

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 4, 2018

Consent [X] Regular []
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Utility Easement (Easement) granted by the Palm Beach County Housing Authority (PBCHA), to Palm Beach County (County) on property located at 1745 Drexel Road.

Summary: Lift station 393 is located within Drexel Road Right-of-Way, on the east side of pavement, just south of Lake Worth Drainage District L-1 Canal (Canal). Relocation of the lift station is necessary due to its proximity to the Canal, susceptibility of being hit by oncoming traffic and overall ability to secure the site. The Water Utilities Department (WUD) is planning to relocate this lift station to a 30-feet by 40-feet easement located within PBCHA property, just west of its current location (Project). Pursuant to the terms of the Utility Easement Agreement, PBCHA is willing to grant this easement providing that WUD reimburse the cost of their attorney's legal review fees in the amount of \$2,785.50. The legal description of the easement parcel and invoice for legal fees are attached to the Utility Easement Agreement. (WUD Project No. 17-064) District 1 (MJ)

Background and Justification: Lift Station 393 collects wastewater from the sewer system and then pumps it into force mains for transmission to the East Central Regional Water Reclamation Facility. This Project will restore the life of the lift station, thus improve the long-term operability and reliability of WUD's wastewater system. PBCHA is granting this easement to the County to allow for access, operation, repair, replacement and maintenance activities.

Attachments:

1. Location Map
2. Three (3) Utility Easement Agreements

Recommended By: Jim Stille 10-29-18
Department Director Date

Approved By: Lee J. Ghera 11/26/18
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	\$2,786	0	0	0	0
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	\$2,786	0	0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0
Budget Account No.:	Fund 4011	Dept 721	Unit W031	Object 6546	

Is Item Included in Current Budget? Yes X No

Does this item include the use of federal funds? Yes No X

Reporting Category N/A

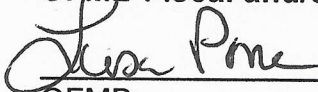
B. Recommended Sources of Funds/Summary of Fiscal Impact:

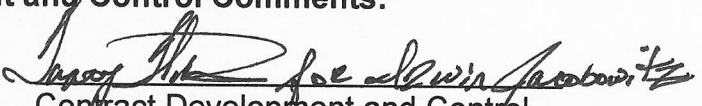
One (1) time expenditure from user fees, connection fees and balance brought forward.

