

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 17, 2010

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) Approve a standard license agreement to be used in the event that the County receives requests for use of County property/facilities for activities related to the Deepwater Horizon Oil Spill Response; and

B) Authorize the County Administrator or his designee to execute the standard license agreement.

**Summary:** On May 20, 2010, Palm Beach County was declared in a Local State of Emergency due to the Deepwater Horizon Oil Spill (Oil Spill). In response to this State of Emergency, Staff is presenting this standard form license agreement which establishes the standard terms and conditions under which the licensee may use County property/facilities for activities to be conducted in connection with the coastal cleanup necessary as a result of the Oil Spill. Staff anticipates that the uses requested may be for: (i) beach cleanup; (ii) the launching of boats; and/or (iii) the temporary storage of materials that require disposal. Prior to a license agreement being issued, the Department of Environmental Resources Management (ERM) and the licensee must mutually agree upon the activities that will be permitted which will be set forth in a project plan (Project Plan) to be attached as an exhibit to the license agreement. Upon approval of the Project Plan by the Director of ERM or his designee, Facilities Development and Operations (FDO) Staff will impose special conditions of use (Special Conditions of Use) based upon the specific activities identified in the Project Plan, which will then be attached as an exhibit to the license agreement. The types of insurance coverage, minimum required limits of coverage and maximum allowable deductibles to be provided by the licensee will: (i) be set forth as a Special Condition of Use; (ii) depend on the nature of licensee's proposed use as set forth in the Project Plan; and (iii) be determined upon consultation with the County's Risk Management Department. In any instance that the standard terms (other than indemnification and insurance) are modified, Staff will notify the Board. A licensee fee will only be imposed if there is a loss of revenue to the County or its concessionaires resulting from the license. If warranted by the Project Plan, the standard terms and conditions of the license agreement may be modified upon the approval of both the County Attorney's Office and the Director of FDO (FDO Director). The FDO Director will sign the license agreement for use of County property/facilities on behalf of the County. **(FDO Admin) Countywide (SF)**

**Background and Justification:** In the event the County is impacted by the Oil Spill, Staff anticipates that it will receive various requests for the use of County property/facilities for activities related to the Oil Spill cleanup response effort. In order to effectively and expeditiously respond to these requests, a standard license agreement is being proposed with the delegation of signature authority to the FDO Director, through the County Administrator.

**Attachments:**

Standard License Agreement

Recommended By: Army Way Department Director Date: 7/31/10

Approved By: [Signature] County Administrator Date: 8/10/10



## LICENSE AGREEMENT FOR DEEPWATER HORIZON OIL SPILL RESPONSE

This License Agreement made and entered into on \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, (the "County") and \_\_\_\_\_, (the "Licensee").

### WITNESSETH:

**WHEREAS**, County is the owner of real property located in Palm Beach County, Florida located at \_\_\_\_\_, which is more particularly described in **Exhibit "A"** (the "Property"); and

**WHEREAS**, Licensee has requested the right to use a portion of the Property more particularly described in **Exhibit "B"** (the "License Area"), for the activities more particularly described in **Exhibit "C"** (the "Project Plan") in connection with the coastal cleanup necessary as a result of the Deepwater Horizon Oil Spill (the "Spill"); and

**WHEREAS**, the Spill has created a state of emergency throughout the coastal areas of Florida threatening the public health, safety, welfare, and property throughout the coastal areas of Florida; and

**WHEREAS**, County is willing to grant Licensee a revocable license to use the License Area for the purposes described in the Project Plan in order to prevent, contain or reduce the damage to the natural resources and property that may occur as a result of the Spill.

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby permits Licensee to use the License Area, as hereinafter defined, upon the terms and conditions contained in this License Agreement.

1. **License Area**

The License Area, for the purpose of this License Agreement, is the real property and/or improvements identified in **Exhibit "B"**. The use of the License Area may be subject to Special Conditions of Use which will be set forth on **Exhibit "D"**. Licensee agrees to comply with any Special Conditions of Use imposed by the County. The Licensee has inspected and accepts the License Area in its "as is" condition. No repair or alterations to the License Area is required to be done by County as a condition of this License Agreement. The County makes no representations about the capabilities, appropriateness or suitability of the License Area for the Licensee's use and Licensee hereby accepts all risk relating to the use of the License Area.

Licensee shall use the License Area solely and exclusively for the use(s) listed in the Project Plan; Licensee shall not use, permit or suffer the use of the License Area for any other purpose whatsoever. Licensee shall be entitled to use the License Area only on the

days and times listed in the Project Plan. Licensee shall make no improvements, alterations or additions to the License Area, except as set forth in the Project Plan. Licensee shall immediately report to a County representative any condition or activity on the License Area which poses a risk to persons or property that arises from or out of the occupancy or use by Licensee of the License Area or any part thereof. If directed by the County, Licensee shall postpone its activity until the County notifies the Licensee that it is safe to resume the activity.

