

## **MEMORANDUM OF UNDERSTANDING**

### **Amended and restated**

This Memorandum of Understanding (MOU) is by and between the State of Florida Department of Environmental Protection (FDEP) and CSX Transportation, Inc., (Railroad). The purpose of this MOU is to memorialize the partnership between FDEP and Railroad for addressing discharges of contaminants on or under Railroad Property.

FDEP acknowledges that Railroad 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.

FDEP further acknowledges that Railroad owns or controls through agreement (including but not limited to easements, charters and license agreements) a variety of properties including but not limited to rail corridors, rail sidings, switch yards, car repair facilities, locomotive repair facilities, commercial/office developments, residential and vacant land (hereinafter "Property"), however, this MOU does not apply to and will not be used for residential properties as defined in this MOU and paragraph II.E.1

FDEP further acknowledges that Railroad's Property is comprised of multiple railroad parcels that do not coincide with parcel boundaries as might be defined by County management agencies such as, but not limited to, property appraisers or taxing authorities.

FDEP further acknowledges that some Railroad Property has been leased to shortline railroads and while Railroad retains certain ownership rights to the Property, the shortline railroad may control access to the Property and permission from the shortline railroad may be required if physical access is needed for assessment, remediation or inspection purposes. When requested, Railroad will inform FDEP of such leases and FDEP will contact the shortline railroad to negotiate access.

Railroad acknowledges that it controls access to its Property (unless such rights have been specifically transferred to a shortline railroad under written agreement), to the extent allowed by law. Third parties seeking access to use Railroad Property for any purpose or to install any structure, pipe or utility on, over or beneath Railroad Property must obtain written permission. Such permission is granted through various Agreements including but not limited to land leases, license agreements, easements, utility agreements, wireline agreements, signboard agreements, longitudinal occupancy agreements, temporary access agreements, construction agreements and environmental right-of-entry agreements. Each Agreement is assigned a unique contract number that is processed and tracked in Railroad's Contract Management System (CMS) database, linked to Railroad's deed record database (Workbench), and archived in Railroad's Visualink electronic document repository. In addition, the location of each new Agreement is recorded in Railroad's Geographical Information System (GIS) database and mapping system. Railroad employees reviewing requests for access consult these resources as part of the approval

process to determine the specific projects potential impact on existing lessees, utilities and Environmental Sites (as defined below) so that the third-party seeking access can be made aware of site conditions and modify their work plans accordingly.

FDEP acknowledges that some of Railroad's Property is controlled by easements containing automatic reversion language that terminates Railroad's rights to the Property upon removal of its track. In such an event, the Property may no longer be subject to this MOU. FDEP may work with the real property owner to negotiate an institutional control that will survive the easement reversion or property transfer. See paragraph 6 and Recital II E.

FDEP has determined there may be circumstances when the status of the contamination on or beneath Railroad Property satisfies FDEP requirements for a risk-based corrective action Site Rehabilitation Completion Order with Conditions (SRCOC), that if complied with, ensure that it is not a risk to the human health, public safety, the users or occupants of the Property, or the environment, and such discharges are stable or shrinking and may naturally attenuate. If Railroad has requested to enter into Conditional Closure Agreements (CCA) with FDEP pursuant to Rule 62-772.401(3)-(4), Florida Administrative Code (FAC), which requires Railroad to commit, in advance of complete site rehabilitation, to an SRCOC, this MOU may be used.

FDEP has requested Railroad's assistance in establishing a procedure for accessing or remediating contaminants that have spilled upon or migrate from another property to Railroad's Property. Such procedure would require a request from FDEP to Railroad to create an "Environmental Site" (as defined below) within Railroad's GIS mapping system and deed record database (Workbench) showing the location of the contaminants on the Property. If Railroad is submitting a CCA Application to FDEP then Railroad must first create an Environmental Site within its Workbench showing the estimated location of the contaminants. FDEP has determined that creating and mapping an Environmental Site within Railroad's GIS and Workbench systems as described in Section 5 satisfies the multi-layered approach for an institutional control.

FDEP further acknowledges that given the nature of rail corridors, Railroad cannot fully control trespasser access to all of its Properties.

## **I. DEFINITIONS:**

A. "Contaminant" includes any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater as defined in Section 376.301, Florida Statutes (Fla. Stat.) (2018).

B. "Discharge" includes but is not limited to, any spilling, leaking, seeping, misapplying, pouring, emitting, emptying, releasing or dumping of any contaminant which occurs and which affects the Property. Section 376.301, Fla. Stat.

C. "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 Federal Railway Administration (FRA), Florida Department of Transportation (FOOT), applicable Water Management District (WMD), FDEP, Occupational Health and Safety Administration (OSHA), Environmental Protection Agency (EPA), Army Corps of Engineers, United States Coast Guard, and local governmental entities.

