

Return to:
Kerry Williams
Palm Beach County Water Utilities Department
Engineering
8100 Forest Hill Blvd.
West Palm Beach, Florida 33413 3336

Site Address: Sherwood Forest Blvd. Greenacres FL
Project #: WUD 21-062, LIFT STATION 5015
Project Name: LIFT STATION IMPROVEMENT

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT is made, granted and entered into this 8th day of January, 2024, by **CITY OF GREENACRES**, a Florida municipal corporation (“Grantor”), in favor of **PALM BEACH COUNTY** (“Grantee”).

WHEREAS, Grantor is by plat dedication the fee simple owner of certain real property for public drainage purposes located in Greenacres, Florida, as more particularly described Plat Book 30, Pages 115-116 (the “Property”); and

WHEREAS, Grantee plans to build a new lift station on property Grantee owns and a portion of the Property; and

WHEREAS, by separate easement request, Grantee seeks an easement from Grantor to utilize a portion of the Property for the new lift station; and

WHEREAS, Grantee has also requested that Grantor grant a Temporary Construction Easement for a portion of the Property described in **Exhibit “A”**, attached hereto and incorporated herein (“Easement Premises”), to allow Grantee to temporarily fill a section of the canal and create a staging area for the construction of a new lift station within the Easement Premises for a period of three hundred sixty-five (365) days from the Effective Date; and,

WHEREAS, Grantor is willing to grant such temporary construction easement and finds granting such easement serves a valid public purpose.

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the Grantor in hand paid by said Grantee, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant to the Grantee, a Temporary Construction Easement as follows:

The foregoing recitals are incorporated into this Temporary Construction Easement and made a part hereof.

The Grantor grants to Grantee a Temporary Construction Easement upon the Easement Premises as shown and described in Exhibit “A”. The rights granted pursuant to this Temporary Construction Easement shall be limited to the right to utilize the Easement Premises solely to allow Grantee to fill a section of the canal on the Property and create a staging area for the construction of a new lift station on adjacent property (the “Project”). The rights granted pursuant to this Temporary Construction Easement shall expire and this Easement shall automatically terminate upon the earlier of Grantee’s completion of the Project or five hundred forty-eight (548) days after construction Notice to Proceed (NTP). The Grantee shall provide the Grantor with a dated copy of the NTP so that the Grantor is aware of when the timeframe associated with the NTP commences and expires. Notwithstanding such automatic termination, Grantee shall promptly

deliver to Grantor a Release of Easement, in a form satisfactory to Grantor, upon completion of the Project, if so requested by Grantor.

1. **Conditions to Right of Usage.** Grantee shall obtain from Grantor and any other necessary governmental entities written approval and necessary permits for all plans relating to construction within the Easement Premises prior to commencement of construction thereof. All improvements shall be constructed at Grantee's sole cost and expense and within the confines of the Easement Premises in accordance with the approved plans and all permits and applicable statutes, rules, regulations, codes and ordinances. Grantee shall install and maintain a construction fence to secure the Easement Premises area at all times. Grantee shall give Grantor ten (10) days written notice prior to commencement of construction; and, Grantee shall not be entitled to construct any improvements within the Easement Premises other than those specifically identified herein.

2. **Location of Existing Utilities.** Prior to exercising the rights conferred hereunder, Grantee or any party acting as its agent shall locate the existing utility facilities within the Easement Premises, if any, and shall contact and coordinate with all utilities that have facilities within the Easement Premises.

3. **Use Limitation.** Grantee acknowledges and agrees that the rights granted by this Temporary Construction Easement are and shall be strictly limited to those specifically granted herein and that Grantee may not utilize the Easement Premises for any purpose not specifically permitted hereby.

