

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 11, 2017

☐ **Consent** ☐ **Regular**
☐ **Workshop** ☐ **Public Hearing**

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) adopt a Resolution establishing a standard form Permission to Enter Property Agreement (Non-Source) with the Florida Department of Environmental Protection (FDEP) for assessment and remediation of contamination on County-owned property originating from a nearby property; and

B) authorize the County Administrator, the Director of Facilities Development & Operations and the Airports Director to execute the standard form Agreement.

Summary: The Board has approved a standard form Site Access Agreement and Permission to Enter Property Agreement (FDEP Source Agreements) with FDEP for assessment and remediation of contamination originating on County-owned property. This Resolution establishes a standard form Permission to Enter Property Agreement (FDEP Non-Source Agreement) for use when FDEP seeks access to County-owned property to assess, remove, monitor and remediate contamination where the County owned property is not the source of the contamination and the contamination is eligible for state-funded cleanup. The Agreement is required to authorize FDEP and its contractors to complete the remediation activities. The Agreement will be provided without cost to FDEP and the assessment/remediation work is completed at no cost to the County. The Agreement requires FDEP provide proof that its contractor and subcontractors have liability insurance of One Million Dollars and provides for continuity of operations during the remediation. The duration of the Agreement with FDEP is for so long as it is necessary to assess, remove, monitor and remediate contamination on the property. The Agreement provides for restoration of the County-owned property by FDEP and/or its contractor(s). **Countywide (LDC)**

Background and Justification: FDEP administers the assessment, removal, monitoring and remediation of contamination on eligible properties under various state-funded programs. On November 17, 2015 (R-2015-1613) the Board approved standard form FDEP Source Agreements with the FDEP to complete assessment and remediation activities where the County-owned property is the source of contamination. This Agreement provides FDEP and/or its contractor's access to County property that is not the source of contamination and is distinguished from the FDEP Source Agreements in that the County cannot; 1) reject a FDEP contractor, 2) provide input into the rehabilitation, or 3) require a separate contractor Site Access Agreement. Delegated authority to execute the FDEP Non-Source Agreement is consistent with the Board's approval of the FDEP Source Agreements and the County Administrator's subsequent authorization to the Director of Facilities Development & Operations and the Airports Director.

Attachments:

1. Resolution
2. Standard Permission to Enter Agreement

Recommended by: DEM

Department Director

5/31/14

Date

Approved by:

County Administrator

4/27/17

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal 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><u>* 0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

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: *Kyra Sykes 6/9/17*

III. REVIEW COMMENTS

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

J. R. McIntosh 6/15/17
OFMB ET 6/14th 6/14

A. J. [Signature] 6/19/17
Contract Dev. and Control

B. Legal Sufficiency:

L. D. [Signature] 6/16/17
Assistant County Attorney

C. Other Department Review:

Department Director

RESOLUTION NO. R-2017-

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING A
STANDARD FORM PERMISSION TO ENTER PROPERTY
AGREEMENT (NON-SOURCE) WITH THE FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP);
AND AUTHORIZING THE COUNTY ADMINISTRATOR OR
DESIGNEE TO EXECUTE THE 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 (non-source) that may have been negatively impacted by soil and/or groundwater contamination originating from a nearby property (source), at no cost to the non-source property owner; and

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

WHEREAS, FDEP requires an owner of property to execute a FDEP Permission to Enter Property Agreement (Non-Source) attached hereto as Attachment “A”, (the “Agreement”) before FDEP will initiate assessment and/or Remediation; and

WHEREAS, the Board of County Commissioners (“Board”) desires to authorize the County Administrator, the Director of Facilities Development & Operations and the Airports Director to execute the standard Agreement; and

WHEREAS, the delegation to the County Administrator, the Director of Facilities Development & Operations and the Airports Director to execute the standard Agreement would eliminate delays and enable prompt coordination with FDEP to initiate and implement Remediation under instances where there is no cost to the County.

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 Agreement.
2. **Standard Form Documents.** The Board hereby authorizes the County Administrator, the Director of Facilities Development & Operations and the Airports Director to execute the standard Agreement, attached hereto and incorporated herein by reference as Attachment

“A”, on behalf of the Board of County Commissioners. Authorization to execute standard Agreements includes non-material changes and the incorporation of 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 insurance requirements provided in the Agreement may be varied with the consent of the Risk Management Department to establish coverage amounts or require additional policies of insurance.

3. **Effective Date.** This Resolution shall become effective 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 PAULETTE BURDICK, MAYOR
COMMISSIONER MELISSA MCKINLAY, VICE MAYOR
COMMISSIONER HAL R. VALECHE
COMMISSIONER DAVE KERNER
COMMISSIONER STEVEN L. ABRAMS
COMMISSIONER MARY LOU BERGER
COMMISSIONER MACK BERNARD

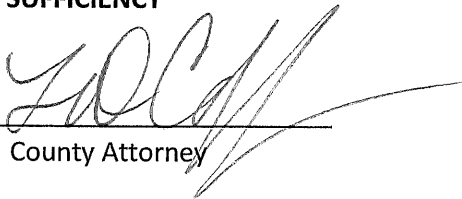
Then the Mayor thereupon declared this Resolution duly passed and adopted this _____ day of _____, 2017.

