined that a discharge of petroleum pollutants within the transportation facility that meets the requirements of a risk based closure no further action (NFA) may present a minimal risk to FDOT, third parties working in the transportation facility, the traveling public, and adjacent property owners; and FDEP has determined a map note showing the location of the discharger's petroleum pollutants will provide an additional resource for any party performing its due diligence prior to working in the transportation facility; and

P. For the purpose of this MOU, the term "map note" shall mean a notation placed upon a ROW map showing the horizontal and vertical location of the discharger's petroleum pollutants and its quantity in applicable regulatory units; and

Q. For the purpose of this MOU, the term "governmental law" includes all applicable federal, state, local, administrative, regulatory, safety, and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications, and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the FDOT, applicable Water Management District, FDEP, Occupational Health and Safety Administration (OSHA), Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, and local governmental entities; and

R. This MOU shall not modify or change Florida Statutes, FDEP rules, or FDOT rules and is limited to the scope outlined in this MOU; and

S. FDEP and FDOT recognize the benefits that accrue to each agency as a result of this MOU.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this MOU, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this MOU, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

### **1. RECITALS AND EXHIBITS**

The recitals set forth above and attached Exhibits are incorporated in and made part of this MOU.

### **2. EFFECTIVE DATE**

The effective date of the MOU shall be the date the last of the parties to be charged executes the MOU ("Effective Date").

### **3. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FUNDS**

A. FDEP acknowledges that FDOT transportation projects are important for Florida's employment and economic benefits. When a discharger discharges petroleum pollutants into, onto or under a transportation facility such discharges impact transportation facilities and future transportation projects. FDEP agrees such petroleum pollutant impacts to transportation facilities should be minimized; therefore, when the FDOT plans a project in the transportation facility where a

discharger's petroleum pollutants are located, the FDOT may request FDEP prioritize FDEP's remediation of the discharger's petroleum pollutants in the transportation facilities in advance of the FDOT work, regardless of the source property priority score. FDEP shall prioritize and remediate the discharger's petroleum pollutants within the transportation facilities subject to funding and statutory authority.

B. If FDEP, for reasons that may impede it from doing so such as trust fund availability, does not assess or, where warranted, remediate the petroleum pollutants in advance of FDOT transportation projects described in the introduction, the FDOT may assess and remediate such petroleum pollutants within the transportation facility. In these cases, the FDOT may request FDEP provide funding and/or reimbursement for the remediation of the trust-fund eligible discharger's petroleum pollutants in the transportation facility, regardless of source property priority score, from the Inland Protection Trust or Water Quality Assurance Trust Fund or other funding source as may become available. Upon FDOT's request the FDEP shall provide funding and/or reimbursement to FDOT for the FDOT's remediation of the discharger's petroleum pollutants within the transportation facilities to the extent authorized by law.

#### **4. DISCHARGER PETITION TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR A NO FURTHER ACTION FOR PETROLEUM POLLUTANTS**

A. A discharger may remediate the petroleum pollutants in its source property but may be unable to remediate some or all of its petroleum pollutants that have migrated from its source property to the transportation facility. If the discharger's access to the petroleum pollutants within the transportation facility causes an inconvenience to the traveling public, or when the discharger's remediation of the petroleum pollutants is not feasible or technically impractical, then the discharger may submit a proposal to FDEP for a determination that the petroleum pollutants within the transportation facility are not a threat to human health, public safety, or the environment, will naturally attenuate, and source property qualifies for a No Further Action or a Site Rehabilitation Completion Order ("closure").

B. Upon FDEP's review of the discharger's proposal and FDEP's written determination that the proposal qualifies for closure, the FDEP may submit to FDOT a request for FDOT to put a map note on FDOT's ROW map. Upon receipt of such request, FDOT may add a map note to its ROW maps identifying the location of discharger's petroleum pollutants in the transportation facility

C. FDOT and any third party voluntarily containing or removing a discharger's petroleum pollutants are immune from liability; FDEP has determined a map note is a reference to assist any party with its due diligence prior to working in the transportation facility; and a map note may be included in a multi-layered approach and qualify as an alternative institutional control.