4. **Maintenance, Repair, and Restoration.** Grantee shall be solely responsible for and shall, at all times, maintain and repair at its sole cost and expense the Easement Premises and all improvements currently existing or constructed hereafter therein during the term of this Temporary Construction Easement. Grantee shall be solely responsible for and shall, at its own cost and expense, promptly repair any damage arising out of Grantee's exercise of the rights granted hereby and restore any improvements or landscaping now existing or constructed or installed hereinafter within the Easement Premises to the condition it was in prior to such damage, using materials of like kind and quality. In the event that Grantee fails to fulfill these obligations, Grantor may complete the work and Grantee shall reimburse Grantor for all costs and expenses incurred as a result of such failure.

5. **Other Obligations.** Grantee agrees to diligently pursue all work performed hereunder to completion and to exercise the rights granted hereunder in a manner that does not unreasonably interfere with and minimizes the impact on the Grantor's use of the Grantor's Property.

6. **Personal Property.** Grantor shall have no liability or responsibility whatsoever for Grantee's improvements, equipment, personal or other property, nor that of any other person or entity, placed upon or located within the Easement Premises.

7. **Prohibition Against Liens.** Neither Grantor's nor Grantee's interest in the Easement Premises shall be subject to liens arising from Grantee's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the Easement Premises or the Property to be discharged or bonded off, pursuant to Chapter 255 and Chapter 713 of the Florida Statutes. In addition, Grantee shall either require all contractors to furnish a payment and performance bond in accordance with Florida Statutes Section 255.05, naming Grantor as an obligee or, require such contractors to comply with County's Bond Waiver Program as set forth in PPM #CW-F-016 as the same may be amended from time to time, which is hereby incorporated herein by reference. Any required payment or performance bond shall be delivered to Grantor prior to commencement of construction.

8. **Insurance.** Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), the Grantee represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If Grantee is not self-insured, Grantee shall, at its sole expense, purchase and maintain in full force and effect at all times during the life of this contract, insurance coverage at limits not less than those contained in the Statute.

Should Grantee purchase excess liability coverage, Grantee agrees to include Grantor as an Additional Insured.

The Grantee agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

Should Grantee contract with a third-party (Contractor) to perform any service related to this Temporary Construction Easement, Grantee shall require the Contractor to provide the following minimum insurance:

Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include Grantee and Grantor as Additional Insureds. Grantee shall also require that the Contractor include a Waiver of Subrogation against Grantor.

Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.

Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

Workers Compensation - Contractor agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

When requested, the Grantee shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

Compliance with the foregoing requirement shall not relieve the Grantee of its liability and obligations under this Agreement.

Compliance with the foregoing insurance requirements shall not relieve Grantee of its liability and obligations under this Temporary Construction Easement.

Grantee's self-insurance or general liability insurance shall be primary with respect to any coverage afforded to or maintained by the Grantor.

9. Indemnification. Subject to Grantee's right to sovereign immunity and the limitation on damages as set forth in section 768.28, Florida Statutes, Grantee, its successors and assigns shall indemnify, defend and hold the Grantor harmless from and against any damages, liability, actions, claims or expenses (including reasonable attorney's fees and expenses at trial and all appellate levels) arising out of the Grantee's exercise of the rights granted hereby and use of this Easement, including, without limitation, loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Easement Premises or access routes or in connection with the use or operation of the Easement Premises or access routes. Nothing in this Easement shall be construed as Grantor's or Grantee's consent to be sued by a third party nor as Grantor's or Grantee's agreement to indemnify the other or any third party for their negligent acts, omissions, wrongful acts, or misconduct.

In addition, Grantee shall require that any of its contractors performing services on or in the Easement Premises indemnify the Grantor. Said indemnification in the Grantee's written contract with any of its

contractors performing services on or in the Easement Premises shall read as follows:

Contractor shall indemnify and hold harmless the County, its officers and employees, and the City of Greenacres, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by or arising from the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

10. No Dedication. The grant of Temporary Construction Easement contained herein is solely for the use and benefit of Grantee, and Grantee's authorized agents and employees, and is not intended, and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

11. Time of Essence. The parties expressly agree that time is of the essence in this Temporary Construction Easement.

12. Matters of Record. Grantee hereby accepts the Easement Premises "As-Is", without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the Easement Premises, and all other easements, restrictions, conditions, encumbrances and other matters of record.