D. "Institutional Control" (IC) means the restriction on use or access to a contaminated site to eliminate or minimize exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants. Section 376.301, Fla. Stat.

E. "Environmental Site" shall mean a notation placed within Railroad's GIS mapping system and deed record database (Workbench) showing the horizontal boundaries of the contaminants and identifying the individual railroad parcels, or portions thereof, that are affected by the contaminants.

F. "Person Responsible for Site Rehabilitation" (PRSR) is as defined in Rule 62-780.200, FAC. This MOU does not modify who the PRSR may be for contamination that may be addressed by this MOU.

G. "Railroad Property" or "Property" is any real property in the State of Florida that is controlled, at the time of execution of this MOU or in the future when the MOU is used and Environmental Site is created, by Railroad via charter, easement, fee title or other mechanism such that Railroad is the "Real Property Owner" as defined in Rule 62-80.200(44), FAC.

H. "Site rehabilitation" means the assessment of contamination and the remediation activities that reduce the levels of contaminants through accepted treatment methods to meet the cleanup target levels established for that site. For purposes of sites subject to the Resource Conservation and Recovery Act, as amended, the term includes removal, decontamination, and corrective action of releases of hazardous substances. *See* Section 376.301, Fla. Stat.

I. "Site Rehabilitation Completion Order" (SRCO) is otherwise defined in Rule 62-780.680(7) and as amended. (all references to SRCOC issued pursuant to Rule 62-780.680(2) or (3), FAC for purposes of this MOU only also include the Low-Scored Site Initiative No Further Action Orders (LSSI NFA) issued pursuant to Section 376.3071(12)(b), Fla. Stat.)

## **II. RECITALS**

A. Sections 403.061(21), 376.307, 376.30701, 376.3071, 376.3078(4), and 376.81,

Fla. Stat., authorize FDEP to enter into this MOU. Railroad covenants and represents that on the date of execution of this MOU that it is either seized of fee simple ownership or otherwise has sufficient control and authority to create, establish, and impose this MOU on Railroad's Property;

B. FDEP and Railroad recognize that contaminants present in soil and groundwater are potentially detrimental to the public health and the environment;

C. 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.; and FDEP is authorized to require the investigation, removal, disposal, and risk-based management of contaminants throughout Florida, see section 376.305(1), Fla. Stat.;

D. If any person discharging contaminants fails to immediately undertake to contain, remove, and abate the discharge, then FDEP may undertake the removal of the discharge; see section 376.305(2) Fla. Stat. 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;

E. Railroad transfers its Property rights using a variety of mechanisms including, but not limited to, Quit Claim Deeds, Warranty Deeds and Releases of Easements. When releasing an easement, Railroad does not have the authority to impose deed restrictions on the Property. When releasing an easement, Railroad will use commercially reasonable best efforts to inform the FDEP contact (see paragraph 12 below) of the expected effective date the easement will be released and the identification of the then current real property owner(s). The Department may work with the underlying real property owner on any necessary institutional controls or revoke the SRCOC, pursuant to Chapter 62-780, FAC (or LSSI NFA or CCA). See paragraph 6.

1. When transferring ownership of Property to which Railroad has fee title, the deed shall contain one or more restrictive covenants, reading substantially as follows, to run with title to the Property and to be binding upon Buyer, Buyer's heirs, legal representatives and assigns, or corporate successors and assigns, or anyone claiming title to or holding the Property through Buyer:

*"Grantee acknowledges that the Property conveyed hereunder has been historically used for railroad industrial operations and is being conveyed for use only as industrial or commercial property. Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not use the Property for any purpose other than industrial or commercial purposes and that the Property will not be used for (a) any residential purpose of any kind or nature (residential use shall be defined broadly to include, without limitation, any use of the Property by individuals or families for purposes of personal living, dwelling, or*

*overnight accommodations, whether such uses are in single family residences, apartments, duplexes, or other multiple residential dwellings, trailers, trailer parks, camping sites, motels, hotels, or any other dwelling use of any kind), (b) any public or private school, day care, or any organized long-term or short term child care of any kind, (c) any recreational purpose (recreational use shall be defined broadly to include, without limitation, use as a public park, hiking or biking trail, athletic fields or courts, or public gathering place) or (d) any agricultural purpose that results in, or could potentially result in, the human consumption of crops or livestock raised on the property (agricultural purpose shall be defined broadly to include, without limitation, activities such as food crop production, dairy farming, livestock breeding and keeping, and cultivation of grazing land that would ultimately produce, or lead to the production of, a product that could be consumed by a human).*

*Grantee acknowledges that certain parts of the Property conveyed may be permanently covered and maintained with an impermeable material that prevents human exposure and prevents water infiltration (hereinafter referred to as "the Engineering Control. An Engineering Control Maintenance Plan (ECMP) has been approved by the Florida Department of Environmental Protection. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of the Department. A copy of the ECMP can be obtained by contacting the Florida Department of Environmental Protection.*

