

Prepared by & Return to:
Marcel Pessoa, Real Estate Specialist
Palm Beach County
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, FL 33411-5605

PCN: __00-43-44-29-00-002-0040 (a portion of)

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made _____ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, ("County") whose mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605, and **CITY OF LAKE WORTH BEACH**, a Florida municipal corporation, whose legal mailing address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460, ("Grantee").

RECITALS

Whereas, County is the owner of the land described in Exhibit "A" attached hereto (the "County Property"); and

Whereas, Grantee has requested that County grant a Temporary Construction Easement to allow Grantee to temporarily place electrical improvements, including a transformer, poles and overhead lines on County's Property for a period of three hundred sixty-five (365) days from the Effective Date.

Now, therefore, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the County in hand paid by said Grantee, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County does hereby grant to the Grantee, a non-exclusive Temporary Construction Easement upon the real property legally described in Exhibit "B" attached hereto ("the Easement Premises"). The rights granted pursuant to this Easement shall be limited to the right to utilize the Easement Premises solely to place electrical improvements, including a transformer, poles and overhead lines on County's Property (the "Project"). The rights granted pursuant to this Easement shall expire and this Easement shall automatically terminate upon the earlier of Grantee's completion of the Project or three hundred sixty-five (365) days after the Effective Date. Notwithstanding such automatic termination, Grantee shall promptly deliver to County a Release of Easement, in a form satisfactory to County, upon completion of the Project, if so requested by County.

1. Conditions to Right of Usage. Grantee shall obtain from County and any other necessary governmental entities written approval of all plans relating to construction of any improvement within the Easement Premises prior to commencement of construction

thereof. Approval shall be obtained from the Director, Property and Real Estate Division, Facilities Development & Operations, Palm Beach County. 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 County ten (10) days written notice prior to commencement of construction; 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 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 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, County may complete the work and Grantee shall reimburse County 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 County's use of the County's Property.

6. Personal Property. County 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 County'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 County

Property to be discharged or bonded off, pursuant to Chapter 255.05 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 County 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 County 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 County 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 the 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 County as Additional Insureds. Grantee shall also require that the Contractor include a Waiver of Subrogation against County.

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.

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 Easement.

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

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 County 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 Grantee's consent to be sued by a third party nor as Grantee's agreement to indemnify the Grantor or any third party for their negligent acts, omissions, wrongful acts, or misconduct.

10. No Dedication. The grant of 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 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. Non-Discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information be excluded from the benefits of, or be subjected to, any form of discrimination under any activity conducted pursuant to this Easement. Failure to meet this requirement shall be considered default of this Easement.

14. Palm Beach County Office of the Inspector General Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to

review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

15. Construction. The terms of this 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 Easement and the same shall remain in full force and effect.

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

17. 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), telecopied or faxed, 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 on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5 PM on a business day and on the next business day if transmitted after 5 PM or on a non-business day, 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:

County:

Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

With a copy to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone: 561-355-2225
Fax: 561-355-4398

Grantee:

Telephone: _____
Fax: _____

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.

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

19 Governing Law & Venue. This 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 Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

20. Prohibition Against Assignment. This Easement may not be assigned by Grantee.

21. No Third Party Beneficiary. No provision of this 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 Easement, including but not limited to any citizens of County or Grantee or employees of County or Grantee.

22. Effective Date of Easement. This Easement is expressly contingent upon the approval of the Director of Facilities Development & Operations and shall become effective only when signed by all parties.

23. Reservation of Rights. County 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.

24. 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 County'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.

25. 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 County, 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.

26. 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 County in at least the same condition the Easement Premises were in at the start of each period of use.