**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: 
County Attorney

**ATTACHMENT “A”
TO
RESOLUTION**

**FDEP PERMISSION TO ENTER PROPERTY AGREEMENT
(NON-SOURCE)**

PERMISSION TO ENTER PROPERTY AGREEMENT
NON-SOURCE

1. The Parties. The undersigned real property owner, Palm Beach County, a political subdivision of the State of Florida, ("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 ("the Property") located at *[insert property address]* pursuant to the terms of this Permission to Enter Property Agreement.

2. The Property. Owner owns the certain parcel(s) *[insert parcel number(s) from Property Appraiser's website]* of real property located at *[insert physical mailing address if available]* (the "Property"), depicted on the attached figure as Exhibit "A." *[Attach figure depicting the Property]*

3. Permissible Activities. This Permission to Enter Property Agreement ("Permission") is limited to activities which may be performed by the Department or its Contractors pursuant to Chapter 62-780 or 62-730, 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. The following activities are included in this Permission 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. The Source: The suspected source of the contamination is located at *[physical address]*, parcel number # *[Parcel ID]* and FDEP Facility ID # is *[Facility ID #]*. The suspected source is eligible for state-funded cleanup under the Department's Drycleaning Solvent Cleanup Program.

5. Duration and Termination of Access. This Permission 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 and Contractor immediately upon the execution of this Agreement. This Permission shall continue until the Department's entry of a site rehabilitation completion order pursuant to Rule 62-780.680,

Permission to Enter Property

[Site Name]

FAC ID# [ID number]

Florida Administrative Code. At which time the Owner shall be provided a copy of the Order and this Permission Agreement shall be automatically terminated.

6. 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.

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

8. 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.

9. Well Permits. The Owner authorizes the Department and its Contractor to act as its agent in signing all required forms and documents necessary for obtaining applicable permits related to well construction, repair, maintenance, modification, and abandonment pursuant to Chapter 373, Florida Statutes.

10. Equipment Ownership. The monitoring wells and remedial equipment installed pursuant to this agreement are the property of the Department. The Owner is responsible for replacing any Department property that may be damaged or lost due to any actions by the Owner.

11. 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 Permission so that such equipment can be either properly removed, secured or abandoned. 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.

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. Except as specifically set forth in this agreement, this agreement does not modify any legal right the parties may have regarding negligent acts.

Permission to Enter Property

[Site Name]

FAC ID# [ID number]

13. 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.

14. No Admission. The granting of this Permission 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.

15. 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 directly caused by the negligent or intentional acts of the Owner's employees and subject to the limits of liability as established in Section 768.28, Florida Statutes. This provision is not intended as a waiver of sovereign immunity and is also not intended to be consent to be sued by third parties.

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 and contractors 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 or project number referenced above in paragraph 4. <http://depdms.dep.state.fl.us/Oculus/servlet/login?action=login>

18. Entire Agreement. This Permission 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 Permission shall be binding upon Department unless approved in writing by an authorized representative of Owner and Department.

19. Governing Law and Venue. This Permission 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 Permission shall be in the appropriate Florida court having jurisdiction located in Leon County, Florida.

20. Severability. Any provision of this Permission, or any part of any provision, that is prohibited, unenforceable, illegal or void, shall be ineffective to the extent of such prohibition, unenforceability, illegality or void provision or part of any such provision, without invalidating the remaining provisions, or parts or portions thereof. It is intended that all remaining provisions, or parts thereof, shall remain in full force and effect to the fullest extent possible; and, to the extent permitted and possible, the prohibited, unenforceable, illegal or void provision, or part or portion thereof, shall be interpreted and deemed replaced by a provision, or part or portion thereof, that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable provision or part.

Permission to Enter Property

[Site Name]

FAC ID# [ID number]

21. No Third Party Beneficiaries. This Permission 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.

22. Applicable Laws. Contractor agrees to abide by all federal, state and local laws.

23. Insurance. During the term of this Entry Agreement, Contractor shall provide and maintain: (1) commercial general liability insurance that does not exclude; (a) pollution, contaminant or environmental liability, (b) pollution clean-up, testing, assessment and remediation activities and claims, and does not exclude (c) claims arising from exposure to a pollutant, contamination or irritant, or alternatively Contractor shall provide a commercial general liability policy and a pollution liability policy or equivalent covering pollution and environmental waste clean-up, assessment and remediation activities; (2) automobile insurance; and (3) workers' compensation insurance or self-insurance as required by Chapter 440, Florida Statutes. The general liability, pollution liability and/or equivalent insurance shall have limits of not less than \$1,000,000 per occurrence each. Contractor shall include County as an additional insured on each required policy except for the automobile and worker's compensation policies. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Contractor shall provide the Additional Insured endorsements coverage on a primary, non-contributory basis. 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 (see contract, attached as Exhibit B). The Department shall provide proof of said insurance to County at the execution of the Agreement and thereafter upon request of County to verify continued coverage.

24. Contact. Any questions regarding this access agreement please contact the following:

For the Contractor: [Contractor Name, email, and phone]

For the Department: [DEP Project Manager Name, email and phone]

The remainder of this page is left intentionally blank

Permission to Enter Property
[Site Name]
FAC ID# [ID number]

WITNESSES:

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

Signature

Typed or Printed Name

By: _____
County Administrator, or designee

Signature

Typed or Printed Name

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

Accepted by the State of Florida Department of Environmental Protection

Signature of Department Representative

Signature of Witness

Title

Print Name Date

Print Name Date

DEP Project Manager: _____

E-Mail: _____

Phone: _____

Attachments: Exhibit A – Figure depicting the Property
Exhibit B – Copy of contract [Contract number and Contractor Name]