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 11/5/18
 OFMB

 11/15/18
 Contract Development and Control

B. Legal Sufficiency:

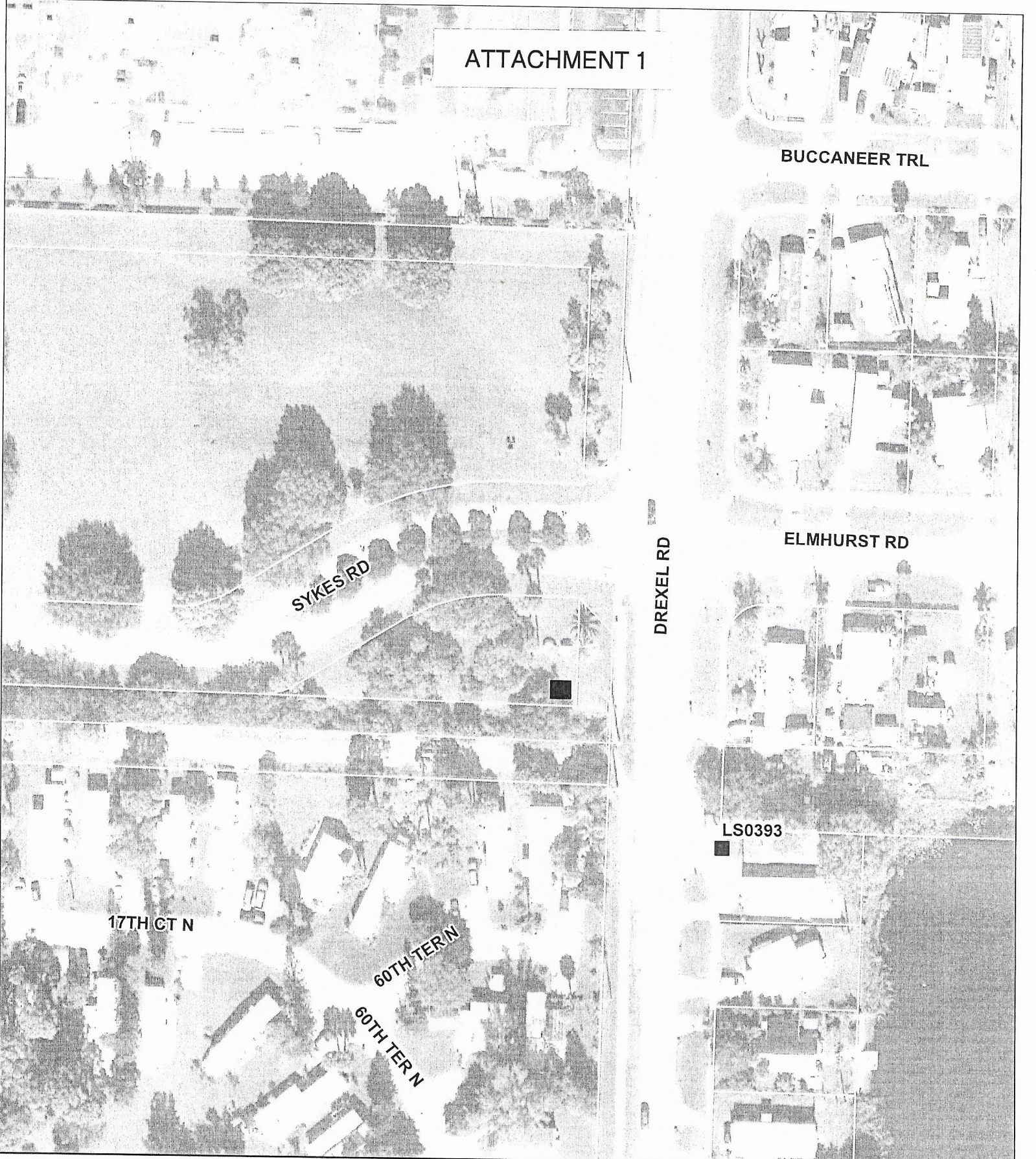
 11/19/18
 Assistant County Attorney



C. Other Department Review:

Department Director

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

ATTACHMENT 1



 <p>Palm Beach County Water Utilities Department 8100 Forest Hill Blvd. West Palm Beach, FL 33416 (561) 493-6251</p>	<p>Improvements to Lift Station 393</p> <p>Easement Acquisition</p> <p>WUD Project No. 17-064</p> <p>Location Map</p>	<p>N</p>  <p>1 in = 90 ft</p>	<p>Legend</p> <p>■ Existing Lift Station</p> <p>■ Proposed Location</p> <p>Parcels</p>
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Return to: Kerry Williams
Palm Beach County Water Utilities Department
P.O. Box 16097, Attn: Engineering
West Palm Beach, Florida 33416

PCN#: 00424327230010000

Site Address: 1745 Drexel Road, West Palm Beach, FL 33417

Project No. 17-064; Improvements to Lift Station 393, 1023, 5133, and the Abidjan Estates Lift Station

UTILITY EASEMENT

THIS UTILITY EASEMENT, entered into this ____ day of _____, 2018, by and between the Palm Beach County Housing Authority, a special District of the State of Florida, whose address is 3432 45th Street, West Palm Beach, Florida 33407 (hereinafter referred to as "Grantor"), and Palm Beach County, a political subdivision of the State of Florida, whose address is c/o Palm Beach County Water Utilities Department, P.O. Box 16097, West Palm Beach, FL 33416-6097 (hereinafter referred to as "County").

WITNESSETH

WHEREAS, the Grantor is the owner of certain real property located in Palm Beach County, Florida, (the "Property"); and

WHEREAS, the County has determined that a utility easement over a portion of the Property is required for County Water Utilities Department purposes (hereinafter the "Utility Easement"); and

WHEREAS, Grantor has agreed to grant the County the necessary Utility Easement in exchange for the sum of \$2,785.50, which represents the Grantor's legal costs in relation to this conveyance of this Utility Easement.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Grantor and the County agree as follows:

1. Recitals

The recitals set forth above are true and correct and form a part of this Utility Easement.