#### **5. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REQUEST FOR A MAP NOTE ON THE TRANSPORTATION FACILITY RIGHT OF WAY MAP**

A. FDEP's request to FDOT for a map note shall include, at minimum:

- (i) A Letter from FDEP to FDOT requesting the map note, see attached exhibit "A";
- (ii) FDEP written determination that the 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; and source property qualifies for a closure;
- (iii) FDEP's written determination the proposed map note on the FDOT ROW map qualifies as an alternative institutional control;
- (iv) A summary of the soil data and groundwater data, in the applicable regulatory units;
- (v) A legal description for the location of the map note; and



- (vi) 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 map note; and
- (vii) The transportation facility ROW map ("ROW map"), prepared according to all FDOT laws, rules, regulations, and procedures, showing the map note; and
- (viii) Draft language for future property interest transfer agreement and draft deed of conveyance language referencing the map note on the ROW Map; and
- (ix) An agreement between the discharger and FDOT to indemnify and hold the FDOT harmless for any damage that may occur to the transportation facility; and
- (x) Any other document the FDOT may require.

D. The FDEP request will be sent to appropriate FDOT District Secretary, with a courtesy copy to the District Right of Way Administrator, the District Contamination Impact Coordinator, and the District Chief Counsel. The FDOT shall timely consider and may acknowledge FDEP request in writing by Acknowledgement Letter; see attached exhibit "B."

## **6. RECORDING**

Upon receipt of FDOT's Acknowledgment Letter, the FDEP shall file this MOU, the FDEP Request Letter, the FDOT Acknowledgment Letter, and the ROW map with map note with the discharger's facility documents in the FDEP's OCULUS database. FDOT shall record this MOU, the FDEP Request Letter, the FDOT Acknowledgment Letter, and the transportation facility ROW map with the map note in the FDOT District Mapping office. FDEP shall require the discharger to record a reference to the ROW map note with the source property in the County Clerk's office.

## **7. MODIFICATION OF THE MAP NOTE**

Modification of the map note is authorized if the discharger, a third party, FDEP, or FDOT demonstrate the transportation facility has achieved cleanup target levels established pursuant to governmental law and the map note is modified.

## **8. LIMITATIONS**

A. This MOU creates a procedure for the FDEP's request for a map note to manage and to notify, of petroleum pollutants that are not feasible or technically impractical to remediate and which under current circumstances of exposure and/or land use, does not pose a potential or real threat to human health or the environment. The management of work, from assessment to closure, at a funding eligible discharge is performed by FDEP's Petroleum Restoration Program in accordance with section 376.305(1), Fla. Stat. (2013). Health and safety considerations for intrusive work in petroleum contaminated areas or discharges such as monitor well installations, contaminated soil excavation, etc., is regulated by the Occupational Health and Safety Administration (OSHA) and existing governmental law. This MOU, any 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 rely on during its due diligence prior to working within the transportation facility;

B. This MOU, any FDEP Request Letter, any FDOT Acknowledgement letter, and any map note shall not operate to create or vest any property right in or to FDEP, the discharger, or to third parties. The FDEP, the discharger, and third parties shall not acquire any right, title, interest or estate in the transportation facility by virtue of the execution, operation, effect, performance or

breach of this MOU, any FDEP Request Letter, any FDOT Acknowledgement letter, or any map note.

C. This MOU, any FDEP Request Letter, any FDOT Acknowledgment letter, and any map note shall not create or impose any additional compliance requirements, other than those already imposed by existing governmental law. The FDEP, the discharger, and third parties shall not acquire any right to monitor or enforce any environmental or safety requirements under this MOU, any FDEP Request Letter, any FDOT Acknowledgement letter, or any map note.

D. This MOU, any FDEP Request Letter, any FDOT Acknowledgement letter, and any map note shall not impose any requirement on FDOT to monitor or enforce the map note, or any additional compliance requirements, other than those already imposed by existing governmental law, 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.

E. Under no circumstances shall this MOU, any FDEP Request Letter, any FDOT acknowledgment letter, any map note, or FDEP prioritization and remediation of a discharger's petroleum pollutants in the transportation facility, obligate the FDOT to remediate the discharger's petroleum pollutants in the transportation facility.

F. Under no circumstances shall this MOU, any FDEP Request Letter, any FDOT acknowledgment letter, any map note, or FDEP prioritization and remediation of a discharger's petroleum pollutants in the transportation facility, obligate the FDOT to remediate the discharger's petroleum pollutants in the source property.

G. Nothing in this MOU, any FDEP Request Letter, any FDOT Acknowledgement letter, or in any map note shall be interpreted as waiving any rights available to FDEP or FDOT under sections 376.305 or 335.10(3), Fla. Stat. (2013).

H. Nothing in this MOU shall be deemed or otherwise interpreted as waiving the parties' sovereign immunity protections, or as increasing the limits of liability set forth in section 768.28, Fla. Stat. (2013). Nothing in this MOU shall be deemed or otherwise interpreted as waiving FDOT limits of liability set forth in sections 768.28, 376.305, and 337.27(4), Fla. Stat. (2013).

