MEMORANDUM

DATE: January 16, 2019

TO: Joy Leggett-Murphy, Property Acquisition Division Manager, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney

FROM: Pamela J. D’Agostino, Assistant County Attorney

RE: Temporary Construction Easement Agreement between Manatee County and Mr. and Mrs. Lonborg; CAO Matter No. 2018-0640

Issue Presented:

In this Request for Legal Services (RLS), you have asked the County Attorney’s Office (CAO) to review a Temporary Construction Easement Agreement (TCEA) for legal sufficiency.

Brief Answer:

I have reviewed the TCEA. Attached are my recommended changes. Subject to the inclusion of my suggested changes, I have no objection from a legal standpoint to this TCEA being presented to the Board for consideration. Execution of this TCEA is a business decision that the Board of County Commissioners of Manatee County, Florida (Board) has the authority to make.

Recommendation:

Staff should revise the TCEA consistent with my advice below. When this TCEA is presented to the Board for consideration, the motion should include a request that the Board appoint and authorize the County Administrator and his or her designee to act as the County’s representative and to be responsible for administration of the TCEA and to perform and request all acts necessary for the administration and performance of the TCEA.
Facts:

The County needs to acquire a temporary construction easement from the owners of the property located at 508 67th Avenue Drive West in Bradenton in furtherance of a utilities project known as the 69th Avenue Water Main Loop from 63rd Avenue West to US 41 which involves replacement of aged failing pipe and fire hydrants. To satisfy various concerns of the owners, Property Acquisition staff has determined that a temporary construction easement agreement is the more appropriate instrument to accomplish the desired objectives of the parties. Of particular concern to the owners is the date of commencement and date of termination of the easement.

Discussion:

Staff has diligently attempted to resolve the outstanding matters with the owners and arrive at suitable language relative to the commencement and termination of this easement. Attached are my recommended changes.

Conclusion:

Subject to the inclusion of my recommended changes and staff proceeding consistent with my advice, above, I have no objection from a legal standpoint to this TCEA being presented to the Board for consideration. I express no opinion as to the business judgment of entering into this agreement.

This completes my response to your RLS. Please contact me if you have any questions or if I can be of further assistance.

Copies with attachment to:
Edwin Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Cheri Coryea, Deputy County Administrator
Charles Bishop, Director, Property Management Department
Mike Glenn, Real Property Specialist, Property Management Department
Sia Mollanazar, P.E., County Engineer, Public Works Department
Mike Sturm, Project Engineer II, Public Works Department
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (hereinafter the Agreement) made this ___ day of ____________, ____, (hereinafter the Effective Date) between JAN K. LONBORG, a married man and VICKIE D. LONBORG, his spouse, as owner of the following described property, whose mailing address is 508 67th Avenue Drive West, Bradenton, Florida 34207, (hereinafter the Grantor), and MANATEE COUNTY, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206, (hereinafter the Grantee).

As used herein, the term “Grantor” shall include any and all heirs, legal representatives, successors or assigns of the Grantor, and all subsequent owners of the “Easement Area” (as hereinafter defined) and the term “Grantee” shall include any successor or assignee of Grantee. Grantor and Grantee are sometimes collectively referred to herein as Parties and individually as Party.

WHEREAS, Grantor is the owner of certain real property located in Manatee County, Florida, more particularly described and depicted in Exhibit A attached hereto and incorporated herein by this reference (hereinafter the Easement Area) and;

WHEREAS, Grantee intends to undertake a watermain replacement and extension project, along 67th Avenue Drive West, Bradenton, Florida 34207 (hereinafter the Project) to replace and extend a twelve (12) inch watermain; and

WHEREAS, Grantor and Grantee agree that implementation of the project by the Grantee is in the best interests of both the Grantor, the Grantee, and the general public; and

WHEREAS, in furtherance of Grantor’s and Grantee’s mutual desire that the project be completed, Grantor is willing to convey certain temporary interests in the Easement Area to Grantee.

NOW, THEREFORE, WITNESSETH that Grantor, for and in consideration of the sum of ONE DOLLAR ($1.00) and other valuable consideration paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and transfer unto Grantee a nonexclusive temporary construction easement (hereinafter the Easement) across, in, over, under, and upon the Easement...
Area to facilitate Grantee’s construction of the Project.

This Easement shall be for the purpose of (1) replacing a twelve (12) inch watermain; (2) grading, clearing, and the watermain replacement and (3) for all other construction purposes reasonably related to the construction of the Project undertaken by the Grantee.

Grantor reserves the right to use the Easement Area in any manner that will not prevent or interfere with the rights granted to the Grantee herein provided that the Grantor does not obstruct, or permit others to obstruct, the Property at any time without first obtaining express written consent of the Grantee.

During the term of this easement, Grantee shall (1) be solely responsible for the performance of the work described herein, and the maintenance of the Easement Area, and (2) maintain its self-insured status such that it shall be financially capable of responding to any claims for personal injury or property damage.

As limited by and in accordance with the provisions of Section 768.28, Florida Statutes, Grantee shall indemnify and hold harmless Grantor from all claims, damages, costs and expenses (including attorney’s fees in the lower court and through appeal) associated with the exercise of the rights set forth herein by Grantee and Grantee’s employees, agents and contractors. Grantee shall also be obligated to remove and discharge any lien recorded against the property of Grantor arising from the exercise of the rights set forth herein by Grantee and Grantee’s employees, agents, and contractors.

Any work shall be performed without any cost or expense to Grantor. Grantee shall, prior to the termination of this Easement, remove any debris, equipment, and materials from the Easement Area and shall restore the Easement Area to the same or substantially the same condition as was

The easement granted herein shall take effect unless the Grantee delivers to the Grantor a letter or memorandum signed by the County Engineer certifying that the Project has reached the Easement Area. The easement granted herein shall commence on the same date which appears within the letter or memorandum and which corresponds with the date that the letter or memorandum is written. The easement shall terminate three hundred and sixty-five (365) calendar days thereafter.

The easement granted herein shall take effect when the Project arrives at the Easement Area and shall terminate one-year (365) calendar days thereafter. Arrival of the Project at the Easement Area shall be evidenced and established by a dated letter or memorandum issued by The County Engineer of Manatee County and delivered to Grantor, certifying that the Project has arrived at the Easement Area. The date on the letter or memorandum shall mark the beginning of the one-year period.

SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES
IN WITNESS WHEREOF, the Grantor and Grantee hereto have executed this Agreement on the day and year first above written.

Signed, sealed and delivered in the presence of two witnesses as required by law:

GRANTOR:
JAN K. LONBORG, a married man and VICKIE D. LONBORG, his spouse

Witness, As to Both

Signature

Printed Name

Printed Name

Witness, As to Both

Signature

Printed Name

Printed Name

STATE OF __________________________
COUNTY OF ________________________

The foregoing instrument was acknowledged before me this ______ day of ________, 20____, by JAN K. LONBORG, a married man and VICKIE D. LONBORG, his spouse, who (____) are both personally known to me or (____) have both produced ______________________ as identification.

Affix seal below:

Notary Public Signature

Printed Name

Commission Number

Expiration Date
GRANTEE:

MANATEE COUNTY, a political subdivision of the State of Florida

By: its Board of County Commissioners

By: ______________________________
   Chairperson

Date: ______________________________

ATTEST: ANGELINA COLONNESO
        CLERK OF THE CIRCUIT COURT AND
        COMPTROLLER

By: ______________________________
    Deputy Clerk