27. Subcontracting. The Grantee may not subcontract or assign any rights, responsibilities or obligations of this Easement

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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:**

Signature

Print name of witness

Signature

Print name of witness

Grantee:

CITY OF LAKE WORTH BEACH, a Florida
municipal corporation

By: _____
Betty Resch, Mayor

Approved as to form and legal sufficiency:

City Attorney

Print Name of City Attorney

(SEAL)

ATTEST:

Melissa Ann Coyne, CMC, 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 _____, 20____, by Betty Resch, the Mayor, of City of Lake Worth Beach, 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

Type, print or stamp name

Commission Number: _____

My Commission Expires: _____

ATTEST:

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

By: _____
Deputy Clerk

**APPROVED AS TO
LEGAL SUFFICIENCY**

By: _____
Assistant County Attorney

**APPROVED AS TO
CONTRACT REVIEW**

By: _____
OFMB/CDC

COUNTY:

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

By: _____
Director, Facilities Development & Operations

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
Department Director

G:\PREM\Dev\Open Projects\PR-John Prince Park\Easement-TCE for Lake Worth Beach 9.1.22 HJF approved.docx

EXHIBIT "A"

COUNTY'S PROPERTY

Being a parcel of land lying in part of Government Lot 2, as shown on plat of subdivision of Government Lots 2 and 3, and part of Lot 1, Section 29, Township 44 South, Range 43 East as recorded in Plat Book 6, Page 58 of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Commencing at the Southwest Corner of the Northwest Quarter (N-W 1/4) of said Section 29;
thence South 87° 27' 28" East (Assumed bearing) along the South Line of said Northwest-Quarter (N.W. 1/4), a distance of 2529.00 feet;
thence North 01° 47' 40" East, a distance of 610.59 feet to the POINT OF BEGINNING of this description, said point being on the East Right-of-Way Line of Lake Worth Drainage District Lateral Canal No. 13;
thence continue North 01° 47' 40" East along said East Right-of-Way Line, a distance of 546.67 feet;
thence South 88° 12' 20" East, a distance of 111.98 feet;
thence South 58° 19' 56" East, a distance of 94.95 feet;
thence South 58° 07' 41" East, a distance of 57.12 feet to the beginning of a curve concave to the Southwest, having a radius of 1029.02 feet and a central angle of 15° 35' 34";
thence Southeasterly along the arc of said curve, a distance of 280.04 feet;
thence South 42° 32' 07" East along the tangent of said curve, a distance of 335.86 feet;
thence South 41° 39' 09" East, a distance of 161.60 feet;
thence South 00° 37' 00" West, a distance of 33.63 feet;
thence South 42° 53' 09" West, a distance of 411.34 feet to the beginning of a curve concave to the North having a radius of 50.00 feet and a central angle of 89° 47' 37";
thence Southwesterly and Northwesterly along the arc of said curve, a distance of 78.36 feet;
thence North 47° 19' 14" West along the tangent of said curve, a distance of 621.50 feet to the POINT OF BEGINNING.

EXHIBIT "B"