2. **Length of Term and Commencement Date**

The term of this License Agreement shall be for the period of time listed on the Project Plan unless terminated earlier pursuant to the provisions of this License Agreement. This License Agreement shall commence upon execution by both parties (the "Commencement Date").

3. **Licensee Fee**

Licensee simultaneously with the execution of this License Agreement shall pay County for the use and occupancy of the Premises for the Term of this License Agreement a License Fee of One Dollar (\$1.00). The Licensee shall reimburse the County for all out of pocket expenses, lost profits or special requirements incurred by the County as a result of the Licensee's use, as set forth in the Special Conditions of Use.

4. **Termination**

The County may terminate this License Agreement at any time upon written notice to the Licensee. Upon Licensee's receipt of written notice from the County, this License Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination. Licensee may terminate this License Agreement upon written notice to the County. Notwithstanding such termination, Licensee shall remain obligated to surrender and restore the License Area as required by this License Agreement and for any obligations arising prior to such termination.

5. **Waste or Nuisance**

Licensee shall not commit or suffer to be committed any waste upon the License Area or any nuisance or other act or thing which may result in damage or depreciation of value of the License Area or which may affect County's fee interest in the License Area. Licensee shall keep the access to the License Area, the parking areas, driveways and other contiguous areas to the License Area free and clear of any obstruction, except as otherwise set forth in the Special Conditions of Use.

6. **Governmental Regulations**

Licensee shall, at Licensee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Licensee or its use of the License Area, and shall faithfully observe in the use of the License Area all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body

rules and regulations pertaining to the Licensee's use of the License Area. Licensee shall indemnify, defend and save County, its agents, officers, and employees harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. Licensee's indemnification obligations set forth in the foregoing shall survive termination of this License Agreement.

7. **Non-Discrimination**

Licensee assures and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, disability, or gender identity or expression, with respect to their use of the License Area.

8. **Surrender of License Area**

Upon termination of each use of the License Area by the Licensee, Licensee, at its sole cost and expense, shall remove all of its personal property from the License Area and shall surrender the License Area to the County in at least the same condition the License Area were in at the start of the License Agreement.

9. **Maintenance and Repair**

County shall conduct all maintenance or repairs to the License Area. In the event that Licensee damages the License Area, County shall complete the necessary repairs and Licensee shall reimburse County for all expenses incurred by County in doing so.

10. **Indemnification of County**

To the extent permitted by law, Licensee shall indemnify, defend and save County, its agents, officers, and employees harmless from and against any and all losses, penalties, fines, claims, actions, damages, liability and expense, including attorney fees and costs, whether at trial or appellate level or otherwise, in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of the occupancy or use by Licensee of the License Area or any part thereof; (ii) any act, error or omission of Licensee, its agents, contractors, employees or invitees; or (iii) Licensee's failure to perform its obligations and comply with the terms and conditions of this License Agreement. In case County shall be made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall protect and hold County, its agents, officers, and employees harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. This Section shall survive expiration or termination of this License Agreement. Nothing contained herein shall be construed as a waiver of sovereign immunity or the statutory limits of liability set forth in Section 768.28, Florida Statutes.

11. **Insurance**

Licensee shall, during the entire Term hereof, keep in full force and effect the following coverages on a primary basis, naming the County as an additional insured as follows "Palm Beach County Board of County Commissioners, a political subdivision of the

State of Florida, its officers, employees and agents, c/o Facilities Development & Operations Department”.\*

- A. General Liability Insurance in an amount not less than \$1,000,000 per occurrence combined single limit bodily injury and property damage liability. The General Liability policy shall include coverage for License Area - Operations, Contractual and Product Liability, Independent Contractors, Contractual Liability and Personal Injury, and Broad Form Property Damage Liability coverages.
- B. Pollution Liability, or similar Environmental Impairment Liability, at a minimum limit not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate providing coverage for damages including, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs. When a self-insured retention or deductible exceeds \$10,000, the County reserves the right, but not the obligation, to review and request a copy of the Licensee’s most recent annual report or audited financial statements in evaluating the acceptability of a higher self-insured retention or deductible in relationship to the Licensee’s financial condition.
- C. Business Automobile Liability at a limit of liability not less than \$500,000 each Occurrence for all owned, non-owned and hired automobiles. In the event Licensee doesn’t own any automobiles, Licensee agrees to maintain Hired & Non-Owned Auto Liability. Hired & Non-Owned Auto Liability coverage may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.
- D. Marine Protection and Indemnity, or similar Watercraft Liability, for all owned, hired, or borrowed watercraft, which shall have minimum limits of \$1,000,000 each occurrence combined single limit for bodily injury and property damage. Coverage may be provided either by way of endorsement to the Commercial General Liability policy (GC 24 12 Boats), or by separate Marine Protection and Indemnity insurance.
- E. Florida Worker’s Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall include an endorsement for U.S. Longshoremen’s & Harbor Workers Act (WC 00 01 06 A) and The Jones Act (WC 00 02 01 A) when activities or operations involve work on or contiguous to navigable bodies of U.S. waterways and ways adjoining, or vessels.

