Agenda Item: 3F

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 7, 2017	[x]] Regular	
Department:	[]	Workshop	Ε] Public Hearing	
Submitted By: Department of Airports					
Submitted For:					
					
<u>I. EXECUT</u>					
Motion and Title: Staff recommends motio (Agreement) with the State of Florida, Dep allowing FDEP to conduct site screening at the determine if contamination exists at sites associate as the former Palm Beach Air Force Base (AF)	artmen he Palı ociated	t of Environmen n Beach Internat with past activitie	ital tion es v	Protection (FDEP), al Airport (PBIA), to when PBIA operated	
Summary: The Agreement will allow FDEP to conduct soil and groundwater sampling at five (5) locations at PBIA, including one (1) location for background conditions. The term of the Agreement commences on January 1, 2017, and expires on April 28, 2017. The sampling will be completed by FDEP at no cost to the County. The standard County Site Access Agreement, which was approved by the BCC in R-2015-1613 and delegated signature authority to the Director of Airports, has been modified in consultation with the County Attorney's Office to remove provisions that are not applicable to this situation. Countywide (AH)					
Background and Justification: The FDEP, under a cooperative agreement and grant with the Environmental Protection Agency (EPA), is conducting a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) investigation of the former Palm Beach AFB. Under the Agreement, four (4) areas of concern plus one (1) background soil and groundwater location will be sampled.					
Attachments One (1) Site Access Agreemen	nt				
Recommended By: Department D	==== Directo	/ / r	<u> </u>	/ <u>28 () 6</u> Date	
Approved By: County Admin	A nistrato	<u> </u>		/ <i> </i>	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fisc	al Impact:					
Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	
Capital Expenditures Operating Costs Operating Revenues Program Income (County) In-Kind Match (County)						
NET FISCAL IMPACT [★]	<u>\$-0-</u>	<u>\$-0-</u>	\$-0	\$-0	\$-0	
# ADDITIONAL FTE POSITIONS (Cumulative)						
Is Item Included in Current Bud Budget Account No: Fund Reporting Cate	dget? Ye Departm egory	es No nentUn	o it RSc	ource		
B. Recommended Sources of	Funds/Sum	mary of Fisc	cal Impact:			
[→] There is no fiscal impact to completed by FDEP at no cos	the County at to the Cour	associated nty.	with this Agre	eement. All s	sampling will be	
C. Departmental Fiscal Review	v:	Sum	<u> </u>			
III. REVIEW COMMENTS						
A. OFMB Fiscal and/or Contra	ct Developm	nent and Co	ntrol Comme	nts:		
Two Ports 1/4/ 1/3 W/3/7 OFMB	17		Contract	Dev. and Co	ontrol //0/)	
B. Legal Sufficiency:			1. 18		A	
Assistant County Attorney	<u>//</u> -/7					
C. Other Department Review:						
Department Director	_					
REVISED 9/03 ADM FORM 01						

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

SITE ACCESS AGREEMENT

- 1. <u>The Parties</u>. 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 Contractor, subcontractors, and vendors ("**Contractor**"), to enter the Owner's property identified in Paragraph 2 below ("the Properties"). **FDEP Facility ID** #s: **COM_310511, COM_310513 and COM_311011.**
- 2. <u>The Property</u>. Owner owns the real property identified by the parcel control numbers listed below, as further shown and depicted on the attached "Exhibit A" (collectively the "Property")

00434332000001090; 1250 Perimeter Rd., 74434332000001050; 1600 Belvedere Rd., 00424325000005090; 3205 Belvedere Rd., 00434330000007000; 3723 Belvedere Rd., 00424325000005320; Cherry Rd., and 00424325000005310; 1355 Country Club Rd.

- 3. <u>Permissible Activities</u>. This Site Access Agreement ("Agreement") is limited to activities which may be performed by the Department or its Contractors pursuant to Chapter 403, Florida Statutes without cost to the Owner (unless required in a separate agreement) to locate contamination and determine contamination levels. The following activities are included in this Agreement but are not limited to this list (the "Permissible Activities"):
 - 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; and
 - conduct surveys, prepare site sketches, and take photographs.
- 4. <u>Duration and Termination of Access</u>. This Agreement is granted, without any fee or charge to the Department commencing January 1, 2017 and expiring on April 28, 2017.
- 5. <u>Work Performed during Business Hours</u>. 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. <u>Activities Comply with Applicable Laws</u>. 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. <u>Proper Disposal of Contaminated Media</u>. 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. <u>Property Restoration</u>. 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 and piping 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.
- 10. <u>No Admission</u>. 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.
- 11. 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.
- 12. 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.
- 13. <u>Injury to Department</u>. 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.
- 14. <u>Indemnification</u>. The Department does not indemnify the Owner, see paragraph 15. 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.