*By acceptance of this deed, Grantee further covenants that it, its successors, heirs, legal representatives or assigns shall not use the groundwater underneath the Property for human consumption, irrigation, or other purposes. Rule 62-621.300, Florida Administrative Code is applicable to, and prior Department of Environmental Protection review is required of, any dewatering plan to ensure that no contaminant exposure from contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to this contaminated site. Department Rule 62-621.300, F.A.C., requires a permit when conducting dewatering in the area of a contaminated site.*

*Grantee and Grantor agree and acknowledge the covenants and easements contained in this Deed shall be covenants "in gross" and easements "in gross" which shall remain binding on Grantee, its successors, heirs, legal representatives and assigns regardless of whether Grantor continues to own property adjacent to the Property. Grantee acknowledges Grantor will continue to have a substantial interest in enforcement of the said covenants whether or not Grantor retains title to property adjacent to the Property."*

2. If the Buyer wishes to retain the option to develop the Property for residential use, Railroad will include the following language within the Purchase/Sale Agreement:

*"In the event that Buyer desires the removal, post-closing, of the deed restriction*

*against recreational use contained in Section 6.3(c) of this Agreement ("Recreational Use Restrictions"), Buyer shall (a) submit the Property into the voluntary cleanup program administered by the Florida Department of Environmental Protection (FDEP); (b) complete remediation of any environmental contamination of the Property to meet residential land use standards; and (c) receive a Site Rehabilitation Completion Order from FDEP that allows a residential land use. If Buyer satisfies these conditions, Seller shall execute and deliver to Buyer for recording a release of the Recreational Use Restrictions in a form to be agreed upon by Seller and Buyer during the Due Diligence Period ("Release of Recreational Use Restrictions"?, which shall provide for the express release of the Property from the force and effect of the Recreational Use Restrictions, provided that Buyer will protect, indemnify, and hold harmless Seller from and against any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, and expenses of every kind and nature suffered by, incurred by or asserted against Seller or Buyer as a direct or indirect result of any hazardous materials, hazardous substances, wastes or other environmentally regulated materials located on, in, at or under the Property. Notwithstanding the foregoing, all other restrictions including but not limited to the restrictions against residential, hotel and ground water uses (except to the extent specifically permitted for non-potable irrigation purposes) contained in Section 6.3 CONTINUES and shall not be removed of record."*

3. Railroad sometimes transfers Property for recreational trail use. Railroad will include the following language within the Purchase/Sale Agreement if the Florida Department of Environmental Protection has approved an alternative soil cleanup target level (ASCTL) for recreational trail use pursuant to Rule 62-780.650, FAC.:

*"Grantee acknowledges that the Property conveyed hereunder has been historically used for railroad industrial operations and is being conveyed for use only as a recreational trail. Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not use the Property for any purpose other than a recreational trail and that the Property will not be used for (a) any residential purpose of any kind or nature (residential use shall be defined broadly to include, without limitation, any use of the Property by individuals or families for purposes of personal living, dwelling, or overnight accommodations, whether such uses are in single family residences, apartments, duplexes, or other multiple residential dwellings, trailers, trailer parks, camping sites, motels, hotels, or any other dwelling use of any kind), (b) any public or private school, day care, or any organized long-term or short-term child care of any kind, or (c) any agricultural purpose that results in, or could potentially result in, the human consumption of crops or livestock raised on the property (agricultural purpose shall be defined broadly to include, without limitation, activities such as food crop production, dairy farming, livestock breeding and keeping, and cultivation of grazing land that would ultimately produce, or lead to the production of, a product*

*that could be consumed by a human). By acceptance of this deed, Grantee further covenants that it, its successors, heirs, legal representatives or assigns shall not use the groundwater underneath the Property for human consumption, irrigation, or other purposes"*

F. Railroad affirms that the Property subject to this MOU is exclusively commercial or industrial in nature. This MOU does not apply to and will not be used for Property with residential type uses as defined in paragraph E.1. above;

G. FDEP has determined that a discharge of contaminants onto Railroad Property that meets the requirements of a risk-based closure pursuant to a SRCOC, may present a minimal risk to the Railroad, third parties working on Railroad Property, the traveling public, and adjacent property owners if that risk is managed as described in this MOU; and FDEP has determined that creating an Environmental Site within Railroad's GIS mapping system and deed record database (Workbench) showing the horizontal limits of the contaminants will serve as a valuable resource to allow Railroad to notify any third party seeking access to Railroad Property of its duty to manage exposure to and spread of contamination as described herein;

