

**MEMORANDUM OF UNDERSTANDING REGARDING
PLACEMENT OF ENVIRONMENTAL INFRASTRUCTURE BY THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION IN THE FLORIDA DEPARTMENT OF
TRANSPORTATION'S RIGHT OF WAY**

This Memorandum of Understanding ("MOU") is by and between the Florida Department of Environmental Protection ("FDEP") and the Florida Department of Transportation ("FDOT"). The purpose of this MOU is to memorialize the partnership and procedure for FDEP and its Contractors to obtain a FDOT general use permit on behalf of FDEP for work on the FDOT's rights of way associated with environmental infrastructure improvement(s).

RECITALS

A. Section 403.061(21), Fla. Stat. (2017), authorizes FDEP and section 334.044(7), Fla. Stat. (2017), authorizes FDOT to enter into this MOU; and

B. 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. (2017); and

C. 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. (2017); and

D. A cornerstone of FDOT's mission is preserving the state's transportation infrastructure investment, section 334.046, Fla. Stat. (2017). To achieve this goal and its attendant objectives, section 334.044 (2017), grants FDOT the power to construct, maintain, and operate its right of way and transportation facilities as well as to issue permits to ensure the integrity, safe operation and maintenance of such facilities; and

E. The FDOT powers and duties require the FDOT to develop and adopt uniform minimum standards and criteria for the design, construction, maintenance, and operation of public roads; and periodically review FDOT's construction, design, and maintenance standards to ensure that such standards are cost-effective and consistent with applicable federal regulations and state law, Section 334.044(10)(a) and (b) Fla. Stat. (2017); and

F. FDOT permits may require an applicant who desires to have a representative sign a FDOT permit provide: (1) a notarized letter of authorization from the applicant designating the authorized representative, Rule 14-20.0010(4)(b) F.A.C.; and (2) guarantees of obligations to the FDOT, Section 334.187 Fla. Stat. (2017); and

G. This MOU is FDEP's acknowledgment that a request for a FDOT permit by a FDEP Contractor shall act to bind the FDEP to the FDOT's permit terms and conditions to the same extent as if FDEP applied for the FDOT permit, except that where the permit terms and conditions conflict with this MOU, this MOU is controlling as required for the guarantees of obligations and the notarized letter of authorization; and

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

I. "Contaminant" or "contaminated" means any contiguous land, sediment, surface water, or groundwater areas that contain substances that may be harmful to human health or the environment. Section 376.301(10) Fla. Stat. (2017).

J. An "environmental infrastructure improvement(s)" such as monitoring wells, injection wells, and treatment piping and wells includes, without limitation, any temporary, non-permanent feature(s) for the assessment, monitoring, or remediation of contaminants; and

K. FDEP has the authority to investigate, assess, and cleanup certain sites pursuant to Sections 376.303, 376.305, 376.307, 376.3071, 376.3078, and 403.1655, Fla. Stat. (2017); and FDEP federal and state trust fund monies are also used to procure environmental contractors ("FDEP Contractors") to perform contaminant work in the FDOT right of way which may include the installation, operation, maintenance, repair, and removal of temporary, non-permanent environmental infrastructure improvements; and

L. FDOT is exempt from any liability imposed by Chapters 376 or 403, Fla. Stat., for pre-existing soil or groundwater contamination due solely to FDOT's ownership of the transportation facility, see section 337.27(4), Fla. Stat. (2017); and if the discharge occurred after the FDOT acquired the right of way, absent evidence that the FDOT caused or contributed to the discharge, then the FDOT is not liable according to subsection 376.308(1)(c), Fla. Stat. (2017), as the FDOT is not a facility owner and did not cause or contribute to the discharge; See the Division of Administrative Hearings Case 97-4411 Parker v. D.E.P., 99 ER FALR 43 (1998); and

M. The term "Federal, State, and Local Rules and Regulations" 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

N. This MOU shall not modify or change Florida Statutes, FDEP or FDOT rules, does not expand FDEP's statutory obligations for assessment or remediation, and is limited to the scope outlined in this MOU; and

