

RESOLUTION NO. 2020- 180

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A LICENSE TO USE AGREEMENT WITH JEA TO PROVIDE A LICENSE FOR THE INSTALLATION OF A NEW TRANSMISSION LINE ALONG A PORTION OF RACE TRACK ROAD; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE LICENSE TO USE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY (COUNTY).

RECITALS

WHEREAS, JEA has provided the County with an agreement that requests a license for the installation of a new transmission line along a portion of Race Track Road; and

WHEREAS, Section 125.42, Florida Statutes authorizes the County to grant licenses to any person or private corporation to construct, maintain, repair, operate and remove lines for the transmission of power under, on over, across or within the right-of-way limits of any county highway or public road or high way acquired by the county or public by purchase, gift, device, dedication or prescription; and

WHEREAS, Section 337.401, Florida Statutes, further authorizes the County to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining of structures, including electric transmission power lines, poles and related facilities, across, on or within the right-of-way limits of roads within its jurisdiction and control, which includes the Right-of-Way; and

WHEREAS, The County and JEA have agreed to certain items with respect to the Project; and

WHEREAS, the Project is in the best interest of the County for the health, safety and welfare of its citizens.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms and conditions of the License to Use Agreement and authorizes the County Administrator, or designee, to execute the Agreements in substantially the same form as attached on behalf of the County.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 19th day of May, 2020.

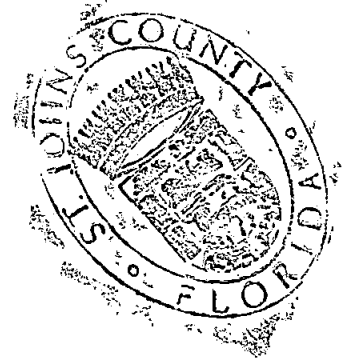
**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: [Signature]
Jeb S. Smith, Chair

ATTEST: Brandon Patty, Clerk

By: [Signature]
Deputy Clerk

Rendition Date: 5/21/20



Prepared by and return to:
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

LICENSE TO USE / HOLD HARMLESS AGREEMENT

This LICENSE TO USE / HOLD HARMLESS AGREEMENT ("Agreement") is made this ___ day of _____, 2020, between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084 (the "County"), and **JEA**, a body politic and corporate with offices at 21 West Church Street, Jacksonville, Florida 32202 ("JEA").

RECITALS:

A. JEA wishes to install, operate and maintain electric transmission power lines, poles and related facilities (the "Facilities") within approximately 3.52 miles of the right-of-way of Race Track Road (the "Right-of-Way"), a County-owned right-of-way and part of the County Road System, in accordance with certain construction plans further described below (the "Project").

B. Section 125.42, Florida Statutes, authorizes the County to grant licenses to any person or private corporation to construct, maintain, repair, operate and remove lines for the transmission of power under, on, over, across or within the right-of-way limits of any county highway or public road or highway acquired by the county or public by purchase, gift, devise, dedication or prescription.

C. Section 337.401, Florida Statutes, further authorizes the County to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining of structures, including electric transmission power lines, poles and related facilities, across, on or within the right-of-way limits of roads within its jurisdiction and control, which includes the Right-of-Way.

D. The County and JEA have agreed to certain items with respect to the Project as set forth herein.

NOW, THEREFORE, in consideration of the above, and based on the covenants contained herein, and ten dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the parties, as follows:

1. The above recitals are true and correct and are hereby incorporated into the body of this Agreement.

2. The County hereby grants to JEA and its contractors, agents, successors and assigns, a license to use the Right-of-Way, for the purpose of installation, operation and maintenance of the Facilities within the Right-of-Way subject to the terms and conditions set forth in this Agreement. JEA and the County expressly acknowledge and agree that this permission is to be considered a license for permissive use only and that nothing in this Agreement, nor the installation, operation or maintenance of the Facilities in the Right-of-Way, shall operate to create or vest any right, title or interest in the Right-of-Way. Further, although JEA may enter and use the Right-of-Way for the purpose set forth in this Agreement, JEA shall not be in possession of the Right-of-Way. The County shall possess and otherwise control all aspects of use of the Right-of-Way.

