

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* <u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Account No: Fund _____ Department _____ Unit _____ Object _____
 Reporting Category _____

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

* No fiscal impact.

C. Departmental Fiscal Review: *Fred Panichi*

III. REVIEW COMMENTS

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

 Steve Bon
 OFMB *10/16/15* *10/16/15* *je voltr*

 Dr. J. J. [Signature] *10/21/15*
 Contract Dev. and Control
10/20/15

B. Legal Sufficiency:

 Anne Adelgent *10-23-15*
 Assistant County Attorney

C. Other Department Review:

 Department Director

RESOLUTION NO. R-2015-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING A STANDARD FORM FDEP SITE ACCESS AGREEMENT AND A STANDARD FORM PERMISSION TO ENTER PROPERTY (ENTRY AGREEMENT); AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS OR HER DESIGNEE TO EXECUTE A STANDARD FORM FDEP SITE ACCESS AGREEMENT AND A STANDARD FORM ENTRY AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Palm Beach County ("County") owns and maintains property in Palm Beach County, Florida; and

WHEREAS, the Florida Department of Environmental Protection ("FDEP") maintains a program, through itself and its contractors, to assess, remove, monitor and remediate contamination ("Remediation") on property meeting certain criteria, at no cost to the property owner; and

WHEREAS, it is in the public interest to allow FDEP to complete Remediation on County properties; and

WHEREAS, FDEP requires an owner of property to execute FDEP's standard form agreement, attached hereto as Attachment "A" ("FDEP Site Access Agreement"), before FDEP will initiate Remediation; and

WHEREAS, FDEP will allow the owner of property to enter into an agreement directly with FDEP's contractor, by utilizing the form attached hereto as Attachment "B" ("Entry Agreement"); and

WHEREAS, the Board of County Commissioners ("Board") desires to authorize the County Administrator or his or her designee to execute the standard form FDEP Site Access Agreement, and the standard form Entry Agreement (collectively the "Agreements"); and

WHEREAS, the delegation to the County Administrator or his or her designee to execute the standard form Agreements would eliminate delays caused by requiring the Agreements to be brought before the Board for approval, which is consistent with the goal of the Board to streamline the agenda process.

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

1. Recitals. The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the meaning ascribed to them in the Agreements.

2. Standard Form Documents. The Board hereby authorizes the County Administrator or his or her designee to execute the standard form Agreements, attached hereto and incorporated herein by reference as Attachment “A” and Attachment “B”, on behalf of the Board of County Commissioners. The County Administrator or his or her designee is hereby authorized to execute standard form Agreements that include non-material changes, or incorporate new Board policies. For purposes of this Resolution, “non-material changes” means changes that do not modify the substantive obligations of the County. In addition, the County Administrator or his or her designee may modify the insurance requirements provided in the standard form Entry Agreement upon the advice of the Risk Management Department to establish coverage amounts or require additional policies of insurance. For purposes of this Resolution, the Director of the Department of Airports shall be considered to be a designee of the County Administrator.
3. Severability. If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.
4. Effective Date. This Resolution shall become effective immediately upon adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 HAL R. VALECHE	-
COMMISSIONER PAULETTE BURDICK	-
COMMISSIONER SHELLEY VANA	-
COMMISSIONER STEVEN L. ABRAMS	-
COMMISSIONER MARY LOU BERGER	-
COMMISSIONER MELISSA MCKINLAY	-
COMMISSIONER PRISCILLA A. TAYLOR	-

Then the Mayor thereupon declared this Resolution duly passed and adopted this _____ day of _____, 20__.

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

Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: Anne Delgado
County Attorney

ATTACHMENT "A"
TO
RESOLUTION

FDEP SITE ACCESS AGREEMENT

SITE ACCESS AGREEMENT

1. The Parties. The undersigned real property owner, **Palm Beach County**, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, ("Owner"), hereby give(s) permission to the State of Florida, Department of Environmental Protection ("Department") and its Agency Term Contractor, subcontractors, and vendors ("Contractor"), to enter the Owner's property ("the Property") located at _____

FDEP Facility ID: _____.

2. The Property. Owner owns the certain parcel(s) *PCN* _____ of real property located at _____, (the "Property"), depicted on the attached legal description as Exhibit "A."

