

RESOLUTION 17-139

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, RELATING TO THE ASSESSMENT AND CLEANUP FROM A POSSIBLE PETROLEUM CONTAMINATION AT CITY'S WASTEWATER TREATMENT PLANT SITE; AUTHORIZING THE CITY MANAGER TO ENTER A SITE ACCESS AGREEMENT WITH FDEP'S CONTRACTOR FOR PERFORMANCE OF THE WORK; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED that

1. The appropriate officers of the City are authorized but not required to accept and deliver on behalf of the City that certain Agreement between the City and the Florida Department of Environmental Protection, relating to the assessment and cleanup of property arising from a possible petroleum contamination at the City's wastewater treatment plant site, in substantially the form attached and presented to the Council today, draft dated September 7, 2017, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.
2. The City Manager shall be authorized to negotiate and execute a Site Access Agreement with FDEP's contractor to perform the work contemplated, on terms consistent with those approved in the FDEP Agreement approved above, with such changes, insertions or omissions as may be approved by the City Manager and City Attorney.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 28<sup>th</sup> day of September, 2017.

CITY OF PANAMA CITY BEACH

By:   
Mike Thomas, Mayor

ATTEST:

  
City Clerk

*deputy*

Florida Department of Protection  
2600 BLAIRSTONE RD STE 4540  
TALLAHASSEE FL 32399-2400

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CITY OF PANAMA CITY BEACH  
110 S ARNOLD RD  
PANAMA CITY BEACH FL 32413-2140



071S00777793

Facility: 8518786



## Florida Department of Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Noah Valenstein  
Secretary

9/7/2017

**CERTIFIED MAIL #9414810200881508359242**  
**RETURN RECEIPT REQUESTED**

CITY OF PANAMA CITY BEACH  
110 S ARNOLD RD  
PANAMA CITY BEACH, FL 32413-2140

Subject: Notice of Funding Availability for Assessment

PANAMA CITY BEACH CITY WTP  
200 N GULF BLVD  
PANAMA CITY BEACH, BAY COUNTY  
FDEP Facility ID#3 8518786  
Eligible Discharge Date: 12/15/1988 (EDI)  
Priority Score: 6

Dear Property Owner:

Your property has been identified as a site affected by petroleum contamination that is eligible for an assessment funded by the State of Florida. On 11/6/2015 and 2/22/2016, the Florida Department of Environmental Protection (Department) sent you a letter with a Site Access Agreement attached. To date, a response to these letters has not been received by the Department.

Providing site access to your property to allow cleanup of the contamination is a required condition to maintain eligibility in the State-funded Petroleum Restoration Program. Should you fail to execute and return the Agreement to the Department within **14** calendars of the date of this letter, the Department may begin the process of revoking your eligibility in the program. If such eligibility is revoked, the total cost to cleanup your property will become your responsibility. For additional information regarding the Petroleum Restoration Program, please find a list of Frequently Asked Questions attached to this letter. Additional information is also posted on our website at <http://www.dep.state.fl.us/waste/categories/pcp/default.htm> under "Petroleum Restoration Program Property Owner/Responsible Party Information Meeting."

CITY OF PANAMA CITY BEACH  
FDEP Facility ID# 8518786  
Page 2 of 2  
9/7/2017

If you have any questions, please contact Grace Rivera, 850-245-8882,  
[Grace.Rivera@dcp.state.fl.us](mailto:Grace.Rivera@dcp.state.fl.us).

Sincerely,



Alan Sakole  
Environmental Supervisor  
York Risk Services Group, Inc.  
Administrative Services Contractor  
[Alan.Sakole@yorkrsg.com](mailto:Alan.Sakole@yorkrsg.com)

Enclosure: Site Access Agreement  
Instructions for Completion of Site Access Agreement  
Frequently Asked Questions

cc: File

**Note, this cover letter is for your records and should not be returned**

### INSTRUCTIONS FOR COMPLETION OF SITE ACCESS AGREEMENT

This agreement is required to allow FDEP and the Agency Term Contractor (ATC) personnel to enter your property to perform remediation services. Upon issuance of a Closure Order, your site will be restored as nearly as practical to the conditions which existed before the activities, and the access agreement shall be terminated.