3. The County agrees to issue to JEA a right-of-way permit for the Facilities in substantially the same form and format as attached hereto as Exhibit A (the "Right-of-Way Permit"). The installation, operation, and maintenance of the Facilities shall be subject to, and in accordance with, the terms and conditions of the Right-of-Way Permit and with those certain construction plans for the Project on file with the County, further described as "Construction Drawings for Phase 2 of the Circuit 909 Greenland Energy Center to Bartram Substation Addition," Project No. 8004064, Drawing No. TR1352, bearing approval date 01/31/20, and "Phase II of the Circuit Greenland Energy Center to Bartram Substation Addition," Project No. 118014.01, Drawing Set TR 1352 PH2-CIV, revision date 3/16/20, and incorporated herein by reference. JEA acknowledges and agrees that any material modifications to such plans must be submitted to the County for review and approval prior to installation, which may require amendment or revision to the Right-of-Way Permit. County's approval of plan modifications shall not be unreasonably withheld, conditioned, or delayed.

4. All costs of the Project and the installation, operation and maintenance of the Facilities shall be paid by JEA.

5. Excluding temporary lane closures in connection with the installation of the Facilities (such closures to be coordinated with the County in accordance with customary practice) or obstructions caused by an event of force majeure, JEA and its agents shall not create any obstruction or conditions of the Right-of-Way or other public property which are or may become dangerous to the public, the County or its agents or employees.

6. JEA shall promptly repair any damage or injury to any County property by reason of the Project or the exercise of the privileges granted herein, including but not limited to repair of the road or highway, restoring such to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

7. Subject to the provisions and limitations of Section 768.28, Florida Statutes, JEA shall be liable for any personal injury or damage to real or personal property that may result from the Project or JEA's use of the Right-of-Way and shall defend, hold harmless, and indemnify the County and its officers, agents, and employees for and from the payment of any compensation,

damages, claims, liability, costs, or fees resulting from the exercise by JEA, its contractors, agents, employees, successors and assigns of the privileges granted herein. This provision shall survive the termination of this Agreement.

8. JEA and the County acknowledge and agree that the Facilities may have to be removed from, or relocated within, the Right-of-Way in the future, if they are found by the County in its sole but reasonable determination to be unreasonably interfering in any way with the convenient, safe or continuous use, or the maintenance, improvement, extension, expansion, widening, repair or reconstruction, of the road or highway. JEA hereby expressly acknowledges and agrees that it shall remove or relocate the Facilities upon the County's request and at JEA's sole cost and expense. JEA and the County agree that, in the event the Facilities, or any part thereof, are to be relocated, such facilities may be moved to another location within the Right-of-Way approved in advance by the County, including right-of-way subsequently acquired by the County or dedicated to the public, and that any such relocated facilities shall be included in this Agreement and subject to its terms and conditions. JEA acknowledges that relocation of the Facilities may require application to the County for a new or revised right-of-way permit.

9. JEA shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders, ordinances, permits, authorizations, approvals or other requirements in connection with the installation, operation and maintenance of the Facilities and the Project.

10. This Agreement is not intended to confer any right or interest not specifically stated herein. Nothing in this Agreement shall in any way restrict, limit or waive any right or obligation set forth in section 125.42, Florida Statutes, sections 337.401-.404, Florida Statutes, the St. Johns County Land Development Code, Ordinance No. 99-51, as amended, or any other applicable law, rule, regulation, statute, code, order, ordinance, permit, authorization, approval or other requirement.

11. Nothing in this Agreement is intended to, nor shall be construed, to operate as a waiver on the part of the County or JEA of the limitations of liability set forth in section 768.28, Florida Statute, or of JEA's or the County's sovereign immunity.

12. The failure of either party to insist upon the strict performance or compliance with any provisions of this Agreement shall not constitute a waiver or relinquishment of such provision on any subsequent occasion, and all such provisions shall remain in effect unless waived or relinquished in writing.

