

35-2

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	February 5, 2013	(X) Consent	() Regular
		() Workshop	() Public Hearing
Submitted By:	<u>Fire-Rescue</u>		

I. EXECUTIVE BRIEF

Motion and Title:

Staff recommends motion to adopt : a resolution of the Board of County Commissioners of Palm Beach County, Florida, authorizing the County Administrator or his designee (Fire-Rescue Administrator), to execute standard license agreements with property owners relating to Fire-Rescue training, including live structure burns; and replacing and repealing Resolution No. R-2002-1936 and Resolution No. R-2002-2185.

Summary:


The County Fire Rescue Department desires to conduct fire-rescue training exercises, including live structure burns, on particular pieces of property that become available for use from time to time with the consent and authorization of the property owner. Approval of this resolution will authorize the Fire Rescue Administrator to enter into standard agreements with property owners as it relates to training and structure burns. This Resolution updates, replaces and repeals Resolution No. R-2002-1936 and Resolution No. R-2002-2185.
Countywide (SGB)

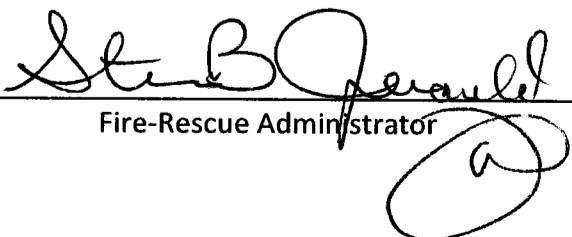
Background and Justification:

County Fire Rescue has determined that live structure burns are an important component of fire-rescue training and will enhance fire-rescue services to the public. The securing of sites for these training-exercises may be implemented more effectively and expeditiously by delegating to the Fire-Rescue Administrator, through the County Administrator, the authority to execute standard license agreements with property owners relating to this training.

Attachments:

1. Resolution
-

Recommended by:  1/14/13
Deputy Chief Date

Approved by:  1/14/2013
Fire-Rescue Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* _____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* There is no fiscal impact associated with the approval of this Resolution.

C. Departmental Fiscal Review: *my whole mat*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

[Signature] 1/17/2013
OFMB
1/16/13

[Signature] 1/18/13
Contract Dev. and Control
1-17-13 SWH

B. Legal Sufficiency:

[Signature] 1/22/13
Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

RESOLUTION NO. R-2013-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE (FIRE-RESCUE ADMINISTRATOR) TO EXECUTE STANDARD LICENSE AGREEMENTS WITH PROPERTY OWNERS RELATING TO FIRE-RESCUE TRAINING, INCLUDING LIVE STRUCTURE BURNS; REPLACING AND REPEALING RESOLUTION NO. R-2002-1936 AND RESOLUTION NO. R-2002-2185.

WHEREAS, the County Fire-Rescue Department desires to conduct fire-rescue training exercises, including live structure burns, on particular pieces of property that become available for use from time to time with the consent and authorization of the property owner;

WHEREAS, the Board of County Commissioners has determined that said training is an important component of fire-rescue training and will enhance fire-rescue services to the public;

WHEREAS, the Board of County Commissioners has determined that the securing of sites for said training exercises may be implemented more effectively and expeditiously by delegating to the County Administrator or the Fire-Rescue Administrator as his designee the authority to execute standard license agreements with property owners relating to said training;

WHEREAS, the execution of these standard license agreements is a ministerial function and does not constitute policy level decision-making.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The County Administrator or his designee (the Fire-Rescue Administrator) is hereby authorized to execute, on behalf of the Board of County Commissioners, standard license agreements with property owners relating to fire-rescue training, including live structure burns, provided that such agreements are in accordance with the terms and conditions of the standard agreement attached hereto as Exhibit A, and have been approved as to form and legal sufficiency by the County Attorney or her designee. Should the Fire-Rescue Administrator or the County Administrator desire to substantively alter any term or condition of a standard training agreement, that agreement shall be presented to the Board of County Commissioners for consideration and approval.

2. Resolution No. R-2002-1936 and Resolution No. R-2002-2185 are hereby replaced and repealed in their entirety.

The foregoing Resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner , and upon being put to a vote, the vote was as follows:

Commissioner Steven L. Abrams, Chairman
Commissioner Priscilla A. Taylor, Vice Chair
Commissioner Hal R. Valeche
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Mary Lou Berger
Commissioner Jess R. Santamaria

The Chairman thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2013.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

SHARON R. BOCK, CLERK &
COMPTROLLER

By: 
County Attorney

By: _____
Deputy Clerk

EXHIBIT A

**LICENSE AGREEMENT
RELATING TO FIRE-RESCUE TRAINING AND STRUCTURE BURN**

This Agreement is made the _____ day of _____, 201____, between **[INSERT NAME OF ALL OWNERS AS LISTED ON DEED OR TITLE]** (hereinafter referred to singularly and collectively as "Owner") and Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter the "County").