H. Likewise, when Railroad chooses to pursue a Petroleum Restoration Program (PRP) CCA to address petroleum contaminants on Railroad Property eligible for a state-funded site rehabilitation and that creating an Environmental Site within Railroad's GIS mapping system and deed record database (Workbench) showing the estimated horizontal limits of the contaminants will not only serve as Railroad's commitment to a SCROC but also serve as a valuable resource to allow Railroad to notify any third party seeking access to Railroad Property of its duty to manage exposure to and spread of contamination as described herein;

I. This MOU shall not modify or change either Florida or federal statutes, rules, regulations, or codes and is limited to the scope outlined in this MOU; and

J. FDEP and Railroad recognize the benefits that accrue to each as a result of this MOU, and FDEP and Railroad have agreed to a procedure set forth below that:

1. will allow both the FDEP, Railroad, and third-parties to expedite and more cost effectively complete site rehabilitation on Railroad Property, especially when remediation of the contaminants is not feasible or is technically impractical;
2. will reduce inconvenience to the traveling public;
3. uses and applies ICs as part of the site rehabilitation process;
4. will allow the FDEP to ensure the long-term integrity of the IC; and
5. will ensure that the risk to human health and the environment from contamination is effectively managed.

**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 ATTACHMENT**

The recitals set forth above and attachment 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.

### **3. INSTITUTIONAL CONTROL RESTRICTIONS**

A. If Railroad executes a Property Owner Conditional Closure Agreement pursuant to Rule 62-772.401(3), FAC and FDEP approves of the contaminated site proceeding under the CCA, or FDEP has determined that the contaminants within the Property are not a threat to human health, public safety, or the environment; are stable or shrinking; and may naturally attenuate; the contamination qualifies for a Conditional SRCO pursuant to Rule 62-780.680(2) or (3) and the Railroad creates an Environmental Site in Railroad's GIS mapping system and places a notation on the affected railroad parcels within the deed record database (Workbench), the following limitations will apply to the Environmental Site:

#### 1. Groundwater:

- (a) Wells: there shall be no access to the groundwater under Railroad's Property as indicated in Railroad's Environmental Site exhibit. There shall be no drilling for water conducted, nor shall any wells be installed other than monitoring wells pre-approved in writing by Railroad, FDEP's Division of Waste Management (DWM), in addition to any authorizations required by FDEP's Division of Water Resource Management (DWRM) and the Water Management Districts (WMD).
- (b) Dewatering: FDEP Rule 62-621.300, FAC, requires a permit when conducting dewatering. If contaminant levels in groundwater are higher than their corresponding levels in the surface water limitations in FDEP Rule 62-302.530, FAC, then any dewatering proposals must be submitted to FDEP's DWM for prior approval to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to this contaminated site. Additional dewatering permitting may also be required if the dewatering discharge is not covered under FDEP Rule 62-621.300 FAC.
- (c) Stormwater facilities: existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales,



stormwater detention or retention facilities or ditches within the Environmental Site without prior written approval from the DWM, in addition to any authorizations required by the DWRM or the WMD. FDEP DWM will timely respond to such requests to review stormwater plans. Nothing herein shall exclude Railroad from conducting routine maintenance or clearing of existing stormwater facilities or temporarily modifying stormwater facilities as part of emergency response efforts (derailment, etc.).

2. Soils:

(a) Land Use Control: if soil contamination has been identified within the Environmental Site and such soil contamination levels do not exceed the Commercial/Industrial Direct Exposure limits as defined in Chapters 62-780 and 62-777, FAC, then the Railroad's Property shall be used for industrial and commercial purposes only and the following uses of the Property are prohibited:

agricultural use of the land including forestry, fishing and mining; hotels or lodging; recreational uses including amusement parks, parks, camps, museums, zoos, or gardens; residential uses, and educational uses such as elementary or secondary schools, or day care services. These prohibited uses are specifically defined by using the North American Industry Classification System, United States, 2012 (NAICS), Executive Office of the President, Office of Management and Budget. The prohibited uses by code are: Sector 11 Agriculture, Forestry, Fishing and Hunting; Subsector 212 Mining (except Oil and Gas); Code 512132 Drive-In Motion Picture Theaters; Code 51912 Libraries and Archives; Code 53111 Lessors of Residential Buildings and Dwellings; Subsector 6111 Elementary and Secondary Schools; Subsector 623 Nursing and Residential Care Facilities; Subsector 624 Social Assistance; Subsector 711 Performing Arts, Spectator Sports and Related Industries; Subsector 712 Museums, Historical Sites, and Similar Institutions; Subsector 713 Amusement, Gambling, and Recreation Industries; Subsector 721 Accommodation (hotels, motels, RV parks, etc.); Subsector 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations; and Subsector 814 Private Households.