13. This Agreement may be assigned, in whole or in part, by either party only upon the written consent of the other, which consent shall not be unreasonably withheld.

14. This Agreement and the license granted herein shall run with the land and shall be binding on and shall inure to the benefit of the parties, their successors and assigns in perpetuity,

subject to termination and revocation by the County in the event the Right-of-Way is closed, abandoned, vacated, discontinued or reconstructed or in the event JEA or its contractors, agents, successors and assigns shall fail to correct any violation of the provisions hereof within a reasonable time after reasonable notice.

15. JEA and the County each agree to execute and deliver to the other party such further documents or instruments as may be reasonable and necessary in the furtherance or performance of the terms, conditions, and covenants of this Agreement.

16. This Agreement shall be recorded in the Official Records of St. Johns County, Florida.

17. This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

18. The County and JEA acknowledge that this Agreement and the exhibits hereto constitute the complete understanding of both parties with respect to the subject matters set forth herein. The County and JEA acknowledge that any amendments to this Agreement shall be in writing, and shall be executed by duly authorized representatives of the County and JEA.

19. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument even though both parties may not have executed the same counterpart. Facsimile or PDF copies of this Agreement executed by a party shall operate as and may be relied upon as an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida

Witness: _____
(Name Printed or Typed)

By: _____
Jeb S. Smith, Chair

Witness: _____
(Name Printed or Typed)

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2020, Jeb S. Smith, as Chair of the Board of County Commissioners of St. Johns County, Florida, on behalf of St. Johns County, who is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires: _____

JEA, a body politic and corporate

Witness: _____
(Name Printed or Typed)

By: _____
Name: _____
Title: _____

Witness: _____
(Name Printed or Typed)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this ____ day of _____, 2020, by
_____, as _____ of JEA, on behalf of
JEA, who is personally known to me or has produced _____ as
identification.

Notary Public
My Commission Expires: _____

EXHIBIT A

[attach Right-of-Way Permit]

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

Zone: 4

Activated: _____

RIGHT-OF-WAY USE PERMIT APPLICATION

Phone: (904) 209-0134 Fax: (904) 209-0135

PERMIT NUMBER: **2019-0985**

For construction within County road rights-of-ways requiring this permit in accordance with the provisions of the St. Johns County Land Development Code, Standards & Detail Manual, and the St. Johns County Water & Wastewater Design Standards & Specifications Resolution No. 92-189, with revisions.

1. Applicant's Name Jordan Pope - Director, Economic Development & Re Contact Name (Print Only) Francis Joseph Dobleo
Mailing Address Estate Email fdobleo@prosserinc.com
21 W Church St.
CC6
Telephone (904) 665-7016
Project Number (Utility Use Only) Installation of 4mi of JEA transm Contractor License Number: _____

2. Proposed construction (Check the appropriate box and provide the required information).
 A. Commercial Driveway Check One: Permanent _____ Temporary _____ Paver Construction _____
911 address connecting to county road: _____ **2 Full Business Days**
 B. Utilities Type PH2 Circuit 909 Greenland Energy Ctr to Bartram Substation Addition **Before You Dig Call**
SUNSHINE STATE ONE CALL
Location 15474 Bartram Creek Blvd. Saint Johns. 32259 **811**
 C. Other Describe _____
Location _____ **IT'S THE LAW IN FLORIDA**

3. I HEARLY CERTIFY THAT I HAVE MADE APPLICATION FOR THE PERMIT DESCRIBED ABOVE, THAT I HAVE PROPER AUTHORITY TO APPLY FOR SUCH PERMIT AND WILL ABIDE WITH ALL OF THE CONDITIONS ATTACHED TO THE PERMIT, INCLUDING THE STATED SPECIAL AND GENERAL CONDITIONS ATTACHED HERETO.