3. Permissible Activities. This Site Access Agreement ("Agreement") is limited to activities which may be performed by the Department or its Contractors pursuant to Chapter 62-780, Florida Administrative Code (F.A.C.), without cost to the Owner (unless required in a separate agreement) to locate contamination, determine contamination levels and, when necessary, remove and remediate contamination which may be performed by the Department and its Contractor. This access is provided only for the contamination either eligible for a state-funded cleanup or is being investigated pursuant to a consent order with the Department. The following activities are included in this Agreement but are not limited to this list:

- conduct soil, surface, subsurface, and groundwater investigations, including but not limited to entry by a drill rig vehicle and/or support vehicles;
- install and remove groundwater monitoring wells;
- use geophysical equipment;
- use an auger for collecting soil and sediment samples;
- locate existing wells;
- collect waste, soil, and water samples;
- remove, treat and/or dispose of contaminated soils and water;
- remove contaminated soil by digging with backhoes, large diameter augers and similar equipment;
- install, operate, and remove remedial equipment;
- install and remove utility connections;
- trenching for connection of remediation wells to equipment; and
- conduct surveys, prepare site sketches, and take photographs.

4. Duration and Termination of Access. This Agreement is granted, without any fee or charge to the Department or Contractor, for so long as is necessary to assess, remove, monitor and remediate the contamination on the Property. Access shall be allowed for the Department (including its employees and contracted site managers with Teams 5 and 6 or local government, if applicable) immediately upon the execution of this Agreement.

However, access for a Contractor can be contingent upon the Owner timely entering into a separate site access agreement with the Contractor (if the Owner wants a separate agreement with the Contractor please check the appropriate box at the end of this document). Such agreement with a Contractor is not binding upon the Department. This Agreement shall continue until the Department's entry of a site rehabilitation completion order pursuant to Rule 62-780.680, Florida Administrative Code, or low-scored site initiative no further action order pursuant to Section 376.3071(12)(b), Florida Statutes ("Order"). At which time the Owner shall be provided a copy of the Order and this Agreement shall be automatically terminated.

5. Work Performed during Business Hours. The Department and Contractor may enter the Property during normal business hours and may also make arrangements to enter the Property at other times after agreement from the Owner.

6. Activities Comply with Applicable Laws. The Department and Contractor agree that any and all work performed on the Property and in association with this Agreement shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal and state statutes, rules and regulations.

7. Proper Disposal of Contaminated Media. The Department and Contractor shall ensure that soil cuttings, any work materials, and water generated shall be disposed of in accordance with Environmental Laws. All soil cuttings, waste materials and development water generated shall be promptly removed from the Property.

8. Property Restoration. The Department shall pay the reasonable costs of restoring the Property as nearly as practicable to the conditions which existed before activities associated with contamination assessment or remedial action were taken.

9. Owner's Non-Interference. The Owner shall not interfere with the Department or Contractor when performing the Permissible Activities. Owner shall not damage any equipment including wells, piping, and remediation system that may be located on the Property. Owner shall notify the Department 90 days prior to commencement of any construction, demolition or other work on the Property that may damage or destroy any part of the equipment installed under this Agreement. If the Department anticipates that the remediation equipment will not be used for over one calendar year, the Owner can request removal of the remediation equipment if it is interfering with the operation of the business or with planned construction activities.

10. Non-revocable. If Property is the source of the discharge that is eligible for State funded remediation pursuant to Chapter 376, Florida Statutes, access to the Property is required and Owner may not revoke this Agreement with the Department until the appropriate site rehabilitation completion order is issued under Chapter 62-780.680 or a low-scored site initiative order issued pursuant to Section 376.3071(12)(b), Florida Statutes, is final.