2. Grant of Utility Easements/Payment

A. Grantor hereby acknowledges, represents and warrants to the County that Grantor is lawfully seized and in possession of the Property and has good and lawful right to grant this Utility Easement free and clear of mortgages and other encumbrances. The Utility Easement covers that portion of the Property set forth in the sketch and legal description attached hereto as **Exhibit "A"**, hereinafter referred to as the "Easement Area".

B. That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the County and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, remise, release, convey and confirm unto the County, its successors and assigns, a non-exclusive Utility Easement over, under and upon the Easement Area, with all rights and authority of ingress and egress in, on, over, upon, under and across the Easement Area at all times, to install, construct, reconstruct, operate, maintain, service, repair, replace, improve, relocate, expand, tie into, inspect, and remove pipes and mains constituting the pump station, and all other equipment and appurtenances as may be necessary or convenient for the operation of the wastewater distribution system.

C. County agrees that it will be solely responsible for the maintenance and operation of any and all wastewater distribution structures or facilities it installs in the Easement Area. County further agrees to keep the Easement Area free of excessive vegetation by mowing the grass and preventing the growth of shrubs, trees, or exotic vegetation on a regular basis.

D. County shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with use and occupancy of residential or commercial improvements constructed upon the adjacent property owned by the Grantor.

E. The Grantor has incurred legal fees in the amount of \$ 2,785.50 in relation to the conveyance of this Utility Easement. An invoice detailing said legal fees is attached hereto and incorporated herein as **Exhibit "B."** County agrees to pay said legal fees in exchange for Grantor's conveyance of the Utility Easement. Payment shall be made in accordance with Section 2.F below.

F. County will pay Grantor \$ 2,785.50 within thirty (30) days of the Effective Date of this Utility Easement. This Utility Easement shall not be effective until said payment is made by the County.

G. County shall be responsible for all costs and fees associated with the recording of the Utility Easement.

3. Term

This Utility Easement shall be effective upon the date this Utility Easement is signed by both Parties through the date the County ceases operation of the pump

station on the Property. Upon termination, the County shall promptly remove any and all improvements it has installed over, under and upon the Easement Area.

4. Limitation of Easement

This Utility Easement is given by Grantor to the County solely for utility purposes and for no other purpose.

5. Reservation of Use by Grantor

This Utility Easement is non-exclusive and the Grantor reserves to Grantor, Grantor's successors and assigns, the right to utilize the Easement Area for any purpose which does not interfere with the use of the Easement Area by the County for the purposes set forth herein. Each party shall use the rights granted and reserved by this Utility Easement with due regard to the rights of the other party to use and enjoy the Easement Area.

6. Hold Harmless

The County shall indemnify, save, and hold harmless the Grantor, its agents, and its employees from any liability, claim, demand, suit, loss, cost, expense or damage which may be asserted, claimed, or recovered against or from the Grantor, its agents, or its employees, by reason of any property damages or personal injury, including death, sustained by any person whomsoever, which damage is incidental to, occurs as a result of, arises out of, or is otherwise related to the negligent or wrongful conduct or the faulty equipment (including equipment installation and removal) of the County during the use of the Easement Area. This paragraph shall not be construed to require the County to indemnify the Grantor for its own negligence, or intentional acts of the Grantor, its agents or employees. The foregoing is not intended, and shall not be construed, as a waiver of either party of the benefits of Section 768.28, Florida Statutes, nor as a waiver of any defense the County may have under such statute, nor as consent to be sued by third parties.

7. Applicable Law

Any litigation arising from or relating to this Utility Easement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.

8. Severability

In the event that any section, paragraph, sentence, clause, or provision of this Utility Easement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Utility Easement and the same shall remain in full force and effect.

9. Enforcement Costs

Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Utility Easement shall be borne by the respective parties.

10. Entirety of Utility Easement

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

11. Successors in Interest

This Utility Easement shall be binding upon and shall inure to the benefit of the County and Grantor and their assigns and successors by merger, consolidation, conveyance or otherwise.

12. Counterparts

This Utility Easement may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one (1) and the same instrument.

13. Modification of Utility Easement

No additions, alterations, or variations from the terms of this Utility Easement shall be valid, nor can the provisions of this Utility Easement be waived by either party, unless such addition, alteration, variation or waiver is expressed in writing and signed by the parties hereto.