**\*The types of insurance coverage, minimum required limits of coverage and maximum allowable deductibles to be provided by the Licensee will: (i) be set forth as a Special Condition of Use; (ii) depend on the nature of Licensee’s proposed use**

**as set forth in the Project Plan; and (iii) be determined upon consultation with the County's Risk Management Department.**

All of the foregoing insurance coverages shall be with an insurance company licensed to do business in the State of Florida and subject to the approval of the County's Risk Management Department. A Certificate of Insurance evidencing such insurance coverage shall be provided to the County at least fifteen (15) days prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of Licensee under this License Agreement. In the event that Licensee shall fail to obtain and maintain in full force and effect any insurance coverage required to be obtained by Licensee under this License Agreement, County shall have the right of injunction, or County may immediately terminate this License Agreement, notwithstanding any provisions herein to the contrary.

In the event of loss or damage to the License Area, the Licensee shall look solely to any insurance in its favor without making any claim against the County, and the Licensee shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Licensee, for itself and its insurers, waives all such insured claims against the County.

**12. Utilities**

The County shall promptly pay to the utility or other provider of such service, all charges and assessments for water, gas, electricity, and non-toxic non-hazardous trash collection and removal; provided however, the County may require the Licensee to reimburse the County for the estimated net increase in utility costs due to Licensee's activities, which will be set forth in the Special Conditions of Use, if applicable. In no event shall County be liable for an interruption or failure in the supply of any utilities to the License Area.

**13. Rules of License Area**

Licensee shall at all times strictly adhere to the Rules that govern the License Area provided by County in writing to Licensee. Licensee also acknowledges that any violation of the Rules governing the use of the License Area may result in the suspension or termination of this License Agreement.

**14. Subcontracting**

The Licensee may not subcontract or assign any rights, responsibilities or obligations of this License Agreement unless agreed to in writing by County.

**15. Hazardous Materials**

License shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials, chemicals or other agents in the License Area, or any adjacent land in any manner not permitted by Environmental Laws and specifically set

forth in the Project Plan. Furthermore, Licensee shall not cause or permit the Disposal of Hazardous Materials upon the License Area or upon adjacent lands, except as specifically set forth in the Project Plan, and shall operate and occupy the License Area in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, transportation, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Unless specifically set forth in the Project Plan, any Disposal of a Hazardous Material, whether by Licensee or any third party, shall be reported to County immediately upon Licensee's becoming aware of such Disposal. Licensee shall be solely responsible for the entire cost of remediation and clean up, including but not limited to County's reasonable attorney's fees, consultant's fees, and other costs incurred in connection with monitoring or review of the remedial work, of any Hazardous Materials disposed of or discovered upon the Licensed Area, or emanating from the License Area onto adjacent lands, as a result of the use and occupancy of the Licensed Area by Licensee, or Licensee's agents, licensees, invitees, subcontractors, or employees. If Licensee fails to timely commence, or cause to be commenced, or fails to diligently prosecute to completion, the remedial work, County may, but is not required to, cause the remedial work to be performed, and all costs and expenses of the remedial work or incurred in connection with it will become immediately due and payable to County from Licensee.

Licensee shall indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability that may be incurred by County, including reasonable attorney's fees and costs, that may arise directly, indirectly or proximately as a result of Disposal of any Hazardous Materials in violation of this License Agreement. Licensee's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Licensee, it shall not be deemed to alter or diminish any statutory or common law liability of Licensee.

Licensee acknowledges that County would not have entered into this License Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. The indemnification provisions set forth in this Section shall survive expiration or termination of this License Agreement.

16. **Representations, Warranties, and Covenants**

Licensee represents, warrants, and covenants to County that:

- A. Licensee has the full right, power, and authority to execute this License Agreement, to license the License Area as provided in this License Agreement and to carry out all of its obligations under this License Agreement; and

- B. Licensee's intended use of the License Area shall not result in the Disposal of any Hazardous Materials on or to the License Area, except as otherwise permitted and specifically set forth in the Project Plan.