WHEREAS, the County desires to conduct fire-rescue training exercises on a particular parcel of property owned by Owner, which may include the burning of any structures thereon, and Owner desires that the County conduct fire-rescue training exercises on said property, including the burning of any structures thereon;

NOW THEREFORE, in consideration of the mutual representations, terms and covenants hereinafter set forth and the benefits hereby acknowledged as mutually accruing unto each party, the parties hereby agree as follows:

ARTICLE 1: OWNER'S REPRESENTATIONS

Owner represents, certifies and warrants to the County that the following facts are true and will remain true from the time of execution of this Agreement through the end of the training period authorized under this Agreement:

Owner is the sole legal owner of the parcel of property described below, located in Palm Beach County, Florida, and any and all structures and improvements situated thereon. Said structures and improvements shall be referred to hereinafter singularly and collectively as the "Structure". Said parcel of property and the Structure shall be referred to hereinafter collectively as the "Property".

Parcel Identification Number or Legal Description of Property:

Property Street Address:

Type of Structure(s) and Visual Description:

Owner's Address:

Owner is vested with fee simple title to the Property and has the authority to grant this consent and authorization to conduct fire-rescue training on the Property including the destruction of the Structure by burning. Title to the Property has been examined on Owner's behalf and there are no outstanding mortgages, liens or other encumbrances upon the Property. Owner has provided the County with an Opinion of Title in a form acceptable to County (attached hereto as **Exhibit A**, and incorporated herein) and upon which County is entitled to rely. No other persons or entities have any interest in the Property. All utility services have been disconnected, including but not limited to gas, electric, water, telephone and cable. Owner has notified the County in writing of any and all dangerous conditions or substances on or about the Property, including but not limited to any structural damage and the existence of asbestos, fuel or other potentially injurious or hazardous materials or substances. The Property, including the Structure, is not insured for property damage. Owner has provided the County with proof of no property damage insurance in a form acceptable to County (attached hereto as **Exhibit B** and incorporated herein) and upon which the county shall be entitled to rely.

ARTICLE 2: CONSENT AND AUTHORIZATION

Owner hereby authorizes the County and its agents, employees, officers and invitees to enter upon and occupy the Property, and to conduct thereon fire-rescue training exercises, specifically including but not limited to the burning of the Structure, and any activities related or incidental to the fire-rescue training. Owner further authorizes the County to post "no trespassing" signs on the Property and to order any unauthorized persons to leave the Property. This consent and authorization shall be valid during the period of time from through and including _____ (hereinafter referred to as the "authorized training period"). Owner further authorizes the County to inspect the Property, or to have it inspected, prior to and during the authorized training period.

Owner understands and acknowledges that it is anticipated that the Structure will be consumed in its entirety of all combustibles. Owner consents to and acknowledges the effects that said burn may have on the physical composition of the Property and the makeup of non-combustibles which are a part of, or located in, on, or in proximity to, the Structure. Owner also consents to and acknowledges that natural vegetation or growth in proximity to the Structure may be destroyed or damaged, either directly or indirectly, from the fire-rescue training exercises.

Owner understands and acknowledges that the County will expend resources in preparing for said fire-rescue training exercises and that the County, in reliance upon this Agreement, may decline to pursue other properties available for training. Owner understands and acknowledges that if it revokes its consent and authorization prior to the end of the authorized training period, then the County may pursue legal recourse to enforce this Agreement and collect damages incurred in its reliance hereon. Owner agrees to notify the County of any revocation in writing with at least five days prior notice.

ARTICLE 3: RESPONSIBILITIES AND DUTIES

The nature, extent and timing of fire-rescue training activities to be performed on the Property by the County rests solely within the discretion of the County. The County may refuse to burn the Structure or conduct other training exercises on the Property, or may discontinue any such burn or training exercises, should the County determine that such activity cannot be conducted in a reasonably safe and appropriate manner or for any other reason or for no reason. Any fire-rescue training exercises conducted by the County pursuant to this Agreement shall be conducted under appropriate supervision and in accordance with fire-rescue training industry safety standards to minimize the exposure to undue harm.

The cost of conducting the fire-rescue training exercises authorized hereunder shall be borne by the County, except that Owner shall be responsible for the cost of abating or removing any hazardous conditions and materials, including removal of asbestos, as deemed necessary or prudent pursuant to inspections performed on the Property. Owner shall be responsible for having said hazardous conditions and materials abated or removed by a qualified contractor and in accordance with any applicable laws, regulations and safety standards. Owner shall provide the County with documentation confirming the abatement or removal of hazardous conditions and materials.

Prior to the commencement of the authorized training period, the County will provide Owner with a schedule indicating the anticipated type of training exercises to be performed and the anticipated dates for each training exercise. The County Fire-Rescue Department may alter this schedule with prior notice to Owner.

Owner shall be responsible for securing the Property, including the Structure, against entry from unauthorized persons before and during the authorized training period. Upon completion of the training activities, Owner will be fully responsible for the cleanup and removal of any remaining portions of the Structure and any debris in accordance with any applicable laws and regulations and for securing and creating a safe site.

