

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY **BLUE SHEET NO: 20021386-UTL**

1. REQUESTED MOTION:

ACTION REQUESTED:

Authorize the Chairman, on behalf of the BOCC, to approve Approval of Subordination of Utility Interests Agreement and Resolution documents requested by Fl. Dept. of Transportation (FDOT).

WHY ACTION IS NECESSARY:

FDOT proposes acquiring additional Right-of-Way (ROW) for the U.S. Business 41 roadway improvement project. The proposed additional ROW includes certain existing Lee County Utilities (LCU) recorded utility easements.

WHAT ACTION ACCOMPLISHES:

Subordinates LCU's interests to FDOT at the specified property. LCU will continue to have utility rights at this property, except now subject to the control of FDOT.

2. DEPARTMENTAL CATEGORY: 10 - UTILITIES
COMMISSION DISTRICT #: 3, 4, 5

C10B

3. MEETING DATE:

12-17-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: _____

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE _____
 - ORDINANCE _____
 - ADMIN. CODE _____
 - OTHER Res/Agmt _____

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: _____
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rich Diaz, Utilities Director

DATE: 11/27/02

7. BACKGROUND:

The FDOT intends to complete roadway and drainage improvements along U.S. Business 41, from Marianna Avenue to Littleton Road (FP ID 195754-1).

As part of the improvements, FDOT is acquiring additional ROW along the project corridor. Within the additional ROW property, LCU has a certain existing recorded utility easement containing existing water and sewer line facilities. FDOT is requesting subordination of LCU utility interests at the specified property, which contains an existing LCU water/sewer utility easement.

(CONT'D.)

MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
<p style="font-family: cursive; font-size: 1.2em;">Lavender</p> <p>Date: <u>12-2-02</u></p>	<p>N/A</p> <p>Date: _____</p>	<p>N/A</p> <p>Date: _____</p>	<p>N/A</p> <p>Date: _____</p>	<p style="font-size: 1.5em; font-family: cursive;">D. Owen</p> <p>Date: <u>12/2/02</u></p>	<p style="font-size: 1.2em; font-family: cursive;">PK</p> <p>Date: <u>12/3/02</u></p>	<p style="font-size: 1.2em; font-family: cursive;">AS</p> <p>Date: <u>12/4/02</u></p>	<p style="font-size: 1.2em; font-family: cursive;">JG</p> <p>Date: <u>12/3/02</u></p>	<p style="font-size: 1.2em; font-family: cursive;">MY</p> <p>Date: <u>12/3/02</u></p>	<p style="font-family: cursive; font-size: 1.2em;">Lavender</p> <p>Date: <u>12-2-02</u></p>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

Rec. by CoAtty

Date: 12/2/02
Time: 3:40 PM

Forwarded To:

Budget
12/2 4:10 PM

**RECEIVED BY
COUNTY ADMIN.** AM

12-3-02
7:45

COUNTY ADMIN.
FORWARDED TO:

12/5 100

The Subordination Agreement states LCU shall continue to have all rights under the specified real property interests, except that the use of the real property shall be subject to the control of the FDOT. Further, the Agreement states that in the event FDOT exercises its rights in a manner creating costs that LCU would not have otherwise incurred without the Agreement, then FDOT will bear those costs.

The existing utility easement requested to be subordinated is summarized as follows:

For US Bus. 41 (SR 739) project from Mariana Ave. to Littleton Rd. –
OR 3095, PG 3713 - FDOT Parcel No. 104.2

Four (4) original document sets are attached for the Chairman's signature. Minutes Dept. to retain one fully-executed set, and remaining sets are to be returned to LCU. Each set includes the following:

Resolution and Subordination of Utility Interests Agreement – Parcel 104.2

◆◆◆

UTL.03

Date: November 20, 2002
This instrument prepared
under the direction of:
Bruce P. Cury, General Counsel
Post Office Box 1249
City: Bartow, Florida 33830
Department of Transportation

F.P. NO. 1957541
PARCEL 104.2
SECTION 12001-2501
STATE ROAD 739
COUNTY Lee

R E S O L U T I O N

ON MOTION of Commissioner _____,
seconded by Commissioner _____,
the following Resolution was adopted:

WHEREAS, the State of Florida Department of Transportation
proposes to construct or improve State Road No. 739, Section No.
12001-2501, in Lee County, Florida: and

WHEREAS, it is necessary that certain easement rights now
owned by _____ Lee _____ County be subordinated to the
State of Florida Department of Transportation: and

WHEREAS, said subordination is in the best interest of the
County: and

WHEREAS, the State of Florida Department of Transportation
has made application to said County to execute and deliver to the
State of Florida Department of Transportation a subordination of
utility interest, or interests, in favor of the State of Florida,
and said request having been duly considered.

NOW THEREFORE, BE IT RESOLVED by the Board of County
Commissioners of _____ Lee _____ County, that the application
of the State of Florida Department of Transportation for a
subordination of utility interest, or interests, is for
transportation purposes which are in the public or community
interest and for public welfare; that a subordination of utility
interest, or interests, in favor of the State of Florida
Department of Transportation, in _____ Lee _____ County,
should be drawn and executed by this Board of County
Commissioners. Consideration shall be \$1.00.

BE IT FURTHER RESOLVED that a certified copy of this
Resolution be forwarded forthwith to the State of Florida
Department of Transportation at Bartow, Florida.

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA at a meeting held on the _____ day of _____, 2002.