Date: _____ Signature of Applicant:(Required) fdobleo@prosserinc.com

FOR ST. JOHNS COUNTY OFFICE USE ONLY
Permission for the above-described construction is granted subject to these additional requirements:
CALL 904-209-0126 for FINAL INSPECTION after completion of all work. (Refer to Note 9)

EFFECTIVE DATE OF PERMIT: _____ EXPIRATION DATE OF PERMIT: 12/04/2019
EXTENSION DATE OF PERMIT: _____

Final Inspection: _____
Permit Fee: \$ 2,444.00 Extension Fee: \$ _____
 Paid by Check # _____

RIGHT OF WAY PERMITS
 APPROVED APPROVED AS NOTED
 ADDITIONAL INFO NEEDED REJECTED

Rick M...
ENGINEERING DIVISION
Signature/Date

SPECIAL CONDITIONS:

1. Call Sunshine 48 hours before you dig at 1-800-432-4770. It's the Law in Florida
2. Approval of this permit does not exclude the applicant from obtaining other approvals or exclude requirements based on PUD's, DRI's, Building Department, NPDES, etc. Note 14 of the attached "General Conditions" becomes an integral part of this permit when signed by the applicant.
2. _____

GENERAL CONDITIONS

1. All authorized work shall be completed in accordance with this approved application, the provisions of the St. Johns County Land Development Code and St. Johns County Water & Wastewater Design Standards & Specifications, Resolution No. 92-189 with revisions, and requirements of all other federal, state and local agencies having jurisdiction over the project. In addition, all construction must meet standards as set forth in the **Americans With Disabilities Act of 1990, Title II.**
2. Public safety shall be maintained at all times during construction in accordance with the Provisions of Part VI, Work Zone Traffic Control, of the Manual on Uniform Traffic Control Devices. **Maintenance of Traffic** plans are required with the application submittal package prior to approval.
3. When excavation is included in this permit, all gas companies must be consulted for information as to existing gas pipelines and appurtenances, pursuant to the provision of Chapter 553.851 Florida Statutes. All other utilities likewise shall be consulted, for location on all existing underground construction.
4. Private driveways, public utilities, and other such improvements permitted herewith which are not available for immediate use by the general public are considered as remaining in private ownership and accommodated within the public right-of-way or other public areas. The owner of such facilities, or their successors or assigns, shall be responsible for maintaining such facilities in good and safe repair.
5. This application shall become a permit with signature of authorization, and number assigned. Applicant is responsible for supplying the approved permit to their contractor or subcontractor who must have it on site during construction at all times. **Failure to present the approved permit upon demand may result in immediate shutdown of any and all construction activities as determined by the St. Johns County Inspector.**
6. The construction and maintenance of such utility shall not interfere with the property and rights of a prior permittee.
7. It is expressly stipulated that this permit is a license for permissive use only and that the placing of facilities upon public property pursuant to this permit shall not operate to create or vest any property rights to said holder.
8. Whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, the alteration or relocation of all, or any portion of said road or highway as determined by St. Johns County, any or all of said poles, wires, pipes, cables or other facilities and appurtenances authorized herein under shall be immediately removed from said road, highway and rights-of-ways for reset or relocation thereon as required by St. Johns County, and at the expense of the permittee unless reimbursement was preauthorized in writing.
9. **All materials, equipment and workmanship shall be subject to inspection by the St. Johns County Engineering Department, phone (904) 209-0119 for all inspections.**
10. All St. Johns County rights-of-ways shall be restored to its original or better condition, in keeping with St. Johns County specifications, and in a manner satisfactory to the Engineering Operations, Public Works Division and/or Development Services Department. See also General Conditions, Note#20 for other important requirements.
11. All installation shall conform where applicable, to the Utility Accommodation Guide, FDOT, and latest edition.
12. Attached drawings covering details of this installation shall be made a part of this permit. Final sketches or drawings showing installation "as built" shall be filed with Engineering Operations within Thirty (30) days of completion. All changes made during construction shall be recorded on the "as built" drawings. Drawings shall give accurate dimensions of concealed and underground construction with vertical and horizontal locations of work from easily identified fixed reference points. **A set of stamped drawings signed and sealed by a Florida Registered Engineer may be required with the submittal drawings as determined by the Engineering Right-of-Way Division Manager.**
13. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of St. Johns County's right, title and interest in the land to be entered upon and used by the holder, and the holder, will at all times, assume all risk and indemnify,

GENERAL CONDITIONS - CONTINUED

14. *In case of noncompliance with any St. Johns County requirements, this permit is void and the facility will have to be brought into compliance or removed from the right-of-way immediately at no cost to St. John County.*

15. St. Johns County reserves the right to withhold issuance of current and future permits to the applicant for failing to comply with St. Johns County or the Engineering Operations Division requests, General Conditions, Ordinances, permit request, Resolutions, or ANY part of the St. Johns County's Land Development Code.