11. No Admission. The granting of this Agreement by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner for any contamination discovered on the Property.
12. Owner's Use of Property. The Owner retains the right to use the Property, and the Department and its Contractors will work with the Owner regarding minimizing activities that may interfere with the Owner's management and use of the Property. However, neither the Department nor the Contractor are responsible for any inconvenience, economic injury, or business damage that Owner may suffer due to the performance of any Permissible Activity. This agreement does not modify any legal right the parties may have regarding negligent acts.
13. Owner's Release of Claim. If Owner selected a qualified contractor (not an agency term contractor), the Owner hereby releases the Department from any and all claims against the Department performed by the Owner's selected contractor arising from or by virtue of, the Permissible Activities.
14. Injury to Department. The Owner shall not be liable for any injury, damage or loss on the Property suffered by the Department, Department employees or Contractors not caused by the negligence or intentional acts of the Owner's agents or employees.
15. Indemnification. The Department does not indemnify the Owner, see paragraph 16. The Contractor has indemnified the Department. However, if the Owner chooses to enter into a separate access agreement with the Contractor, the Contractor is not prohibited from indemnifying Owner as long as such indemnification does not conflict with the Contractor's indemnification of the Department. Where no conflicts exist, any subsequent indemnification by the Contractor to any party associated with the Permissible Activities is subservient and subordinate to the Contractor's indemnification of the Department.
16. Sovereign Immunity. The Department acknowledges and accepts its responsibility under applicable law (Section 768.28, Florida Statutes) for damages caused by the acts of its employees while on the Property.
17. Public Records. All documents created or received associated with the Permissible activities are a public record pursuant to Chapter 119, Florida Statutes. The Owner may retrieve any documents or other information related to the Permissible Activities online using the facility number reference above.
<http://depedms.dep.state.fl.us/Oculus/servlet/login?action=login>
18. Entire Agreement. This Agreement shall constitute the entire agreement between the Department and the Owner regarding this grant of access to the Department as stated herein. No modification, amendment or waiver of the terms and conditions of this Agreement shall be binding upon Department unless approved in writing by an authorized representative of Owner and Department.

19. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action or proceeding arising from or relating to this Agreement shall be in the appropriate Florida court having jurisdiction located in Leon County, Florida.

20. Severability. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

21. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.

A. Are additional requirements attached to this agreement? Note: Additional requirements must be on a separate page titled Exhibit B and include the facility ID#, owner signature and date on the page.

YES

NO

B. Do you wish to participate or provide input with respect to rehabilitation of this facility?

YES

NO

C. Do you wish to exercise the option to reject one Agency Term Contractor prior to assignment of work?

YES

NO

D. Do you want the Contractor to contact you to obtain a separate site access agreement? Note: Additional site access agreements must be completed between the owner and ATC within ninety (90) calendar days.

YES

NO

WITNESSES:

**PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA**

Signature

Typed or Printed Name

Signature

Typed or Printed Name

By: _____
County Administrator, or designee

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
County Attorney

Accepted by the State of Florida Department of Environmental Protection:

Diane D. Pickett, P.G.
Program Administrator
Petroleum Restoration Program

Signature of Witness

Date

Print Name

Date

Attachments: Exhibit A- Legal description of the Property.

FDEP Coordinates (Degrees Minutes Seconds) for Facility Id. #:

Latitude

Longitude

**ATTACHMENT "B"
TO
RESOLUTION**

ENTRY AGREEMENT

PERMISSION TO ENTER PROPERTY (Entry Agreement)

General

1. This Entry Agreement is made and entered into this ____ day of ____ by and between Palm Beach County, a political subdivision of the State of Florida (“Palm Beach County” or “County”), and _____ (“Contractor”).
2. For and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, County hereby gives permission to Contractor and its agents and sub-contractors, to enter County’s property located at _____, FDEP Facility ID: _____ as more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference (the “Property”), to perform assessment and remediation activities associated with Petroleum Restoration Program.
3. Contractor and the County agree to all terms and conditions in the Permission to Enter Property, (aka Site Access Agreement) dated _____ by and between Palm Beach County and State of Florida Department of Environmental Protection (the “Department” or “FDEP”) attached hereto and incorporated herein as Exhibit “B”.
4. This permission is specifically limited to the following activities that may be performed by Contractor, its agents or sub-contractors on the property: soil and groundwater assessment and remediation activities in accordance with FDEP cleanup directives (see attached Exhibit “C”).
5. Contractor, its agents or sub-contractors may enter the Property during normal business hours as described herein and may also make arrangements to enter the Property at other times after coordinating with the County.
6. During the term of this Entry Agreement, Contractor shall provide and maintain commercial general liability and automobile insurance with limits of not less than \$1,000,000 per occurrence and workers’ compensation insurance or self insurance as required by Chapter 440, Florida Statutes. All such insurance or self-insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by Contractor. Contractor shall include County as an additional insured on its general liability insurance policy. In the event Contractor subcontracts any part or all of its operations as described in this or related in any way to this Agreement, Contractor shall require its subcontractor(s) to acquire and maintain workers’ compensation, automobile and general liability insurance coverage in such amounts as described in this Agreement. Contractor shall include in its contract with subcontractor(s) a provision whereby the subcontractor agrees to defend, indemnify and hold harmless Palm Beach County from