The Agreement includes 21 standard paragraphs. Alteration may not be made directly on the original agreement. In addition, there are four questions concerning owner access preference that must be answered by checking the corresponding boxes. Any additional requirements or agreements may not result in the FDEP incurring additional expenses. Please see the instructions following each question for more information.

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

Some property owners require additional access conditions, such as those mandated in the *Jessica Lundsford Act* for school properties, or have specific requirements regarding notification of work. Additional requirements may be requested on a separate signed and dated page to this agreement, to be titled Exhibit B. Such requests are subject to evaluation and approval by the Department. You will be informed if the Department cannot accept your request. Any changes or alterations to the standard access agreement must be made in Exhibit B, and not on the original agreement.

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

If you wish to be in close communication with the ATC and receive notifications of work, copies of reports and recommendations for the site, select "yes" for this option. If you prefer to be hands off and let the ATC conduct all work as directed by the FDEP, please select "no."

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

As required by legislation outlined in Chapter 62-772 Florida Administrative Code, FDEP will use a competitive procurement process to select an ATC to conduct the assessment/remediation activities. Checking "yes" for the above option allows you to be informed by FDEP which ATC is selected before they are authorized to initiate activities, and reject one selected ATC, if you so choose.

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

If "yes" is selected, you will be contacted by the ATC to discuss the terms of your additional site access agreement prior to beginning any work at your site. The State of Florida does not review or give advice regarding these separate agreements. If you choose to do this, the separate access agreement cannot contradict, and must be subservient to, the agreement between the owner and the FDEP.



**Petroleum Restoration Program**  
**SITE ACCESS AGREEMENT**

1. The Parties. The undersigned real property owner, CITY OF PANAMA CITY BEACH ("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") 200 GULF BLVD N, PANAMA CITY BEACH 32413 with FDEP Facility ID# 8518786.

2. The Property. Owner owns the certain parcel(s) 33804-000-000 of real property located at 200 GULF BLVD N, PANAMA CITY BEACH, BAY COUNTY, FLORIDA 32413 (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 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

\_\_\_\_\_  
Signature of each Property Owner

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
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 (Degrees<sup>0</sup> Minutes' Seconds") for Facility Id.#: 8518786

Latitude 30<sup>0</sup> 13' 1.3296"

Longitude 85<sup>0</sup> 51' 11.2351"

Exhibit A

Short Legal Description: 21 3S 16W 34.68AC-1.1- 37C BEG SE COR OF NW 1/4 OF SEC TH W  
25.05 N 1049.84'E 25' TO POB TH CONT N 645' E 1175' S 1165' W 1175' N 520' TO POB \*\*AND  
BEG SE COR OF NW 1/4 OF SEC TH W 25.05' N 1413.50' TH W 35' FOR POB TH W304.92' TH  
S432.94' SELY 374.63' N 650.58' TO POB ORB 256 P 665 ORB 1879 P 505 ORB 2019 P 243

FDEP Coordinates(Degrees Minutes Seconds) for Facility 3/ 8518786:

Latitude 30<sup>0</sup> 13' 1.3296 "

Longitude 85<sup>0</sup> 51' 11.2351"

## **FREQUENTLY ASKED QUESTIONS FOR SITES SCORED 29 AND BELOW**

### **What is the Petroleum Restoration Program?**

The Department of Environmental Protection (DEP) Petroleum Restoration Program (PRP) includes the technical oversight, management, and administration of the assessment and cleanup of sites contaminated by discharges of petroleum and petroleum products from stationary petroleum storage systems. Sites that are eligible for cleanup by the State will be done in priority order based on risk using qualified contractors.

### **What facility or site is this letter referring to?**

For facility specific information please visit the Contamination Locator Map:

1. Go to the PRP main page at:  
<http://www.dep.state.fl.us/waste/categories/pcp/default.htm>
2. Click on the blue CLM icon on the left side of the screen.
3. Select "Petroleum" from the search criteria, select "Continue."
4. Search for the site using an address, a 5-digit zip code or a city.

### **Is this site access agreement required?**

Yes, access to the site, through an executed site access agreement, is required in order to be eligible for all funding assistance and is necessary for the site to be assessed.

