

**Meeting Date:**    **December 4, 2018**

☒ **Consent**                      ☐ **Regular**  
☐ **Ordinance**                    ☐ **Public Hearing**

## I. EXECUTIVE BRIEF

**Summary:** Resolution (R-2015-1613) established a new standard form Agreement for use with the Florida Department of Environmental Protection (FDEP) and its contractors to assess, remove, monitor and remediate contamination on County-owned property. The Site Access Agreement is FDEP's standard form, and is required for FDEP to solicit a contractor, who will actually complete the remediation activities. The County enters into a separate Entry Agreement with each contractor before the contractor commences work. Both Agreements are provided without cost to FDEP or its contractors, and the remediation work would be completed at no cost to the County. The attached standard Site Access Agreement was fully executed on August 22, 2018 on behalf of the Board of County Commissioners. In accordance with County PPM CW-O-051, all delegated contracts, agreements and grants must be submitted by the initiating department as a Receive and File agenda item. **(FDO Admin) Countywide (LDC)**

**Attachments:**

Recommended By: MB For many Wolf 11/14/18  
Department Director Date

Approved By: MBaker 11/21/18  
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	0.00	0.00	0.00	0.00	0.00
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes \_\_\_\_\_ No X  
Does this item include the use of federal funds: Yes \_\_\_\_\_ No X

Budget Account No:  
Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Revenue Source \_\_\_\_\_  
Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Revenue Source \_\_\_\_\_

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

C. Departmental Fiscal Review: [Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] white  
OFMB 10/1 9/10/31  
[Signature] for Sean Jacobowitz  
Contract Development and Control 11/8/18 TW

B. Legal Sufficiency: [Signature] 11/13/18  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.



**Petroleum Restoration Program  
SITE ACCESS AGREEMENT**

RECEIVED  
FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

13 AUG 20 AM 10:12

PETROLEUM  
RESTORATION PROGRAM

1. **The Parties.** The undersigned real property owner, Palm Beach County ("Owner"), hereby give(s) permission to the State of Florida, Department of Environmental Protection (FDEP) ("Department") and it's Contractor, subcontractors, and vendors ("Contractor"), to enter the Owner's property ("the Property") 1040 Royal Palm Beach Boulevard, Royal Palm Beach, Palm Beach County, Florida 33411 with FDEP Facility ID# 508623112.

**The Property.** Owner owns the certain parcel 72-41-43-26-30-000-0020 of real property located at 1040 Royal Palm Beach Boulevard, Royal Palm Beach, Palm Beach County, Florida 33411 (the "Property"), depicted on the attached legal description as Exhibit "A."

2. **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 or is statutorily required for FPLRIP or ATRP programs) 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. If the contamination is eligible for state funding, nothing herein is intended to modify the requirements and limitations of the eligibility program or order. 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.

3. **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

AS

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.

4. 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.

5. Environmental Infrastructure and Well Permits. The owner authorizes the Department and the Contractor to act as its authorized representative in signing all required forms and documents necessary for obtaining applicable permits related to environmental infrastructure improvements including well construction, repair, maintenance, modification, and abandonment pursuant to Chapter 373 F.S.

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://depcedms.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 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 Contractor within ninety (90) calendar days.

☒ YES

☐ NO

22. 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.

WITNESSES:

Robert Eric McClellan

Signature

Robert Eric McClellan

Typed or Printed Name

John Tierney

Signature

John Tierney

Typed or Printed Name

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

By: Alan Arvey Wolf  
County Administrator, or designee

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: [Signature]  
County Attorney

2633 Vista Parkway, West Palm Beach, FL 33411

Property Owner Mailing Address

(561) 233-0200

Property Owner Telephone or Cell Phone Number

awolf@pbcgov.org

Property Owner E-mail Address

Accepted by the State of Florida Department of Environmental Protection:

[Signature]

Austin Hoffmeister

Program Administrator

Petroleum Restoration Program

8/22/18

Date

Signature of Witness

Jennifer Bate 8/22/18

Print Name

Date

Attachments: Exhibit A- Legal description of the Property

FDEP Coordinates (Degrees Minutes Seconds) for Facility Id.#: 508623112

Latitude 26° 42' 14.0934"

Longitude 80° 13' 43.2552"

✓

**Exhibit A**

**Legal Description: VILLAGE HALL LT 2**

**Facility ID# 508623112**

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