14. Captions

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

15. Survival

The parties' warranties, agreements, covenants and representations set forth herein shall not be merged and shall survive consummation of the transaction contemplated by this Utility Easement.

16. Incorporation by References

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Utility Easement by Reference.

17. Time of Essence

Time is of the essence with respect to the performance of each and every provision of this Utility Easement where a time is specified for performance.

18. Default

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

19. Assignment

Neither the County nor Grantor may assign this Utility Easement or any interest herein without the prior written consent of the other party, which may be granted or withheld at the other party's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment by operation of law, legal process, bankruptcy, receivership or otherwise, whether voluntary or involuntary.

20. No Third Party Beneficiary

No provision of this Utility 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 Utility Easement, including but not limited to any citizen or employees of the County or Grantor.

21. Palm Beach County Office of the Inspector General

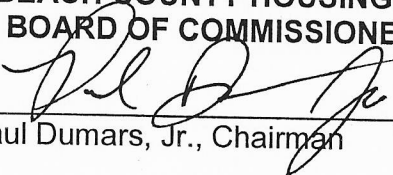
Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed Palm Beach County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with Palm Beach 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 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Utility Easement on the day and year first above written.

PROPERTY OWNER:

**PALM BEACH COUNTY HOUSING AUTHORITY,
BY ITS BOARD OF COMMISSIONERS**

By: 
Paul Dumars, Jr., Chairman

PALM BEACH COUNTY HOUSING AUTHORITY

By: 
Larry Greenberg, Chief Operating Officer

ACCEPTED BY:

**PALM BEACH COUNTY, FLORIDA:
ATTEST:**

**SHARON R. BOCK, CLERK AND
COMPTROLLER**

By: _____
Deputy Clerk

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

By: _____
County Attorney

**PALM BEACH COUNTY, BY ITS
BOARD
OF COUNTY COMMISSIONERS**

By: _____
Melissa McKinlay, Mayor

**APPROVED AS TO TERMS AND
CONDITIONS**

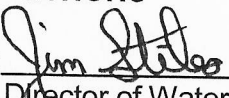
By: 
Director of Water Utilities

EXHIBIT "A" SKETCH/LEGAL DESCRIPTION OF EASEMENT AREA

P:\Private_Clients\Baxter & Woodman, Consulting Engineers\18-1987-LS393-EASEMENT\18-1987-LS393-EASEMENT.dwg, 6/5/2018 3:27:56 PM, selwir, li

LOCATION MAP

SCALE: N.T.S.

PROJECT
LOCATION

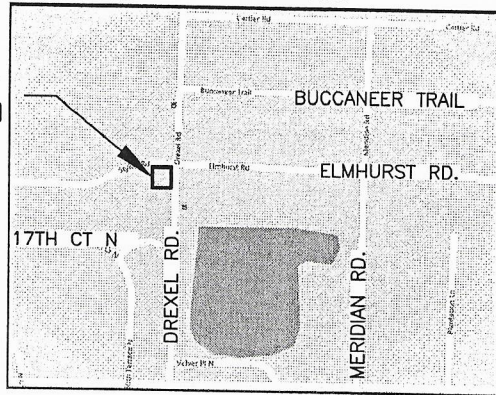


EXHIBIT "A"

BEING A PORTION OF THE DONALD C. WALKER COMMUNITY, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 53, PAGE 18, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID PLAT;

THENCE NORTH 01°52'53" EAST ALONG THE EAST LINE OF SAID PLAT, ALSO BEING THE WEST RIGHT OF WAY LINE OF DREXEL ROAD (80 FOOT RIGHT OF WAY), A DISTANCE OF 45.01 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 88°07'07" WEST, A DISTANCE OF 5.00 FEET;

THENCE SOUTH 01°52'53" WEST, A DISTANCE OF 10.00 FEET;

THENCE NORTH 88°07'07" WEST, A DISTANCE OF 30.00 FEET;

THENCE NORTH 01°52'53" EAST, A DISTANCE OF 40.00 FEET;

THENCE SOUTH 88°07'07" EAST, A DISTANCE OF 30.00 FEET;

THENCE SOUTH 01°52'53" WEST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 88°07'07" EAST, A DISTANCE OF 5.00 FEET TO A POINT ON SAID WEST RIGHT OF WAY LINE OF DREXEL ROAD AND EAST LINE OF SAID PLAT;