17. **Inspection Rights**

County and County's officers, employees, assigns, contractors and agents shall have the right, but not the duty, to inspect the License Area and to perform any tests on the License Area as County desires. Licensee shall be responsible for paying for any testing that is conducted if Licensee is not in compliance with the License Agreement. If Licensee is not in compliance with this License Agreement, County, without waiving or releasing any right or remedy it may have with respect to the noncompliance, will have the right, but not the duty, to immediately enter on the License Area to remedy any contamination caused by Licensee's failure to comply notwithstanding any other provision of this License Agreement. County shall use reasonable efforts to minimize interference with Licensee's use of the License Area but will not be liable for any interference caused by County's entry onto the License Area.

18. **Security, Signage and Warning Devices**

County may require Licensee to create and install, with County approval, or pay for signage and warning devices to be placed on or in the vicinity of the License Area to notify residents and visitors of the nature of Licensee's temporary use of the License Area. Licensee shall be fully responsible for prohibiting unauthorized persons from entering the License Area during Licensee's use of the License Area and for leaving the License Area in a safe condition at the end of its use each day.

19. **Notices**

All notices and elections (collectively, "Notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any Notice shall be the date of delivery of the Notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed delivery receipt if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which Notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

- (a) If to the County at:

Palm Beach County  
Facilities Development & Operations Department  
Attn: Business & Community Agreements Manager

2633 Vista Parkway  
West Palm Beach, FL 33411  
Fax: (561) 233-0206

Palm Beach County  
Environmental Resources Management Department  
Attn: Director  
2300 N. Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Florida 33411-2743  
Fax: (561) 233-2414

With a copy to:

Palm Beach County  
Attn: County Attorney  
301 North Olive Avenue  
West Palm Beach, FL 33401  
Fax: (561) 355-6461

(b) If to the Licensee at:

Licensee Name: \_\_\_\_\_

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

Fax: \_\_\_\_\_

Either party hereto may change the address for service of Notices required or permitted hereunder upon three (3) days' prior written notice to the other party.

20. **Severability**

If any term or provision of this License Agreement shall be held invalid or unenforceable, the remainder of this License Agreement shall not be affected and every other term and provision of this License Agreement shall be deemed valid and enforceable to the extent permitted by law.

21. **WAIVER OF JURY TRIAL**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LICENSE AGREEMENT.

22. **Governing Law and Venue**  
This License Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in a state court of competent jurisdiction in Palm Beach County.
23. **Recording**  
Licensee shall not record this License Agreement, or any memorandum or short form thereof in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this License Agreement.
24. **Time of Essence**  
Time is of the essence with respect to the performance of every provision of this License Agreement in which time of performance is a factor.
25. **Interpretation**  
This License Agreement and the Application and the Special Conditions of Use attached hereto are deemed to have been prepared by both County and Licensee, after consulting with legal counsel, and any uncertainty or ambiguity herein shall not be interpreted against the drafter. If such ambiguity or uncertainty exists, it shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of Florida.
26. **Entire Agreement**  
This License Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee. All representations, either oral or written, shall be deemed to be merged into this License Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this License Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.
27. **PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL**  
Pursuant to Ordinance No. 2009-049, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All parties doing business with the County shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the Licensee, its officers, agents, employees, and lobbyists in order to ensure compliance with the License Agreement and to detect waste, corruption and fraud.
28. **Standard License Agreement and Delegation of Signature Authority**  
This License Agreement shall be the standard License Agreement to be used for all Spill related clean-up activities to be conducted on County-owned property. The Director of the Facilities Development and Operations Department (the "FDO Director") is authorized to approve or disapprove and execute on the County's behalf License

Agreements, in a form substantially similar to this License Agreement and in accordance with the purpose of this License Agreement; provided however, the FDO Director shall not enter into a License Agreement with a Licensee until a Project Plan has been approved by the Director of the Department of Environmental Resources Management (ERM) or the ERM Director's designee (collectively, the "ERM Director") and submitted to the FDO Director. The standard terms and conditions of this License Agreement may be modified upon the approval of the modifications by both the County Attorney's Office and the FDO Director.

Remainder of page intentionally left blank

**IN WITNESS WHEREOF**, County and Licensee have executed this License Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESS:

LICENSEE:

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Print Licensee Name

\_\_\_\_\_  
Print Licensee Title

**PALM BEACH COUNTY**, a Political  
Subdivision of the State of Florida

By: \_\_\_\_\_  
Director of Facilities Development & Operations

**OTHER DEPARTMENT APPROVAL:**

By: \_\_\_\_\_  
Director of Environmental Resources Management

**EXHIBIT "A"**

**Description of the Property**

**EXHIBIT "B"**

**Description and Map of the License Area**

**EXHIBIT "C"**

**Project Plan**

**EXHIBIT "D"**

**Special Conditions of Use**