16. Applicant/Licensee agrees to indemnify, hold harmless, defend from, and release the County, its Board of County Commissioners, and members thereof, from any loss, damage, suit, judgement, action, cost, or expense incurred, or brought against St. Johns County, its Board of County Commissioners, and members thereof, including personal injury, damage to vehicles, and damage to property, resulting from or arising out of the exercise of the rights and privileges granted by this permit.

17. Pavers are allowed within the St. Johns County rights-of-ways for use as commercial driveways. If there is a new or existing sidewalk within any portion of the new or replacement section of the permitted driveway, no modifications or alterations may be made to the sidewalk in any way without prior written authorization. ADA (Americans with Disabilities Act) standards must be strictly followed and those standards will be noted on your approved permit. Should any portion of the permitted COMMERCIAL DRIVEWAY be determined to be out of compliance with county standards and/or ADA standards, the applicant or the applicants contractor will be required to remove this non-conforming section and replace it within 48 (fourty-eight) hours of written notice by St. Johns County. This requirement will be enforced even if the existing sidewalk or modifications to the sidewalk are not shown on the drawings as submitted with the Commercial Driveway Permit Application. See also Note 14 of the GENERAL CONDITIONS.

18. IMPORTANT WARRANTY INFORMATION: All work performed within the St. Johns County rights-of-ways under an approved Engineering Division right-of-way permit will be warranted for a period not less than (12) twelve months from the expiration date as shown on the permit. However, in the event the project includes open road cuts, roadway cuts, roadway patches, directional drilling or any type of activities conducted under roadways as issued with the approved right-of-way permit, the warranty period shall be indefinite unless compaction test reports, asphalt test reports, reports showing depth of bores, and as-builts are provided to the St. Johns County inspector prior to final inspection.

19. Jetting of utilities under roadways is **PROHIBITED** within any and all rights-of-ways of St. Johns County per Section 6.04.04.E.3, page VI-32 of the St. Johns County Land Development Code, Adopted July 29, 1999.

20. It is the sole responsibility of the applicant to video and/or provide detailed digital photographs of the proposed construction site prior to commencing any and all work in order to protect the applicants interest in the event of disputes between residents, subcontractors, St. Johns County inspector, etc. In the event of a dispute the applicant will provide St. Johns County a copy of the original video/digital photographs for review. All rights-of-ways must be restored to existing or better conditions as set forth and detailed within the St. Johns County Land Development Code Section 6.04.04.E.5, page VI-32.

21. Applicant must assure that any and all work as permitted is performed within the county owned rights-of-ways only and NOT encroaching in whole or in part onto private property by means of conducting a survey, survey staking, as-builts, etc. It is not the responsibility of the Right-of-Way Permitting Division to ensure the exact location of any proposed work. In the event of a conflict, it will be the responsibility of the permittee to resolve the issue.

EXEMPTIONS

1. Utilities performing emergency maintenance or emergency repair work do not require a right-of-way permit. However, the Utility must set up a safe work zone in accordance with the latest edition of the Manual on Uniform Traffic Control Devices, (MUTCD) and call (904) 209-0119 to inform the St. Johns County inspector of the unscheduled work and its location. Scheduled work IS NOT considered an emergency. In addition, should any damage occur to the roadway system, drainage system, etc. due to the maintenance or emergency repair work a Right-of-Way permit will be required and a fee will be accessed.

2. Developments with approved construction plans by the Development Review Committee (DRC) are exempt from obtaining a separate right-of-way permit providing ALL on-site and off-site utility work within the rights of ways are shown on the approved