all injury and property resulting from its operations and to include County as an additional insured on the subcontractor's general liability insurance policy.

7. Contractor assumes any and all risk of injury and property damage attributable to the acts or omissions of its officers, employees and sub-contractor(s) and agrees to defend, indemnify and hold harmless Palm Beach County and its officers, employees and agents from all claims, actions, losses, judgments, fines, liabilities, costs and expenses in connection therewith. More specifically, to the extent permitted by law, Contractor shall indemnify and hold Palm Beach County, its officers, agents and employees harmless from and against any and all claims, liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, actions and fees (including, without limitation, reasonable paralegal and attorney fees and expenses, whether in court, out of court, in administrative proceedings, or on appeal), including damage to property or property rights that may arise and which are proximately caused by the acts, errors, or omissions of Contractor, its agents, representatives and subcontractors, arising out of its activities related to the testing. In addition, without limiting the foregoing, in the event that any act or omission of Contractor, its agents, representatives and subcontractors, arising from or related to this Agreement results in any spill or release of hazardous materials or other pollutants, as those terms are defined in federal and state environmental laws and regulations, including, without limitation any petroleum-based substances, then, to the extent permitted by law, Contractor shall indemnify and hold Palm Beach County, its officers, agents and employees harmless from and against any and all claims, liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, actions, fees, including, without limitation, all reasonable, actual cleanup or remediation costs and expenses expended by Palm Beach County at the direction of any federal or state agency having jurisdiction, and further including, without limitation, reasonable paralegal and attorney fees and expenses, whether in court, out of court, in administrative proceedings, or on appeal. Contractor shall be responsible for the immediate notification to the County of any environmental condition, spill, or release, or any other condition or occurrence of which it becomes aware that may result in a claim for damages or that occurs as a result of Contractor's activities related to this Agreement. Neither party to this agreement waives its right to sovereign immunity under the law.
8. Contractor agrees to abide by all federal, state and local laws.

Specifically

Time Limits: Access will be between the hours of 7:00 AM and 3:30 PM
Monday through Friday, excluding government holidays.

Points of Contact: **Owner:** Palm Beach County

Phone: _____

Contractor: _____

Restoration: Upon completion of the soil and groundwater assessment and remediation activities provided for under this Entry Agreement, Contractor shall return the Property to the same general condition as it was prior to the activities being performed. All equipment used shall be removed from the Property by Contractor.

Termination Date: The permission to enter the property is granted from 30 days after the execution of this document by Palm Beach County. Any extension must be requested in writing and agreed upon by Palm Beach County.

(Remainder of page intentionally left blank)

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

WITNESSES:

**PALM BEACH COUNTY, FLORIDA,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA**

Signature

Typed or Printed Name

By: _____
County Administrator, or designee

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Signature

Typed or Printed Name

By: _____
County Attorney

WITNESSES:

CONTRACTOR:

Signature

Typed or Printed Name

By: _____
Signature

Typed or Printed Name

Signature

Typed or Printed Name

Title

(Corporate Seal)

Exhibit "A"
To Entry Agreement
(the "Property")

Exhibit "B"
To Entry Agreement

Permission to Enter Property, (aka Site Access Agreement) dated _____
by and between
Palm Beach County
and
State of Florida Department of Environmental Protection (the "Department" or "FDEP")

Exhibit "C"
To Entry Agreement

(soil and groundwater assessment and remediation activities
in accordance with FDEP cleanup directives)