THENCE SOUTH 01°52'53" WEST ALONG SAID LINE, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA CONTAINING 1,300 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES:

1. REPRODUCTIONS OF THIS DOCUMENT ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED FLORIDA PROFESSIONAL SURVEYOR AND MAPPER.
2. BEARINGS SHOWN HEREON ARE RELATIVE TO THE EAST LINE OF THE DONALD C. WALKER COMMUNITY, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 53, PAGE 18, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. (SHOWN TO BEAR S01°52'53"W)
3. NO SEARCH OF THE PUBLIC RECORDS WAS PERFORMED BY THIS FIRM IN THE MAKING OF THIS DESCRIPTION. THERE MAY EXIST EASEMENTS, RESTRICTIONS, RIGHTS OF WAY, ETC., WHICH APPEAR IN THE PUBLIC RECORDS, OR THAT ARE BASED ON UNDOCUMENTED AND/OR UNRECORDED AGREEMENTS, WHICH AFFECT THIS SURVEY.

THIS IS NOT A SURVEY

PREPARED FOR:

PALM BEACH COUNTY

CRAIG A. SMITH & ASSOCIATES

7777 GLADES ROAD, SUITE 410
BOCA RATON, FLORIDA 33434
(561)791-9280
CERT. NO. LB0003110



SKETCH_&_DESCRIPTION

SEE

02/28/17

N/A

RDK

REVISION

DWN

DATE

FB/PG

CKD

LIFT STATION EASEMENT

LIFT STATION 393

PALM BEACH COUNTY, FLORIDA

PROJECT NUMBER: 18-1987

FILE NAME: 18-1987-LS393-EASEM.dwg

SHEET 2 OF 2

SKETCH_&_DESCRIPTION	SEE	06/05/18	N/A	RDK
REVISION	DWN	DATE	FB/PG	CKD
<p style="text-align: center;"> LIFT STATION EASEMENT LIFT STATION 393 PALM BEACH COUNTY, FLORIDA PROJECT NUMBER: 18-1987 </p>				
FILE NAME: 18-1987-LS393-EASEM.dwg		SHEET 2 OF 2		

EXHIBIT B
INVOICE FOR LEGAL FEES

01014421-6

**LLW****LEWIS
LONGMAN
WALKER**

515 North Flagler Drive, Suite 1500
West Palm Beach, FL 33401
Tel 561-640-0820
Fax 561-640-8202
Tax ID No. 65-0500793

Palm Beach County Housing Authority
c/o Larry Greenberg
3432 West 45th Street
West Palm Beach, FL 33407

August 27, 2018
Invoice No. TWD-126392

CLIENT: 5386 - Palm Beach County Housing Authority
Re: 002 Palm Beach County Water Utilities Department pump station

Date		Services	Hours	Amount
06/11/18	TCM	Telephone call and voice mail to C. Pettit regarding Palm Beach County Water Utilities Department request to place a pump station on Palm Beach County Housing Authority Property.	0.40	108.00
06/14/18	TCM	Review voice mail from C. Pettit returning telephone call regarding Palm Beach County Housing Authority site.	0.10	27.00
07/24/18	TWD	Work session with T. Morgan regarding draft easement for pump station and proposed revision to same; follow up.	0.50	157.50
07/26/18	TCM	Email to L. Greenberg with suggested edits to draft Easement Agreement; review email from L. Greenberg requesting telephone conference to discuss edits to draft Easement.	0.30	81.00
07/27/18	TCM	Conference with T. Duhy regarding L. Greenberg's email regarding Easement Agreement; respond to email from L. Greenberg regarding telephone conference to discuss changes to Easement Agreement; review emails from L. Greenberg and V. Taylor regarding same.	0.60	162.00
07/30/18	TCM	Review and respond to emails from A. McBarnette and C. Pettit regarding status of draft Easement Agreement.	0.20	54.00