13. Construction. The terms of this Temporary Construction Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Temporary Construction Easement and the same shall remain in full force and effect.

14. Entire Understanding. This Temporary Construction Easement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Temporary Construction Easement.

15. Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Grantee:

Water Utilities Department
Attention: Director
8100 Forest Hill Blvd.
West Palm Beach, Florida 33413

With a copy to:

Palm Beach County Attorney's Office
Attention: Utilities Department
301 North Olive Avenue, Suite 601

West Palm Beach, FL 33401

Grantor:

City of Greenacres
Attn: City Manager
5800 Melaleuca Lane
Greenacres, FL 33413

With a copy to:

City of Greenacres
Attn: Director, Public Works Department
5800 Melaleuca Lane
Greenacres, FL 33413

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

16. Default. In the event Grantee fails or refuses to perform any term, covenant, or condition of this Temporary Construction Easement for which a specific remedy is not set forth in this Temporary Construction Easement, Grantor shall, in addition to any other remedies provided at law or in equity, have the right of specific performance thereof.

17. Governing Law & Venue. This Temporary Construction Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Temporary Construction Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

18. Prohibition Against Assignment. This Temporary Construction Easement may not be assigned by Grantee.

19. No Third Party Beneficiary. No provision of this Temporary Construction Easement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Temporary Construction Easement, including but not limited to any citizens of County or Grantee or employees of County or Grantee.

20. Effective Date of Easement. This Temporary Construction Easement is expressly contingent upon the approval of the Grantor's City Council and shall become effective only when signed by the Grantor's Mayor.

21. Reservation of Rights. Grantor hereby retains all rights relating to the Easement Premises not specifically conveyed by this Easement including the right to use the Easement Premises and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional easements in the Easement Premises or the right to use the improvements therein.

22. Waste or Nuisance. Grantee shall not commit or suffer to be committed any waste upon the Easement Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Easement Premises or which may affect Grantor's fee interest in the Easement Premises. Grantee shall keep the access to the Easement Premises, the parking areas, driveways and other contiguous areas to the Easement Premises free and clear of obstruction.

23. Governmental Regulations. Grantee shall, at Grantee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Grantee or its use of the Easement Premises, and shall faithfully observe in the use of the Easement Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the Grantee's use of the Easement Premises. Grantee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Grantee's activity, on the Easement Premises or in any manner not permitted by law. Subject to Grantee's right to sovereign immunity and the limitation on damages as set forth in section 768.28, Florida Statutes, Grantee shall indemnify, defend and save Grantor, its agents, officers, and employees harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Grantee's failure to perform its obligations specified in this Section. Grantee's indemnification obligations set forth in the foregoing shall survive termination or expiration of this Easement.

24. Surrender of Premises. Upon termination of the use of the Easement Premises by the Grantee, Grantee, at its sole cost and expense, shall remove all of its personal property from the Easement Premises and shall surrender the Easement Premises to the Grantor in at least the same condition the Easement Premises were in at the start of each period of use.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Temporary Construction Easement as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

**Signed, sealed and delivered
in the presence of:**

CITY OF GREENACRES, a Florida
municipal corporation

Signature

By: _____
Joel Flores, Mayor

Print name of witness

Approved as to form and legal sufficiency:

Signature

City Attorney

Print name of witness

Print Name of City Attorney

(SEAL)

ATTEST:

Quintella Moorer, City Clerk

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by Joel Flores, the Mayor of the City of Greenacres, a Florida municipal corporation, () who is personally known to me OR () who has produced _____ as identification and who () did () did not take an oath.

(Notary Seal)

Notary Public, State of Florida

ATTEST:

COUNTY:

**JOSEPH ABRUZZO
CLERK OF THE CIRCUIT
COURT & COMPTROLLER**

**PALM BEACH COUNTY, a political
subdivision of the State of Florida**

By: _____

By: _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By: _____
Department Director

EXHIBIT "A"

EASEMENT PREMISES