Clerk: Lisa L. Pierce
Board of County Commissioners
Lee County, Florida

ATTEST: BOARD OF COUNTY COMMISSIONERS
CHARLIE GREEN, EX-OFFICIO CLERK LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairperson

APPROVED AS TO FORM:

David Owen, Chief Asst. Attorney
Office of the County Attorney
Lee County, Florida

23-UTL.02-07/99

Date: November 20, 2002
This instrument prepared
under the direction of:
Bruce P. Cury, General Counsel
Post Office Box 1249
City: Bartow, Florida 33830
Department of Transportation

F.P. NO. 1957541
PARCEL 104.2
SECTION 12001-2501
STATE ROAD 739
COUNTY Lee

SUBORDINATION OF COUNTY UTILITY INTERESTS

THIS AGREEMENT, entered into this ____ day of _____, 2002, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the FDOT, whose post office address is: Post Office Box 1249, Bartow, Florida 33831-1249 and LEE COUNTY, FLORIDA, Utility Agency Organization, hereinafter called the UAO.

W I T N E S S E T H:

WHEREAS, the UAO presently has an interest in certain real property that is needed for a transportation facility; and

WHEREAS, the proposed use of the real property requires subordination of the UAO's interest to the FDOT; and

WHEREAS, the FDOT is willing to participate in the cost of locating, protecting, adjusting or removing the UAO'S facilities if necessary to prevent conflict between the UAO's facilities and the transportation facility;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the FDOT and the UAO hereby agree as follows:

1. The UAO hereby subordinates to the interest of FDOT, its successors, or assigns, any and all interest the UAO has in the real property described as follows:

SEE EXHIBIT "A"

The interest of the UAO being subordinated hereby includes, but is not necessarily limited to, the interest created by the following document:

RECORDED

INSTRUMENT	DATE	FROM	TO	O.R. BOOK/PAGE
Easement	01-08-99	Fahdev, Inc.	Lee County, Florida	OR 3095 Page 3713

2. The UAO shall continue to have all rights under the UAO'S real property interest document identified above, except that the use of the real property shall be subject to the control of the FDOT pursuant to paragraph 3 hereof.

3. The FDOT shall have the right to control the UAO's use of the real property interest created by the document identified above in the following manner:

a. The FDOT may require, for any present or future transportation facility project, that any facilities of the UAO be located, protected, adjusted, or removed as the FDOT determines is necessary (including the timing of any of such activities) to accommodate the transportation facility project. The UAO shall have the right to engage in additional protective measures during the transportation facility project beyond what the FDOT determines is necessary, provided that the cost of any such additional protective measures shall be borne by the UAO.

b. The UAO shall operate and maintain the UAO's facilities located on the real property in accordance with FDOT standards as set forth in the FDOT's then current Utility Accommodation Manual.

c. Any placement of new facilities or adjustment, upgrading, removal, or relocation of the UAO's facilities proposed by the UAO shall be subject to the prior approval of the FDOT as provided in and under the conditions of the FDOT's then current Utility Accommodation Manual. Approval will be granted through the issuance of a utility permit.

4. In the event the FDOT exercises its rights under paragraph 3 hereof and the exercise of those rights creates costs that the UAO would normally not have incurred had this subordination not been executed, the FDOT will bear those costs. Such costs shall include, but not necessarily be limited to, damage to the UAO's facilities resulting from failure of FDOT's protective measures where the UAO has not elected to undertake additional protective measures pursuant to subparagraph 3.a. hereof or the adjustment, relocation or removal of the UAO's facilities as the result of FDOT's activities. The specific arrangement for FDOT bearing the excess costs shall be by separate agreement.

IN WITNESS WHEREOF, the FDOT hereto has executed this agreement on the day and year first above written.

Executed in our presence
as witnesses:

STATE OF FLORIDA
DEPARTMENT OF
TRANSPORTATION

Signature

By: _____
District Secretary/Designee
for District One

Print/Type Name

Approved as to Form and
Legality:

Signature

Print/Type Name

Department Attorney

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this
____ day of _____, 20__ by _____,
District Secretary/Designee for District One. He is personally
known to me or has produced _____
as identification.

(Affix Seal/Stamp here) Notary Signature: _____

Printed Name: _____

Notary Public in and for
the County and State last
aforesaid.
My Commission Expires:

Serial No.: _____

IN WITNESS WHEREOF, the County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST: BOARD OF COUNTY COMMISSIONERS
CHARLIE GREEN, EX-OFFICIO CLERK LEE COUNTY, FLORIDA

By: _____ By: _____
Deputy Clerk Chairperson

Grantor(s) Mailing Address:
P. O. Box 398
Ft. Myers, FL 33902

APPROVED AS TO FORM:

David Owen, Chief Asst. Attorney
Office of the County Attorney
Lee County, Florida

F.P. NO. 1957541

SECTION 12001-2501

PARCEL 104

That portion of the northwest $\frac{1}{4}$ of Section 35, Township 43 South, Range 24 East, Lee County, Florida.

Being described as follows:

Commence at the northwest corner of said Section 35; thence along the west line of said Section 35, South 00°01'12" West a distance of 25.00 feet to the southerly existing right of way line of Littleton Road (per Official Records Book 1281, Page 1943, Public Records of Lee County, Florida) for a POINT OF BEGINNING; thence along said southerly existing right of way line South 89°53'24" East a distance of 360.93 feet to the westerly existing right of way line of State Road 739 (1201-Proj 589); thence along said westerly existing right of way line South 22°28'01" East a distance of 335.73 feet; thence North 89°53'24" West a distance of 489.34 feet to said west line of Section 35; thence along said west line North 00°01'12" East a distance of 310.00 to the POINT OF BEGINNING.

Containing 3.026 acres.

Legal Description Approved by:

William E. Ray
William E. Ray P.L.S. #2737
Date: 11-20-02
NOT VALID UNLESS EMBOSSED