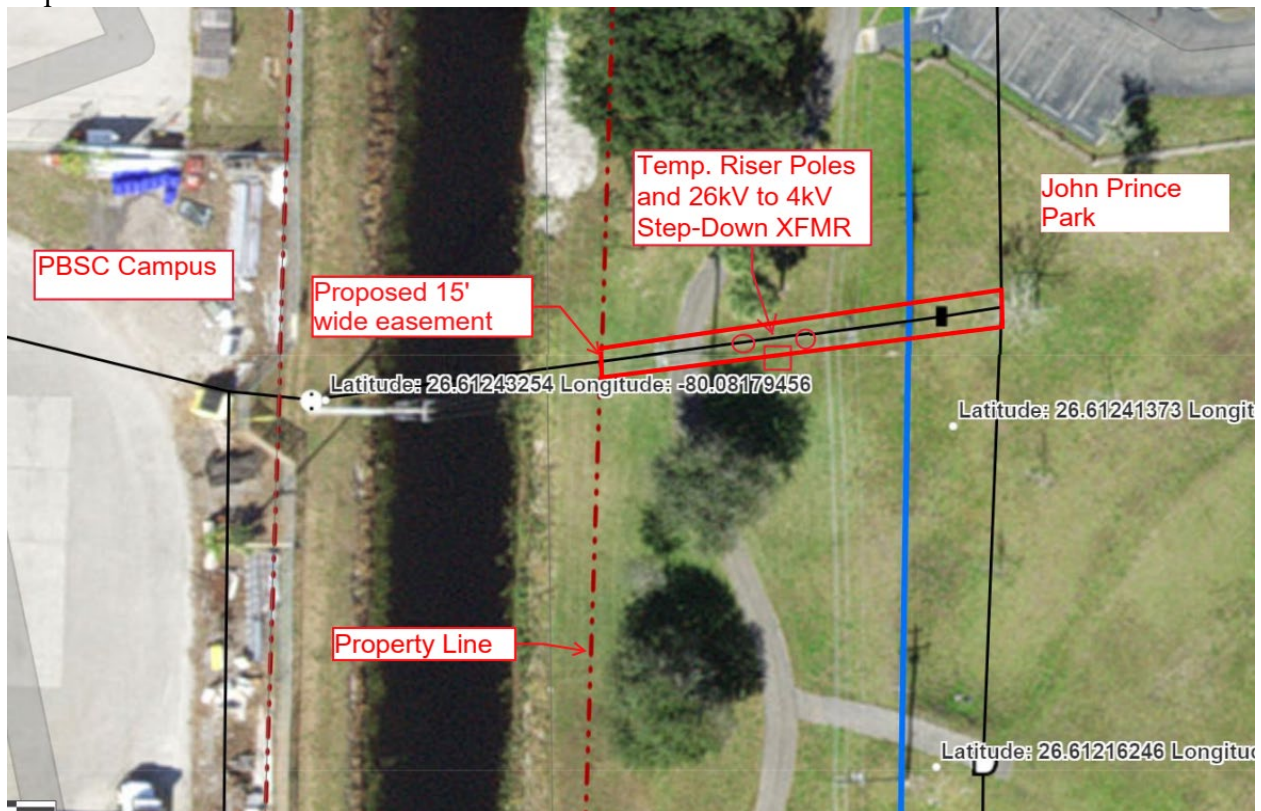
EASEMENT PREMISES

A 15' wide easement as depicted below, being a portion of the following described property:

Being a parcel of land lying in part of Government Lot 2, as shown on plat of subdivision of Government Lots 2 and 3, and part of Lot 1, Section 29, Township 44 South, Range 43 East as recorded in Plat Book 6, Page 58 of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Commencing at the Southwest Corner of the Northwest Quarter (N-W 1/4) of said Section 29;
thence South $87^{\circ} 27' 28''$ East (Assumed bearing) along the South Line of said Northwest-Quarter (N.W. 1/4), a distance of 2529.00 feet;
thence North $01^{\circ} 47' 40''$ East, a distance of 610.39 feet to the POINT OF BEGINNING of this description, said point being on the East Right-of-Way Line of Lake Worth Drainage District Lateral Canal No. 13;
thence continue North $01^{\circ} 47' 40''$ East along said East Right-of-Way Line, a distance of 546.67 feet;
thence South $88^{\circ} 12' 20''$ East, a distance of 111.98 feet;
thence South $58^{\circ} 19' 56''$ East, a distance of 94.95 feet;
thence South $58^{\circ} 07' 41''$ East, a distance of 57.12 feet to the beginning of a curve concave to the Southwest, having a radius of 1029.02 feet and a central angle of $15^{\circ} 35' 34''$;
thence Southeasterly along the arc of said curve, a distance of 280.04 feet;
thence South $42^{\circ} 32' 07''$ East along the tangent of said curve, a distance of 335.86 feet;
thence South $41^{\circ} 39' 09''$ East, a distance of 161.60 feet;
thence South $00^{\circ} 37' 00''$ West, a distance of 22.63 feet;
thence South $42^{\circ} 31' 09''$ West, a distance of 411.34 feet to the beginning of a curve concave to the North having a radius of 50.00 feet and a central angle of $89^{\circ} 47' 37''$;
thence Southwesterly and Northwesterly along the arc of said curve, a distance of 78.36 feet;
thence North $47^{\circ} 19' 14''$ West along the tangent of said curve, a distance of 621.50 feet to the POINT OF BEGINNING.

Depiction of Easement Area 1 of 2



Continued on second page

Depiction of Easement Area 2 of 2