#### **9. RIGHT OF ENTRY**

Subject to requirements of Florida Law, FDOT agrees to allow FDEP access to the transportation facility at reasonable times for the purpose of performing those tasks contemplated by this MOU. FDEP acknowledges and agrees that FDOT permit requirements, or safety considerations limit the times, areas, and activities which may be conducted. FDEP will contact FDOT and schedule time(s) to access the transportation facility by coordinating through the appropriate FDOT District Office.

#### **10. MODIFICATION OF MOU**

A modification or waiver of any of the provisions of this MOU shall be effective if made in writing and executed with the same formality as this MOU.

## **11. DISPUTE RESOLUTION AND VENUE**

A. If a dispute arises concerning the interpretation, validity, performance or alleged breach of this MOU which cannot be resolved at the staff level, such dispute shall be elevated to the attention of FDEP's Director for the Division of Waste Management (DWM) and FDOT's Manager of the State Environmental Management Office (SEMO). If the DWM Director and SEMO Manager are unable to resolve any such dispute, then the matter will be elevated to each agency's Secretary or their designee for resolution.

B. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the MOU that are not resolved to the mutual satisfaction of the parties shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

## **12. SPILLS AND DISCHARGES, AND ABANDONED LIQUID WASTE**

A. The public's right to use the transportation facility can result in third party spills and discharges of petroleum pollutants and contamination and the abandonment of liquid waste in containers and drums (abandoned liquid waste). The third party responsible (responsible party) for the spills, discharges, and abandonment may be unknown or known. Such spills, discharges, and abandoned waste may be discovered by the FDOT, FDEP, or the traveling public.

B. Upon discovery of any spill or discharge of petroleum pollutants or contamination by an unknown third party to a transportation facility, the FDEP shall:

- (i) notify the FDOT in writing within forty-eight (48) hours of the spill or discharge; and
- (ii) determine whether the spill or discharge is a de-minimus discharge and provide a copy of such determination to FDOT; and
- (iii) if not a de-minimus discharge then task its Office of Emergency Response headquarters office in Tallahassee or any of the Office's emergency response specialists located in one of its six districts to investigate and, where warranted, ensure the spill or discharge does not pose a threat to human health or the environment by authorizing one of its approved discharge cleanup organizations to remove/remediate and dispose of the spill or discharge; and
- (iv) require the local discharge clean-up organizations to acquire the appropriate FDOT permit and submit a copy of that permit to FDEP; and

C. Upon discovery of a spill or discharge of petroleum pollutants or contamination by a known third party into a transportation facility, the FDEP shall:

- (i) if a spill, require the Division of Emergency Management State Watch Office to notify FDOT in writing within forty eight (48) hours of the spill; and
- (ii) if a discharge, require the responsible party to notify FDOT in writing by certified mail; and
- (iii) determine whether the spill or discharge is a de-minimus discharge and provide a copy of such determination to FDOT; and
- (iv) if not a de-minimus discharge then require any and all parties, including without limitation local discharge clean-up organizations, who are remediating spills or discharges in the transportation facility, to acquire a FDOT permit and submit a copy of that permit to FDEP; and

D. Upon discovery and notice of unknown abandoned liquid waste in the transportation facility, the FDEP shall authorize a local discharge cleanup organization to, where warranted, contain, remove, and dispose of the abandoned waste.

E. Good Samaritan

If an unknown third party abandons waste, or spill or discharges petroleum pollutants or contamination within the transportation facility, the FDOT may voluntarily elect to collect, contain, remove or abate, and dispose of such without liability for its actions; section 376.305(3), (4), and (5), Fla. Stat. (2013).

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties hereby execute this MOU, consisting of eight pages.

**- Signatures to follow -**

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

  
Secretary

June 12, 2014  
Date

FLORIDA DEPARTMENT OF  
TRANSPORTATION

  
Secretary

June 16, 2014  
Date

Electronic copies to:

Jorge Caspary, Director Division of Waste Management, FDEP,  
[Jorge.caspary@dep.state.fl.us](mailto:Jorge.caspary@dep.state.fl.us)

Marjorie Bixby, Manager State Environmental Management Office

Valerie K. Huegel, Program Administrator, Petroleum Restoration Program FDEP

Douglas A. Jones, Program Administrator, Waste Cleanup Program, FDEP

FDOT District 1 Secretary

FDOT District 2 Secretary

FDOT District 3 Secretary

FDOT District 4 Secretary

FDOT District 5 Secretary

FDOT District 6 Secretary

FDOT District 7 Secretary



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

A. 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 \_\_\_\_\_.

B. 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.

#### 2. 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.

#### 3. 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.

#### 4. LIMITATIONS

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. Nothing in this Request Letter or any related Acknowledgment Letter shall require the FDOT to remediate the source property.