O. 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. APPLICABILITY AND PROCEDURE

A. This MOU may be used by the FDEP and the FDEP Contractors in obtaining a FDOT general use permit, Chapter 14-20, F.A.C. This MOU may be used by FDEP and its Contractors to satisfy the FDOT permit requirements for (1) guarantees of obligations to the FDOT, Section 334.187 Fla. Stat. (2017); and (2) a notarized letter of authorization from the permit applicant, FDEP, designating the authorized representative. This MOU supersedes the October 29, 2012 Memorandum of Understanding between FDEP and FDOT regarding Petroleum Cleanup and Remediation in the Right of Way. The terms, provisions, and requirements of this MOU required for the guarantees of obligations and the notarized letter of authorization shall control over any conflicts between the MOU and the FDOT general use permit, as may be issued to FDEP and FDEP Contractors.

B. When applying for a general use permit the FDEP Contractor, in lieu of a notarized document or separate letter providing authorization to sign on behalf of FDEP, shall present to the FDOT a copy of this MOU and the FDEP purchase order (PO), Work Order (WO), Task Assignment (TA) or Change Order (CO) executed by FDEP authorizing the contaminant work requested under the permit application (sample PO, WO, TA and CO attached as Exhibits 1-4, respectively). The FDEP acknowledges that a request from FDEP's Contractor for a FDOT permit shall bind the FDEP to the FDOT's permit to the same extent as if FDEP requested the FDOT permit.

C. For sites eligible for the FDEP Petroleum Restoration Program's low-scored site initiative (LSSI) program, the FDEP qualified Contractor shall provide the LSSI site access agreement (SAA) executed by the real property owner of the property participating in the LSSI. See Exhibit 5 for a sample LSSI SAA (sample LSSI Work Order and SAA attached as Exhibit 5).

D. This MOU only applies to FDOT general use permits to do work in those transportation facilities and rights of way owned by the FDOT. This MOU does not apply to state lands owned by the FDEP Board of Trustees of the Internal Improvement Trust Fund and leased by the FDOT. Further this MOU only applies for FDOT general use permits to do work for contaminant environmental infrastructure improvements that are temporary, not permanent.

4. INCORPORATION INTO CONTRACT

The FDEP shall ensure that FDEP Contractors acting under the MOU are aware of the terms and provisions of the MOU and more specifically that such terms and provisions of paragraphs 5, 6, 7, and 12 of this MOU are referenced into any FDEP contract [PO, WO TA or CO] under which an FDEP Contractor is obtaining an FDOT general permit for environmental infrastructure(s).

5. CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, AND REMOVAL

A. The FDEP shall ensure all work performed pursuant to this MOU and any related permit is done in a good and workmanlike manner, with reasonable care, and the environmental infrastructure improvement(s) are constructed, operated, maintained, and repaired and removed in accordance with the terms and provisions of the FDOT permit and this MOU, including, without limitation, all applicable Federal, State, and Local Rules and Regulations, the FDOT Road and Bridge Specifications, the FDOT Design Standards, and the most current edition of the FDEP's Monitoring Well Design and Construction Guidance Manual, as the same may be constituted and amended from time to time. No term or provision of this MOU shall obligate the FDOT to operate, maintain or repair the environmental infrastructure improvement(s), nor shall FDOT bear any

costs or expenses associated with such activities said obligations to remain the sole responsibility of the FDEP.

B. If the FDOT determines that the FDEP or the FDEP Contractor is not performing work in accordance with the terms and provisions of this MOU, then the FDOT shall deliver written notification of such to the FDEP with a copy to the FDEP Contractor. The FDEP shall have thirty (30) days from the date of the FDOT's written notice, or such other time as the FDOT and the FDEP mutually agree in writing, to correct the deficiency and provide the FDOT with written notice of the same.