- 15. <u>Sovereign Immunity</u>. 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.
- 16. <u>Public Records</u>. 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 numbers referenced above. http://depedms.dep.state.fl.us/Oculus/servlet/login?action=login
- 17. <u>Entire Agreement</u>. 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.
- 18. 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.
- 19. <u>Severability</u>. 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.
- 20. <u>No Third Party Beneficiaries</u>. 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.

SIGNATURES ON FOLLOWING PAGE

WITNESSES: Signature Earle Beeber Typed or Printed Name	PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA By: Jely 12/3/14 Director of Airports
Signature RAY WACTER Typed or Printed Name	
	APPROVED AS TO FORM AND LEGAL SUFFICIENCY
	By: Onne de Jant County Attorney
Accepted by the State of Florida Departme	ent of Environmental Protection:
Jim McCarthy	Signature of Witness
Professional Geologist Waste Cleanup Program CERCLA Site Screening Section	Bills K. MCClain 12/12/2016
Drcember 12 2014	A. TAMES MCCATTLUTTE

Print Name

Attachments: Exhibit A- Depiction of the Property.

Date

EXHIBIT "A" Depiction of the Property

The Geographic Coordinates (Degrees Minutes Seconds) in the center of each parcel are:

Parcel# 00434332000001090

N: 26° 41' 3.02" | W: -80° 4' 52.67"

Parcel# 74434332000001050

N: 26° 41' 24.56" | W: -80° 4' 37.81"

Parcel# 00424325000005090

N: 26° 41' 42.59" | W: -80° 6' 30.38"

Parcel# 00434330000007000

N: 26° 41' 31.82" | W: -80° 5' 53.87"

Parcel# 00424325000005320

N: 26° 41' 46.24" | W: -80° 6' 23.41"

Parcel# 00424325000005310

N: 26° 41' 47.01" | W: -80° 6' 30.26"

Each groundwater and soil sample location shall be within the limits of the sites as depicted, and the specific location(s) of sample locations within each site shall be determined by mutual agreement based on a physical field inspection to be completed between Owner and Department and/or Department's Contractor.

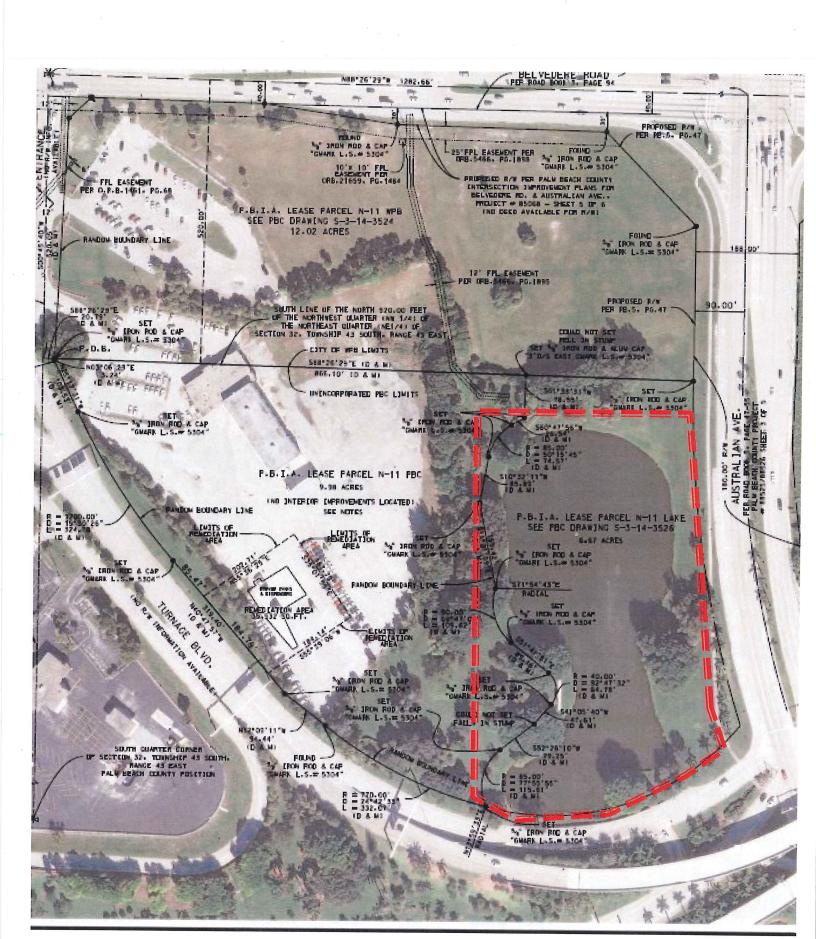
Background Groundwater and Soil Sample Locations a portion of PCN 00-43-43-30-00-7000



CFR 1 Burn Pit Location a portion of PCN 00-43-43-32-00-000-1090



"Landfill #2" Site a portion of PCN 00-43-43-32-00-000-1090 & 74-43-43-32-00-000-1050



"CFR 2 Burn Pit" Site a portion of PCN 00-43-43-32-00-000-1090



"Former FFTA Location" a portion of PCN 00424325000005310 and PCN 00424325000005320