H. Nothing in this Request Letter shall be interpreted as imposing liability on FDOT for any third party work in the transportation facility.

#### **5. TRANSPORTATION FACILITY TRANSFERS**

##### **A. 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.

##### **B. Conveyance of the transportation facility**

(i) 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.

##### **(ii) Transfer by Map.**

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

##### **(iii) Transfer by Roadway Jurisdictional Transfer**

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

##### **(iv) 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."

#### **7. 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.

#### **8. MODIFICATION OF THE MAP NOTE**

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

**9. 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.

**10. DISPUTE RESOLUTION AND VENUE**

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

**10. RIGHT OF ENTRY**

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

**11. 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.

**12. ACKNOWLEDGMENT**

A. 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.

B. 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.

**13. SOVEREIGN IMMUNITY AND LIMITATIONS ON LIABILITY**

A. 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, Fla. Stat. (2013).

B. 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), Fla. Stat. (2013). Nothing in this Request Letter shall be interpreted as waiving section 335.10(3), Fla. Stat. 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



Exhibit B  
Sample Florida Department of Transportation Acknowledgement Letter

Date: Date  
From: Florida Department of Transportation ("FDOT")  
To: Florida Department of Environmental Protection ("FDEP")  
CC: Other involved entity  
Re: FDEP Request Letter for ROW Map note  
FDEP Facility ID# \_\_\_\_\_ State Road \_\_\_\_; \_\_\_\_\_  
County \_\_\_\_\_

Dear (FDEP Program Manager),

The FDOT acknowledges receipt of FDEP's request to add a map note to the FDOT Right of Way ("ROW") map showing the location of petroleum pollutants that have: (1) spilled upon or (2) migrated from an off-site source property to FDOT's transportation facility. FDOT has also received FDEP's written determination that: (1) the third party 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; (2) the map note qualifies as an alternative institutional control; and (3) the third party discharger's source property qualifies for a risk based corrective action no further action ("NFA") or Site Rehabilitation Completion Order ("SRCO") ("closure").

FDOT and any third party voluntarily containing or removing a discharger's petroleum pollutants from the transportation facility are immune from liability. FDEP has determined the map note is a reference to assist any party with its due diligence prior to working within the transportation facility.

Based upon its review of the FDEP Request Letter and related documents and pursuant to the Memorandum of Understanding ("MOU") entered into by the FDEP and FDOT on \_  
\_\_\_\_\_, 2014, the FDOT:

- (1) Agrees to maintain the transportation facility ROW map and the map note, until such time as it may be modified; and
- (2) Agrees to incorporate a reference to the map note into any future property transfer, including transfer by map, transfer by Roadway Jurisdictional Transfer, or transfer by deed;
- (3) Agrees the Request Letter, this Acknowledgement letter, and the map note do not operate to create or vest any property right, title, interest or estate in the transportation facility in or to FDEP, the discharger, or to any other third parties;
- (4) Agrees the Request Letter, this Acknowledgement letter, and the map note are only an additional reference to show the location of petroleum pollutants in the transportation facility for any party to reference during its due diligence prior to working within the transportation facility; and further agrees that neither the Request Letter, this Acknowledgment letter, nor any map note shall impose any additional compliance requirements on any party working within the

transportation facility, other than those already imposed by existing governmental law (as defined in the MOU).

(5) Agrees the Request Letter, this Acknowledgement letter, and the map note shall not impose any requirement to monitor the map note, or any additional 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.

(6) Agrees the Request Letter, this Acknowledgment letter, and the map note shall not obligate the FDOT to remediate the third party discharger's petroleum pollutants.

(7) Agrees the Request Letter, this Acknowledgment letter, and the map note shall not obligate the FDOT to remediate the third party discharger's source property.

(8) Agrees the Request Letter, this Acknowledgement letter, and the map note shall not be interpreted as waiving any rights of the FDOT under sections 376.305 or 335.10(3), Fla. Stat. (2013).

(9) Agrees that the Request Letter, this Acknowledgement letter, or the map notes shall not be deemed or otherwise interpreted as waiving FDOT limits of liability set forth in sections 768.28, 376.305, and 337.27(4), Fla. Stat. (2013).

Sincerely,

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Right of Way Property Management Administrator