C. The FDOT may require FDEP to remove the environmental infrastructure improvement(s), or any portion of the environmental infrastructure improvement(s), and to restore the FDOT right of way and/or transportation facility without liability to the FDOT if: (1) the environmental infrastructure improvement(s) are not constructed or maintained in accordance with the terms and provisions of this MOU; (2) removal of the environmental infrastructure improvement(s) is required by applicable Federal, State, and Local Rules and Regulations; (3) the FDOT notifies FDEP that FDOT intends to terminate the applicable permit; (4) the FDEP no longer utilizes the environmental infrastructure improvement(s); or (5) if in the FDOT's determination removal of the environmental infrastructure improvement(s) is necessary for the conduct of the FDOT's business. Upon request of FDOT, FDEP agrees to perform or cause to be performed these activities whether such construction operation, maintenance, repair, or removal was conducted by FDEP or the FDEP Contractor.

D. The FDEP shall ensure the timely removal of the environmental infrastructure improvement(s), or portions thereof designated by the FDOT for removal, and shall restore the FDOT right of way and/or transportation facility as nearly as practicable to the conditions which existed prior to activities associated with this MOU and related permit. See sections 376.3071(4)(k) and 376.307(1)(b) & (i), Fla. Stat. (2017).

E. The FDOT will make reasonable effort to have its employees and Contractors be aware of the FDEP environmental infrastructure improvement(s) with the aim that they avoid damaging, destroying, or paving over such improvements. If the FDEP environmental infrastructure improvement(s) appear to be in the way of FDOT activities, FDEP requests that it be informed so that FDEP can address the conflict or remove the environmental infrastructure improvement(s).

6. UTILITIES

The FDOT shall not be responsible for locating, removing or relocating utilities related to FDEP environmental infrastructure nor shall FDOT bear any costs or expenses associated with such activities. The FDEP shall bear the responsibility of locating, removing, and relocating utilities, both aerial and underground, that lie within the FDOT Property, if required to perform this MOU. The FDEP shall ensure all utility locations are researched and documented pursuant to Section 556.105, Fla. Stat. All utility conflicts shall be resolved by the FDEP directly with the applicable utility.

7. MAINTENANCE OF TRAFFIC

The FDEP shall ensure maintenance of traffic ("MOT") is performed at all times during its performance of this MOU. MOT shall be performed in accordance with applicable Federal, State, and Local Rules and Regulations and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of the MOU by reference: (1) Section 102 of the FDOT's Standard Specifications for Road and Bridge Construction (located at

<http://www.fdot.gov/programmanagement/Implemented/SpecBooks/>); (2) the Manual on Uniform Traffic Control Devices (MUTCD) (located at <https://mutcd.fhwa.dot.gov/>); and (3) the FDOT's Roadway Design Standards Index (located at <http://www.fdot.gov/design/PublicationsList.shtm>)

8. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

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. (2017). Nothing in this MOU shall be deemed or otherwise interpreted as waiving FDOT limits of liability set forth in sections 376.305, 376.308, and 337.27(4), Fla. Stat. (2017).

9. DUE DILIGENCE & WARRANTIES

A. Any and all due diligence requirements related to the FDEP's negotiation, execution and performance of this MOU are the sole responsibility of the FDEP.

B. The FDOT makes no representations or warranties of any kind, express or implied, concerning the FDOT rights of way and transportation facilities, including, without limitation, representations and warranties concerning: (1) the physical condition of the rights of way and transportation facilities; (2) compliance with local ordinances and zoning laws; (3) compliance with Federal, State, and Local Rules and Regulations; or (4) merchantability or fitness for a particular purpose.

10. FDEP FUNDS

A. FDEP acknowledges that FDOT transportation projects are important for serving the people of the state and providing an integrated, balanced statewide transportation system, while enhancing Florida's economic competitiveness. When contaminants are discharged into, onto or under a transportation facility such discharges impact the transportation facilities and future transportation projects.

B. The purpose for the use of this MOU is as outlined in Recital G and paragraph 3 above, however, if the FDEP does not have an existing responsibility to fund the contaminant work, nothing in this MOU shall create an obligation for the FDEP to assume such costs.

11. LIMITATIONS

A. The management of FDEP's work shall be performed by FDEP or its Contractors in accordance with its statutory authority and applicable Federal, State, and Local Rules and Regulations. Health and safety considerations for FDEP's or its contractor's work in contaminated areas or discharges is regulated by the Occupational Health and Safety Administration (OSHA) and existing Federal, State, and Local Rules and Regulations.

