

RESOLUTION 2017-10

A RESOLUTION OF THE BOARD OF SUPERVISORS OF CENTRAL COUNTY WATER CONTROL DISTRICT APPROVING THE FDEP PETROLEUM RESTORATION PROGRAM SITE ACCESS AGREEMENT; AUTHORIZING THE BOARD OF SUPERVISORS TO EXECUTE THE AGREEMENT ON BEHALF OF THE DISTRICT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Central County Water Control District (the "District") is a Florida water control district operating and organized under Chapter 298, Florida Statutes, and Chapter 70-702, Laws of Florida, as amended; and

WHEREAS, the District wishes to contract with the Florida Department of Environmental Protection and its Contractor, subcontracts, and vendors to enter into the District's property and perform those remediation activities outlined in the attached Petroleum Restoration Program Site Access Agreement ("the Site Access Agreement"); and

WHEREAS, the Board of Supervisors finds that entering into the Site Access Agreement furthers the purposes of the District under Chapter 298, Florida Statutes, and the District's Charter.

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the Central County Water Control District as follows:

Section 1. The Board of Supervisors hereby approves the Site Access Agreement attached and incorporated to this Resolution as Exhibit A and authorizes the President of the Board of Supervisors to execute the Site Access Agreement on behalf of the District.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 20th day of December, 2017.

BOARD OF SUPERVISORS
CENTRAL COUNTY WATER CONTROL DISTRICT


By: Denise Miller, President

ATTEST:


By: CAROLYN HESTER, District Manager

APPROVED AS TO LEGAL SUFFICIENCY AND FORM:


By: JOHN J. FUMERO, District Attorney



**Petroleum Restoration Program
SITE ACCESS AGREEMENT**

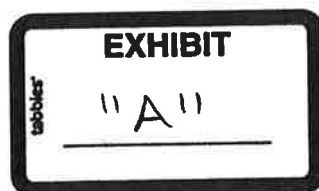
1. The Parties. The undersigned real property owner, CENTRAL COUNTY WATER CONTROL DISTRICT ("Owner"), hereby give(s) permission to the State of Florida, Department of Environmental Protection (FDEP) ("Department") and its Contractor, subcontractors, and vendors ("Contractor"), to enter the Owner's property ("the Property") CABBAGE PALM ST & HUNTING CLUB, CLEWISTON 33440 with FDEP Facility ID# 9600862.

2. The Property. Owner owns the certain parcel(s) 1-33-44-19-A00-0001.0000 of real property located at CABBAGE PALM ST & HUNTING CLUB, CLEWISTON, HENDRY COUNTY, FLORIDA 33440 (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://depdms.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

Denise Miller John J. Fumero
Signature of each Property Owner Signature of Witness
Denise Miller JOHN J. Fumero
Print Name Date 12/20/17 Print Name Date 12/20/17

Property Owner Mailing Address

Property Owner Telephone or Cell Phone Number

Property Owner E-mail Address

Accepted by the State of Florida Department of Environmental Protection:

Austin Hofmeister
Program Administrator
Petroleum Restoration Program

Signature of Witness

Date

Print Name

Date

Attachments: Exhibit A- Legal description of the Property. FDEP Coordinates (Degrees⁰ Minutes' Seconds") for Facility Id.#: 9600862

Latitude 26⁰ 39' 3.9132"
Longitude 81⁰ 4' 21.5436"

Exhibit A

Short Legal Description: ALL EXC E 251 FT RD 609.58 AC