(b) Engineering Control: if soil contamination has been identified that exceeds the Commercial/Industrial Direct Exposure CTLs or leachability-based soil CTLs per Chapter 62-780 and 62-777, FAC, then either the soil contamination must be remediated, or engineering controls approved by FDEP and Railroad must be implemented (such as the installation of an impervious cap) by the appropriate PRSR. If an engineering control is utilized, an FDEP approved Engineering Controls Maintenance Plan (ECMP) must be attached to the Workbench deed record for each railroad parcel affected by the contaminants.

(c) Excavation: excavation and construction are not prohibited on the Property impacted by this MOU, provided any known contaminated soils that are excavated are properly managed or disposed of pursuant to applicable local, state, and federal requirements. Nothing herein shall limit any legal requirements regarding construction methods or precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas.

B. If any of the above limitations are not followed as it applies to the specific contaminated site on a specific Property, unless it is demonstrated that the cleanup target levels under Rule 62-780.680(1), FAC, have been achieved, the FDEP may institute proceedings to revoke the SRCOC issued for that contaminated site and require site rehabilitation to resume, or require that other approved institutional controls be implemented.

#### **4. INFORMATION NEEDED TO COMPLY WITH THIS MOU**

A. To close a contaminated site with an SRCOC or LSSI NFA

1. After approval from the FDEP and upon receipt of such request, Railroad will create an Environmental Site that is linked to Railroad's Workbench deed record database and graphically depicted within Railroad's GIS mapping system. The Environmental Site will identify each individual railroad parcel, or portion thereof, that is affected by the contaminants and show the horizontal limits of contamination. Railroad will submit to the FDEP an exhibit showing the boundaries of the Environmental Site, the location of contaminants within the Environmental Site, and identifying all affected railroad parcels.

2. Railroad must be provided with the following information in order to create and post an Environmental Site in Railroad's deed record database and GIS mapping system. If Railroad is requesting the use of the MOU, Railroad shall supply such information, and if the FDEP or third parties (through FDEP) are making the request, then those respective entities shall provide the information.

- a. FDEP written determination that the Environmental Site to be linked to the Railroads' Workbench deed record database and graphically depicted within Railroad's GIS mapping System qualifies as an ~~(appropriate)~~ Institutional Control and with the use of Institutional Controls the contaminants within the Property are not a threat to human health, public safety, the users or occupants of the Property, or the environment; and the contaminated site qualifies for a Conditional SRCO under Rule 62-780.680(2) or (3), FAC. See attached Attachment "A" for template of such a letter.
- b. A summary of the soil data and groundwater data, in the applicable

regulatory units.

- c. A Specific Purpose Survey, Boundary Survey or Sketch and Description as defined under Chapter ~~SL~~ 17, FAC, and GPS coordinate information showing the boundaries of the Environmental Site.
  - d. Except for sites where the State of Florida is funding the assessment and remediation work, in which case Railroad waives any fees associated with preparation of an Environmental Site, a payment of FIVE HUNDRED AND 00/100's DOLLARS (\$500.00), made payable to CSX Transportation, Inc., to cover Railroad's administrative labor and expense for the preparation and posting of an Environmental Site.
- B. To apply for the PRP CCA
- a. Railroad provides a complete CCA application except that instead of a Declaration of Interim Restrictive Covenant include an Environmental Site to be linked to the Railroads' Workbench deed record database and graphically depicted within Railroad's GIS mapping System the contaminants within the Property. Application and instructions can be found for Condition Closure Agreement Program at this website: <https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-programs>
  - b. A Specific Purpose Survey, Boundary Survey or Sketch and Description as defined under Chapter ~~SL~~ 17, FAC, and GPS coordinate information showing the boundaries of the Environmental Site.
  - c. FDEP processes CCA as normal. At the end of the site rehabilitation, if any changes need to be made to the Environmental Site, the process in paragraph 4.A shall be followed.

## **5. RECORDING**

Upon issuance of the SRCOC, the FDEP shall file this MOU and the Railroad's exhibit identifying the Environmental Site with the FDEP's facility documents in the FDEP's OCULUS database and shall update the FDEP's Institutional Control Registry with the closure information. Railroad shall file this MOU, the FDEP Request Letter and the exhibit showing the Environmental Site in Railroad's Workbench deed record database, Visualink electronic document depository, and GIS mapping system. FDEP's Institutional Controls Registry website is located at: <https://ca.dep.state.fl.us/mapdirect/?focus=icr>