Owner acknowledges benefits received by it under this Agreement in the possible monetary savings in razing costs of the Structure and enhancement of fire-rescue services by this training opportunity. The County acknowledges benefits received by it under this Agreement in the opportunity for live fire-rescue training and enhancement of fire-rescue services.

ARTICLE 4: INDEMNIFICATION

In consideration of the County conducting fire-rescue training exercises on the Property, which may include the burning of the Structure, and other valuable consideration received and acknowledged, Owner shall protect, defend, reimburse, indemnify, release and hold harmless the County, its agents, employees and elected officers from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, whether known or unknown, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising out of or in any way related or incidental to this Agreement, including but not limited to claims relating to any fire-rescue training exercises, inspections and Structure burns on the Property, claims of mortgage and lien holders, claims relating to lack of clear title to the Property or lack of authority to authorize the Structure burn, claims relating to the existence of property damage insurance on the Property, claims relating to damage to the Structure or surrounding property, claims arising from harmful conditions on the Property, and claims relating to environmental or bodily injury (including death); provided however that with respect to damage or injury to County equipment or personnel acting within the scope of their duties, this paragraph shall apply only to the extent that such damage or injury arises out of or is in any way related or incidental to an act, omission or liability attributable in whole or in part to Owner or its agent, including but not limited to the failure to disclose any harmful condition.

ARTICLE 5: INSURANCE

Owner will not file any insurance claim relating to damage or destruction of the Property, including the Structure, arising out of or in any way related to the fire-rescue training exercises performed hereunder, including related inspections and Structure burns.

ARTICLE 6: NOTICES

All notices required to be given under this Agreement shall be deemed sufficient to each party when delivered by hand or by certified mail, return receipt requested, to:

Owner:
[INSERT NAME, ADDRESS AND CONTACT INFORMATION FOR EACH OWNER]
Attn: [INSERT CONTACT NAME]

County:
Palm Beach County Fire-Rescue
405 Pike Road
West Palm Beach, FL 33411
Attn: Fire-Rescue Administrator

ARTICLE 7: REMEDIES

This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens or employees of the County and/or Owner.

ARTICLE 8: SEVERABILITY

In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

ARTICLE 9: SURVIVABILITY

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, shall survive the execution and delivery of this Agreement, the consummation of the activities contemplated hereby, and the expiration or earlier termination of this Agreement.

ARTICLE 10: ENTIRETY OF AGREEMENT

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.

ARTICLE 11: CONTEXT, PLURAL, GENDER:

Where the context of this document requires for clarity, the singular shall include the plural, the plural shall include the singular, and the gender shall be interchangeable.

ARTICLE 12: PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. To the extent permitted by law, the Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Owner, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

Failure to cooperate with the Inspector General or interfering with or impeding any

investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 13: NONDISCRIMINATION

Owner warrants and represents that all of its employees are treated equally during employment without regard to race, sex, sexual orientation, gender identity or expression, color, religion, disability, age, marital status, familial status, national origin, or ancestry; and that no person shall, based on any of these grounds, be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Agreement.

ARTICLE 14: AVAILABILITY OF FUNDS

The County's performance and obligation to pay under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 15: CONFLICT OF INTEREST

Owner represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. Owner further represents that no person having any such conflict of interest shall be employed for said performance of services.

Owner shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence Owner's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Owner may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by Owner. The County agrees to notify Owner of its opinion by certified mail within thirty (30) days of receipt of notification by Owner. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by Owner, the County shall so state in the notification and Owner shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by Owner under the terms of this Agreement.

ARTICLE 16: PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, Owner certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 17: CONTINGENT FEES

Owner warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Owner to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Owner, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 18: REGULATIONS; LICENSING REQUIREMENTS

Owner shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion, and Florida's public records law. Owner is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

ARTICLE 19: ARREARS

Owner shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Owner further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 20: SUCCESSORS AND ASSIGNS

The County and Owner each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the County nor Owner shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first above written.

WITNESS:

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

Signature

Name

By: _____
Steven B. Jerauld, Fire-Rescue Administrator,
through Robert Weisman, County Administrator

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: _____
Fire-Rescue

WITNESS:

[INSERT NAME OF OWNER]

Signature

Signature*

Name

Name*

*** IF BY AGENT, COPY OF POWER OF ATTORNEY AND NOTARIZED AFFIDAVIT MUST ACCOMPANY THIS DOCUMENT**

The foregoing instrument was acknowledged, subscribed and sworn to before me this _____ day of _____, 20____, by _____ who is personally known to me or who has produced _____ as identification, and who did take an oath.

Notary Signature

Print Notary Name

[SEAL]

Notary Public, State of Florida
My Commission Expires: _____

[COPY AND COMPLETE SIGNATURE AND NOTARY BLOCK FOR EACH OWNER]