B. This MOU shall not operate to create or vest any property right in or to FDEP, FDEP Contractors, dischargers, responsible parties, or to third parties. The FDEP, FDEP Contractors, dischargers, responsible parties 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.

C. This MOU shall not create or impose any additional compliance requirements, other than those already imposed by existing Federal, State, and Local Rules and Regulations. The FDEP, FDEP Contractors, dischargers, responsible parties, and third parties shall not acquire any additional right to monitor or enforce any environmental or safety requirements under this MOU.

D Under no circumstances shall this MOU make FDOT the discharger. Under no circumstances shall this MOU create a new obligation for FDOT to remediate contaminants in the transportation

facility. Under no circumstances shall this MOU create a new obligation for the FDOT to remediate the contaminants in the source property.

E. Nothing in this MOU shall be interpreted as waiving any rights available to FDEP or FDOT, including but not limited to those under sections 376.305 or 335.10(3), Fla. Stat. (2016). Further, nothing in this MOU shall be construed to limit or constrain either agency's exercise of their respective existing remedies under agency rules or any applicable Federal, State, or Local Rule or Regulation.

12. RIGHT OF ENTRY

Subject to requirements of Florida law, and upon acquisition of the applicable FDOT permit, the FDOT agrees to allow FDEP and its Contractors access to the transportation facility and rights of way 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 and its Contractors will contact FDOT and schedule time(s) to access the transportation facility by coordinating through the appropriate FDOT District Office. <http://www.fdot.gov/agencyresources/contactus.shtm>

13. 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.

14. 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 Director of the Office of Environmental Management (OEM). If the DWM Director and OEM Director 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.

15. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the MOU and shall do all other acts to effectuate the MOU.

16. EMERGENCY


A. If an Act of God or emergency or event, including without limitation third party spills and discharges of contamination and the abandonment of waste, and third party damage or vandalism to environmental infrastructure improvements, arises which impacts the traveling public's health, safety, or welfare or the rights of way subject to a general use permit issued under this MOU, then the FDOT may remove the permitted environmental infrastructure or any portion of the environmental infrastructure and restore the FDOT right of way to the condition it was prior to permit issuance without liability to FDEP, the FDEP Contractors, dischargers, responsible parties or third parties. FDOT will make reasonable effort to inform FDEP of these actions in a timely manner.

B. The public's right to use the rights of way can result in third party spills and discharges of contamination, abandonment of waste, and damage and vandalism to environmental infrastructure Improvement(s). The third party responsible (responsible party) for such damage or vandalism may be unknown or known. Nothing in this MOU shall require the FDOT to notify or make the traveling public aware of the FDEP environmental infrastructure improvements or prevent, investigate, or enforce any penalties regarding the traveling public's damaging, destroying, or paving over such Improvements. Nothing in this MOU shall make the FDOT liable for third party spills, discharges of contamination, abandonment of waste, and damage and vandalism to environmental infrastructure improvements

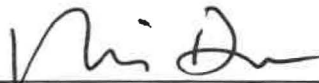
IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this MOU, consisting of 7 pages plus attachments.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

FLORIDA DEPARTMENT OF
TRANSPORTATION



Secretary



Secretary

2.26.18

Date

26 MAR 18

Date

- Exhibit 1: DEP Purchase order (PO) template
- Exhibit 2: DEP Work Order (WO) template
- Exhibit 3: DEP Task assignment (TA) template
- Exhibit 4: DEP Change Order (CO) template
- Exhibit 5: DEP Low-Scored Site Initiative Site Access Agreement (LSSI SAA) template

Electronic copies to:

- Joe Ullo, Director, Division of Waste Management, FDEP,
- Austin Hofmeister, Program Administrator, Petroleum Restoration Program, FDEP
- Teresa Boeshaghi, Program Administrator, Waste Cleanup Program, FDEP
- John S. Johnson, Director, Office of Emergency Response, FDEP
- Jason Watts, Director, Office of Environmental Management, FDOT
- Kathleen Toolan, Special Counsel for Environmental Affairs, FDOT
- 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
- FDOT Turnpike Executive Director