## **6. RAILROAD PROPERTY TRANSFERS**

- A. Lease of Railroad Property. Prior to the entry into a lessee/lessor relationship with respect to the Property, Railroad agrees to provide to the lessee a copy of the exhibit showing the Environmental Site and a copy of this MOU.
- B. Conveyance of the Railroad Property. In order to ensure the perpetual nature of this MOU, Railroad shall reference this MOU in any deed of conveyance, lease, or abandonment, for any railroad parcel or Property that is part of an Environmental Site.
1. Notify FDEP. Railroad will notify FDEP (pursuant to paragraph 12) thirty (30) days prior to any conveyance, relinquishment, or sale, granting or transferring the portion of the Railroad Property included within an Environmental Site. During that 30 days, FDEP shall review the conveyance instrument (the draft deed, excluding any financial arrangements) and, if appropriate, contact the buyer/transferee. FDEP will also evaluate whether it would be appropriate for FDEP to sign the restrictions (see paragraph 11.E.) to the conveyance.
  2. Transfer by map. Railroad's conveyance of Railroad Property by map transfer shall include a reference to the Environmental Site on the map.
  3. Transfer by deed. Railroad's conveyance by deed or other written transfer shall include "by acceptance of this transfer, the grantee hereby agrees it has received an exhibit showing the boundaries of the Environmental Site and location of the contaminants."

## **7. MODIFICATION OF THE RAILROAD'S ENVIRONMENTAL SITE**

Modification of the Railroad's Environmental Site is authorized if it is demonstrated and FDEP agrees that the Property has achieved cleanup target levels established pursuant to FDEP statutes and rules. For contaminated sites with a CCA, at the end of site rehabilitation, the boundaries of the Environmental Site shall be adjusted to reflect the actual boundaries of the remaining contaminants pursuant to paragraph 4.A.

## **8. LIMITATIONS**

- A. This MOU and/or any documentation associated with use of this MOU are only an additional reference showing the location of contaminants on Railroad's Property for any party to rely on during its due diligence prior to accessing or working on the Property.
- B. This MOU and documentation associated with use of this MOU shall not operate to create or vest any property right in or to FDEP, the discharger, the PRSR or to

third parties. The FDEP, the discharger, the PRSR and third parties shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect, performance or breach of this MOU or any documentation associated with use of this MOU.

C. This MOU and documentation associated with use of this MOU shall not create or impose any additional compliance requirements, other than those already imposed by existing governmental law. The discharger, the PRSR and third parties shall not acquire any additional right to monitor or enforce any environmental or safety requirements under this MOU or documentation associated with use of this MOU, except that FDEP may conduct periodic inspections of the Environmental Site for compliance with the terms of this MOU.

D. Nothing in this MOU and/or documentation associated with use of this MOU shall be interpreted as waiving any rights available to FDEP or Railroad under Chapters 376 or 403, Fla. Stat.

## **9. RIGHT OF ENTRY**

Subject to requirements of Florida Law, Railroad agrees to allow FDEP access to Property containing an Environmental Site at reasonable times for the purpose of conducting site inspections necessary to confirm compliance with this MOU. FDEP acknowledges and agrees that Railroad's safety considerations limit the times, areas, and activities which may be conducted. FDEP will contact Railroad and schedule time(s) to access the Property.

Any assessment, remediation, capping or other work of intrusive nature shall be performed under an Environmental Right-of-Entry Agreement between Railroad and PRSR (or FDEP/FDEP's contractor performing the work). When such work is to be performed by contractors who have already entered a Master Services Agreement ("MSA") with Railroad, said MSA shall be sufficient to provide said contractor with access. Railroad, upon request by FDEP, shall provide FDEP with written confirmation of the access rights granted by the MSA.

## **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 Railroad's AVP Public Safety, Health & Environment. If the DWM Director and Railroad's AVP Public Safety, Health & Environment are unable to resolve any such dispute, then the matter will be elevated to FDEP's Secretary and Railroad's EVP Law & Public Affairs 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. MOU CONTACTS**

A. FDEP's contact for specific contaminated sites that will be addressed under this MOU will be the FDEP assigned project or site manager. Any questions or concerns regarding the MOU itself can be referred to Kevin Boland, Railroad's Environmental Right-of-Entry Program Manager.

B. Railroad's contact for specific contaminated sites that will be addressed under this MOU will be Railroad's Environmental Right-of-Entry Program Manager (Kevin Boland: 904-279-3818). Any questions or concerns regarding the MOU itself should be referred to: Railroad's Sr. Director Public Safety, Health and Environment (Raghu Chatrathi: 904-366- 3858.)

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties hereby execute this MOU, consisting of 16 pages plus Exhibits.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL  
PROTECTION

CSX TRANSPORTATION, INC.