Client Ref: 5386 - 002
Invoice No. TWD-126392

August 27, 2018
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Date		Services	Hours	Amount
08/01/18	TCM	Email to A. McBarnette and C. Pettit attaching the Palm Beach County Housing Authority's edits to the draft easement agreement with Palm Beach County Water Utilities; review email from C. Pettit advising that edits will need legal approval before the agreement is finalized.	0.20	54.00
08/07/18	TCM	Review email from A. McBarnette attaching revised easement agreement; review Palm Beach County Water Utility edits to the agreement; email to T. Duhy regarding the same.	0.70	189.00
08/09/18	TCM	Email to L. Greenberg and P. Dumars forwarding Palm Beach County Water Utilities' edits to the Utility Easement; review and respond to email from A. McBarnette following-up on status of draft easement agreement.	0.30	81.00
08/13/18	TCM	Review and respond to email from A. McBarnette regarding status of draft Utility Easement; email to L. Greenberg and P. Dumars regarding the same.	0.20	54.00
08/14/18	TWD	Telephone conference with P. Dumars and L. Greenberg regarding easement revisions; follow up with T. Morgan regarding same.	0.60	189.00
08/14/18	TCM	Telephone conference with L. Greenberg and P. Dumars regarding proposed edits to draft utility easement; research regarding Palm Beach County setback requirements from a drainage easement.	1.60	432.00
08/15/18	TCM	Edit draft Utility Easement Agreement in keeping with client's request regarding termination and assignment language; email to T. Duhy regarding the same; review and respond to email from A. McBarnette regarding status of the draft Utility Easement.	1.00	270.00
08/16/18	TWD	Receive and review revised easement; follow up with T. Morgan regarding same; telephone conference with C. Petit.	0.60	189.00

Client Ref: 5386 - 002
Invoice No. TWD-126392

August 27, 2018
Page 3

Date		Services	Hours	Amount
08/16/18	TCM	Review T. Duhy's comments to edits to draft Utility Easement; telephone call with T. Duhy regarding conversation with C. Petit regarding draft Utility Easement; edit draft Utility Easement to remove 30-year term language and revise term to cover the life of the pump station; email to L. Greenberg and P. Dumars regarding changes to draft utility easement per Palm Beach County Water Utilities' request.	0.90	243.00
08/17/18	TCM	Review and respond to email from A. McBarnette inquiring about status of the draft Utility Easement.	0.20	54.00
08/19/18	TWD	Correspond with T. Morgan regarding status.	0.20	63.00
08/20/18	TCM	Review and respond to email from A. McBarnette regarding status of draft Utility Easement; email to L. Greenberg and P. Dumars regarding approval of draft Utility Easement; review email from L. Greenberg approving suggested edits; email A. McBarnette Palm Beach County Housing Authority's edits to the same.	0.40	108.00
08/22/18	TCM	Review and respond to emails from A. McBarnette attaching draft easement agreement with additional revision to Section 6 and providing finalized version of Utility Easement Agreement; email to L. Greenberg and P. Dumars regarding execution of the same; confer with L. Burnaford regarding finalizing invoices for this matter to include as an attachment to draft Utility Easement Agreement.	0.70	189.00
08/23/18	TCM	Telephone conference with L. Greenberg regarding signing finalized Utility Easement Agreement.	0.30	81.00

Summary of Services

		Rate	Hours	Amount
TWD	Duhy, Tara W.	315.00	1.90	598.50
TCM	Morgan, Telsula C.	270.00	8.10	2,187.00
Total for Services			10.00	\$2,785.50

Client Ref: 5386 - 002
Invoice No. TWD-126392

August 27, 2018
Page 4

Total for Services and Expenses	<u>\$2,785.50</u>
Previous Balance	0.00
Payments Since Last Invoice	-0.00
Amount Due	<u>\$2,785.50</u>

Please return this page with remittance

to
Lewis, Longman & Walker, PA
515 North Flagler Drive, Suite 1500
West Palm Beach, FL 33401

Invoice No. TWD-126392
Invoice Date: August 27, 2018
Client Code: 5386
Client Name: Palm Beach County Housing Authority
Matter Code: 002
Matter Name: Palm Beach County Water Utilities Department pump station

Total for Services and Expenses	<u>\$2,785.50</u>
Previous Balance	0.00
Payments Since Last Invoice	-0.00
Amount Due	<u>\$2,785.50</u>

Amount enclosed: _____

Please make checks payable to: Lewis, Longman & Walker P.A.
Please contact our Billing Department at (561) 640-0820 if you wish to pay by credit card.