### **Will I be expected to pay for this work?**

There is no cost to you to have your site assessed. These assessments are the necessary first step in determining the risk (if any) associated with the discharge. If the assessment reveals contamination levels that require additional monitoring or remediation then your site will be placed back in the queue to await priority funding.

### **Who will be doing the work on my property?**

The State has competitively procured qualified cleanup contractors through Agency Term Contracts. One of our Agency Term Contractors (ATCs) will be selected for your site, unless you participate in the voluntary Low-Score Site Initiative (LSSI) described below and select your own contractor. You will be notified of the selected ATC and have the option to evaluate and reject the ATC prior to work assignment if you are not satisfied with the selection.

**FREQUENTLY ASKED QUESTIONS FOR SITES SCORED 29 AND BELOW**

**What is the Difference between the Low-Score Site Initiative (LSSI) and the Low-Score Assessment (LSA)?**

Low-Score Site Initiative	Low-Score Assessment
Voluntary program for owners/responsible parties that provides a faster assessment with the intent of closing sites below funding range.	Department led assessment to determine risk of contamination at sites below funding range.
Authorized and described in Section 376.3071(12), Florida Statutes.	Authorized in Section 376.3071(4), Florida Statutes
Up to \$30,000 for assessment activities.	Provides enough funding to complete assessment.
Not all low score sites qualify for LSSI. Florida law requires certain criteria for a site to be considered for the LSSI.	All low score program sites are eligible to receive a LSA
An executed site access agreement is not required and the DEP does NOT solicit the owner/responsible party for such agreements.	The DEP requires an executed site access agreement from the owner/responsible party before a LSA may be conducted.
Owner acknowledges that minimal contamination may remain onsite and agrees to the DEP issuing a "No Further Action" determination.	The data collected will determine if the site is an imminent threat, requires monitoring, requires remediation, or qualifies for closure. If additional monitoring or remediation is required, the site will be placed back in the queue to await priority funding.

**Will the site assessment or remediation work impact my business?**

Contractors are required to communicate with the owner or operator on the property and provide notification prior to any field work. In addition, the PRP site manager will also communicate with you or your designee to ensure the best communication is made. All sites will be returned to their original condition that existed prior to any assessment or remedial work.

## **FREQUENTLY ASKED QUESTIONS FOR SITES SCORED 29 AND BELOW**

### **What if there is an issue with the work conducted at my site?**

Once you sign the site access agreement, you will be assigned a PRP site manager. The site manager is responsible for overseeing all of the technical and administrative aspects of the site cleanup. Your assigned site manager will be contacting you upon site assignment and during site activities, and following assessment. You will have an opportunity to rate the ATC that works on your site. Feel free to contact your assigned site manager with any questions you may have throughout the process.

### **How long will it be before something is done on my site after access is granted?**

Once the signed site access agreement is received by the Department, a site manager will be assigned to your site. The assigned site manager will then contact you within 30 days to discuss the next steps and will be able to answer any questions you have about the program.

### **Who do I contact about my site?**

- For general questions concerning the current site assessment, please contact the Department representative whose name is on the Notice of Funding Availability for Assessment letter attached to this document.
- For specific questions regarding site access or the site access agreement contact Grace Rivera at 850-245-8882.
- If you are considering the LSSI, please contact Graham Witt at (850) 222-6446, ext. 260 or review the information on the PRP website: <http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm>
- For specific questions about the eligibility program of your discharge (Early Detection Initiative (EDI), Abandoned Tank Restoration Program (ATRP), Petroleum Liability and Restoration Insurance Program (PLRIP), or Petroleum Cleanup Participation Program (PCPP) contact Lewis Cornman at 850-245-8846.

## EXHIBIT B

FDEP Facility ID#3 8518786  
Panama City Beach Wastewater Treatment Plant  
200 N Gulf Boulevard, Panama City Beach, Bay County

### ADDITIONAL REQUIREMENTS

1. Contractor's performance of work shall not materially interfere with the City's ability to adequately treat wastewater as required by current permit FL 0021512-016.
2. Due to extensive buried process piping on the site, all utility locations are to be determined by FDOT approved Subsurface Utility Engineering (SUE) methods.