*Raghumath S. Chatrathi*

\_\_\_\_\_  
Tim Bahr, Director  
Division of Waste Management  
Date \_\_\_\_\_  
[Tim.bahr@FloridaDEP.gov](mailto:Tim.bahr@FloridaDEP.gov)

\_\_\_\_\_  
Raghu Chatrathi  
Sr. Director - Public Safety, Health &  
Environment  
Date 10/17/2019  
[Raghu.Chatrathi@csx.com](mailto:Raghu.Chatrathi@csx.com)

Attachment A: Sample Determination Letter

Electronic copies to:

- Natasha Lampkin, Program Administrator, Petroleum Restoration Program, FDEP, [Natasha.lampkin@FloridaDEP.gov](mailto:Natasha.lampkin@FloridaDEP.gov)
- Teresa Booeshaghi, Assistant Director, Division of Waste Management, FDEP, [Teresa.booeshaghi@FloridaDEP.gov](mailto:Teresa.booeshaghi@FloridaDEP.gov)
- Rebecca Robinette, Deputy General Counsel, OGC FDEP, [Rebecca.robinette@FloridaDEP.gov](mailto:Rebecca.robinette@FloridaDEP.gov)

**CSX TRANSPORTATION, INC.**

**Officer's Certificate**

I, Nathan D Goldman, do hereby certify that:

1. I am the duly elected, qualified and acting Executive Vice President and Chief Legal Officer of CSX Transportation, Inc., a Virginia corporation (the "Company"), and that in such capacity, I am authorized to execute this Certificate on behalf of the Company.
2. The individual named below is hereby authorized to execute, in the name and on behalf of the Company, any and all agreements, contracts, and certificates required by the State of Florida Department of Environmental Protection ("FDEP") to effect the Memorandum of Understanding between the Company and FDEP for addressing discharges of contaminants on or under the Company's property:


Raghunath S. Chatrathi  
Sr. Dir. - Public Safety, Health & Environment  
CSX Transportation, Inc.

IN WITNESS WHEREOF, I have executed this Certificate and affixed the corporate seal  
of the Company this 22 day of October, 2019

**CSX TRANSPORTATION, INC.**



Executive Vice President & Chief Legal  
Officer



[corporate seal]

Attest:



Assistant Corporate Secretary



## ATTACHMENT A

**{INSERT APPROPRIATE LETTERHEAD}**

(See 'letterhead' section of <https://www.fldepnet.org/content/communications/branding-guidelines>)

This document is to be used for voluntary cleanups [for active State-funded cleanups use "NFAP Approval Provisional"] when the site qualifies for Site Rehabilitation Completion pursuant to Subsection 62-780.680(2) or 62780.680(3), F.A.C., (closure with restrictions), and if the NFAP recommends closure with restrictions for groundwater contamination (if SRCO without restrictions will be issued, no provisional approval is needed because facility restoration may be performed after the SRCO is issued). This provisional approval complies with the SAR approval requirements of Paragraph 62-780.600(9)(a), F.A.C., if SAR/NFAP and with the NFAP approval requirements of Subsection 62-780.680(5), F.A.C., if closure without restrictions, and also with the requirements of Subsection 62-780.220(7), F.A.C., if closure with restrictions. The provisional approval EXCLUDES approval of the institutional control and, if applicable, engineering control. Due to the variety of ICs being provided to the FDEP to review, site/project managers must first confirm the discharge(s) has met the technical rule requirements contingent upon later approval of the IC(s).

[Date]

[Mr. or Ms. or . . .] [Responsible Party's Name]  
(if applicable) [Responsible Party's Company]  
[Responsible Party's Address]  
[City, State Zip Code]

Subject: [(only applicable if SAR/NFAP)Site Assessment Report and] Provisional No Further Action Proposal Approval  
[Facility Name]  
[Facility Street Address]  
[City, xxx] County  
FDEP Facility ID#/COM\_#/Project # [xxxxxxxxx]

Dear [Mr. or Ms. or . . .] [Responsible Party's Last Name]:

Excluding any proposed institutional controls and, if applicable engineering controls, the [[insert program/district]] has reviewed the [[Site Assessment Report (SAR) [(if applicable) (and SAR [Addendum or Addenda]] and No Further Action Proposal (NFAP) with Conditions dated [Date] [(if applicable) and [Date]; if several, list the range of dates] (received [Date] [(if applicable) and [Date]; if several, list the range of dates]], for the discharge[s] discovered on [Date] [(if applicable) and [Date]] at the subject facility. All the documents submitted to date are adequate to meet the site assessment requirements of Rule 62-780.600, Florida Administrative Code (F.A.C.). In addition, documentation submitted with the SAR[s]/NFAP confirms that technical criteria set forth in Subsection 62-780.680(2) or (3), F.A.C., may be met assuming the appropriate institutional controls and restrictions and, if appropriate, engineering controls, are in place. Namely that:

- a. The contamination is properly delineated and the plume is stable or shrinking;
- b. Free product is not present;

- c. Alternative soil CTLs have been established and one or more of the criteria for direct exposure and one or more of the criteria for leachability are met for soil in the unsaturated zone (R. 62-780.680(2)(b) or (3)(b); and
- d. Alternative groundwater CTLs have been established depending on the current and projected use of groundwater in the vicinity of the site and one or more of the criteria are met in R. 62-780.680(2)(c) or (3)(c), F.A.C.

For a closure pursuant to Rules 62-780.680(2) or (3), the appropriate restrictions must be in place with the appropriate institutional controls, and, if applicable, engineering controls. Such restrictions should include **[[remove or modify any that do not apply]]**:

1. Access to and use of a public water supply to ensure that no contaminant exposure from using the groundwater as a potable water source resulting in a risk to human health, public safety or the environment will occur.
2. Florida Department of Environmental Protection, **[select which is appropriate - \_\_\_\_\_ District Waste Cleanup or Division of Waste Management]** (Department) review of any dewatering plan and proper water handling during dewatering to ensure that no contaminant exposure from contaminated groundwater resulting in a risk to human health, public safety or the environment will occur.
3. Maintenance of the current stormwater facility configuration on these properties to ensure that no contaminant exposure from contaminated groundwater entering into new or expanded stormwater facilities resulting in risk to human health, public safety or the environment will occur.
4. No irrigation wells are to be installed without the prior approval of the Department to ensure that no contaminant exposure from contaminated groundwater entering into irrigation wells resulting in risk to human health, public safety or the environment will occur.
5. All monitoring wells, injection wells, extraction wells, and sparge wells will be required to be properly plugged and abandoned within 60 days after receipt of the Department's Conditional Site Rehabilitation Completion Order (SRCOC) unless these wells are otherwise required for compliance with a local ordinance or another cleanup. **[[Districts check if you require abandonment before the SRCOC is issued]]**
6. Engineering controls if necessary to reduce or eliminate the potential for migration of, or exposure to, contaminants.
7. Information about the above property will be maintained on the Department's Contamination Locator Map website and on the Institutional Controls Registry website.

Before an SRCOC may be issued by the Department you must provide the supporting documents necessary for the proposed restrictive covenant or other institutional control(s) to be evaluated (see the Institutional Control Procedures Guidance Document for assistance at <http://www.dep.state.fl.us/waste/categories/brownfields/pages/ICR.htm> ). The proposed institutional control(s) must adequately address each of the restrictions listed above. Once all of the necessary information is submitted to the **[[Program]]** we will work with the Department's Office of General Council to evaluate the proposed institutional control(s).

Before an SRCOC may be issued by the Department, if an engineering control is necessary, you must provide supporting documents indicating that an engineering control that prevents human exposure (for example, a minimum of two feet of soil), infiltration/leachability (for example, a permanent cover material) or, as appropriate, migration of the plume (for example, a permanent containment such as a barrier wall or has been implemented in which case the contaminant concentrations in the soil below the permanent cover

or two or more feet below land surface may exceed the direct exposure soil CTLs. You must also provide certification from a registered Professional Engineer that to the best of his or her knowledge the engineering control is consistent with commonly accepted engineering practices, is appropriately designed and constructed for its intended purpose, and has been implemented.

Once the institutional control and, if applicable, engineering control have been provisionally approved by the Department you must provide constructive notice pursuant to Subsection 62-780.220(7), F.A.C., within 30 days after that provisional approval. Once the Department approves the complete engineering and institutional control packet and constructive notice has been provided, if no objections to the Department's proposed action are received during the 30-day comment period, the Conditional SRCO may be issued.

[Only applicable to facilities in the SW Florida Water Management District and if SAR/NFAP] Please send a copy of the approved assessment document[s] and the GIS shape file indicating the groundwater area to be restricted to Darrin W. Herbst of the Southwest Florida Water Management District within 30 days of receiving this approval letter.

Please mail a copy of the institutional control and, if applicable, engineering control information and constructive notice to me at the letterhead address, Mail Station [xxxx]. (or District Office) If you should have any questions concerning the review of the [SAR[s]/NFAP or SRCR/NFAP], please contact me at [(xxx) xxx-xxxx] or at the letterhead address, Mail Station [xxxx] or the Department's professional [engineer or geologist] at [(xxx) xxx-xxxx] at the same letterhead address and Mail Station. (or District Office)

Sincerely,

[Reviewer's Name]  
[Reviewer's Title]  
[Program]  
[xxx]@dep.state.fl.us

/[reviewer's initials (lower case)]

cc: (if e-mail address is not available) (only include if the property owner is not the responsible party)  
[Property Owner's Name, (if applicable) Property Owner's Company, Address, City, State Zip Code]

(Include all properties on which contamination is allowed to remain - Property Owner's Name, Property Owner's Company, Address, City, State Zip Code)

ec: (if e-mail address is available) (only include if the property owner is not the responsible party)  
[Property Owner's Name, (if applicable) Property Owner's Company – e-mail address]

[Consultant's Name, Consultant's Company – e-mail address]

(only applicable if SAR/NFAP and the facility is located in the SW Florida Water Management District) Darrin W. Herbst, P.G., Southwest Florida Water Management District – [darrin.herbst@watermatters.org](mailto:darrin.herbst@watermatters.org)

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