

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY **BLUE SHEET NO: 20030512-UTL**

1. REQUESTED MOTION:

ACTION REQUESTED:

Approval of Florida Dept. of Transportation (FDOT) Utility Agreement Resolution, authorizing the Chairman, on behalf of the BOCC, to approve and execute the *Utility Work by Highway Contractor Agreement*.

WHY ACTION IS NECESSARY:

FDOT requires such a Resolution to accompany a *Utility Work by Highway Contractor Agreement*. The Agreement was approved and executed previously by the BOCC, but had not included a Resolution.

WHAT ACTION ACCOMPLISHES:

Executes a Resolution to accompany a previously executed Agreement between FDOT and LCU for necessary utility relocations and adjustments by the FDOT Contractor.

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

C10B

3. MEETING DATE:

05-13-2003

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE _____
 - ORDINANCE _____
 - ADMIN. CODE _____
 - OTHER Resolution

6. REQUESTOR OF INFORMATION:

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

DATE: 4/28/03

7. BACKGROUND:


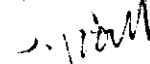




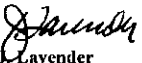
Lee County Utilities has been informed by FDOT that they require a *Utility Agreement Resolution* to accompany a *Utility Work by Highway Contractor Agreement*. The latter Agreement was previously approved and executed by the BOCC on April 1, 2003, (C-10-E) but had not included a Resolution. The proposed Resolution is for this purpose.

(CONT'D.)

8. MANAGEMENT RECOMMENDATIONS:

YCM 4/20/03

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	
 J. Lavender Date: 4/28/03	N/A Date:	N/A Date:	Date:	 J. Owen Date: 4/28/03	 J. M Date: 5/1/03	 J. M Date: 5/1/03	 J. M Date: 5/1/03	 J. M Date: 5/1/03	 J. Lavender Date: 4/28/03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty

Date: 4/30/03

Time: 1:15 PM

Forwarded To:
Budget
5/1/03 8:35 AM

RECEIVED BY
 COUNTY ADMIN. PM

5-1-03

9:00

COUNTY ADMIN.
 FORWARDED TO:
5/1/03

As described (when the *Utility Work by Highway Contractor Agreement* previously went before the BOCC for execution), FDOT is proposing roadway and drainage facility improvements on Alico Rd. in conjunction with the I-75 interchange improvement project. The FDOT Project No. 200966-1-52-03 intends to improve the I-75 interchange at Alico Rd., extending along Alico Rd. from Three Oaks Pkwy. to just east of Ben Hill Griffin Pkwy., and includes installation of drainage structures, drainage pipes, pavement widening, and new bridge pilings which will conflict with existing LCU water main facilities. This project will require relocation and adjustment of the LCU owned existing water mains in accordance with Section 337.403, Florida Statutes.

The FDOT will be responsible for bidding and construction of the utility work, and shall be funded by FDOT in accordance with the Agreement. A copy of the previously approved Agreement is attached for reference.

Attachments:

Five (5) original *Utility Agreement Resolutions* are attached for the Chairman's signature

One (1) copy of the previously approved *Utility Work by Highway Contractor Agreement* is provided for reference

(Minutes Dept. to retain one set and the remaining 4 sets are to be returned to LCU.)

◆◆◆

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
RESOLUTION
UTILITY AGREEMENT

FORM 710-010-13
UTILITIES
10/98

FPN				COUNTY	S.R.#	FAP NO.
200966	1	52	03	LEE	93	NA

WHEREAS, the **State of Florida Department of Transportation**, hereinafter referred to as the **"FDOT"**, proposes to construct or reconstruct a transportation facility identified above, hereinafter referred to as the **"Project"**; and

WHEREAS, in order for the **FDOT** to proceed with the Project, it is necessary for Lee County Utilities, hereinafter referred to as the **"UAO"**, to execute and deliver to the **FDOT** the agreement identified as FPID #200966-1-52-03, Utility Work by Highway Contractor Agreement, hereinafter referred to as the **"Agreement"**;

NOW, THEREFORE, BE IT RESOLVED BY THE UAO:

That **(Name)** Ray Judah, **(Title)** Chairman of BOCC be hereby authorized and directed to execute and deliver the Agreement to the **FDOT**.

A certified copy of this Resolution be forwarded to the **FDOT** along with the executed Agreement.

ON MOTION of _____, seconded by _____,
the above resolution was introduced and passed by the **UAO** on the _____ day of _____, 200__.

NAME: _____
Ray Judah

Title: Chairman of BOCC

ATTEST: _____

Title: _____

RESOLUTION
UTILITY AGREEMENT
(Cont'd.)

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 _____, 200__.

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

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY
COMMISSIONERS, LEE COUNTY, FL

By: _____
Deputy Clerk

By: _____
Chairperson

APPROVED AS TO FORM:

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

COPY

UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT

(AT FDOT EXPENSE)

Financial Project ID:	200966-1-52-03	Federal Project ID:	
Work Program Item No. (old):	N/A	County/Section No:	12075
State Job No. (old):	N/A	District Document No:	1

THIS AGREEMENT, made and entered into this _____ day of _____, year of _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FDOT", and Lee County Utilities, hereinafter referred to as the "UAO";

WITNESSETH

WHEREAS, the FDOT is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as I-75 at Alico Road State Road No.: 93, hereinafter referred to as the "Project"; and

WHEREAS, the UAO owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the FDOT and the UAO desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the FDOT's contractor as part of the construction of the Project; and

WHEREAS, the FDOT, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work;

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

1. Design of Utility Work

- a. UAO shall prepare a final engineering design, plans, technical special provisions, and a cost estimate for the Utility Work (hereinafter referred to as the "Plans Package") on or before _____ October _____, year of 2003.
- b. The Plans Package shall be in the same format as the FDOT's contract documents for the Project and shall be suitable for reproduction.
- c. Unless otherwise specifically directed in writing, the Plans Package shall include any and all activities and work effort required to perform the Utility Work, including, but not limited to, all clearing and grubbing, survey work, and shall include a traffic control plan.
- d. The Plans Package shall be prepared in compliance with the FDOT's Utility Accommodation Manual and the FDOT's Plans Preparation Manual in effect at the time the Plans Package is prepared, and the FDOT's contract documents for the Project. If the FDOT's Plans Preparation Manual is updated and conflicts with the FDOT's Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.
- e. The technical special provisions which are a part of the Plans Package shall be prepared in accordance with the FDOT's guidelines on preparation of technical special provisions and shall not duplicate or change the general contracting provisions of the FDOT's Standard Specifications for Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental Specifications of the FDOT for the Project.

- f. UAO shall provide a copy of the proposed Plans Package to the FDOT, and to such other right of way users as designated by the FDOT, for review at the following stages: 60% plans

Prior to submission of the proposed Plans Package for review at these stages, the UAO shall send the FDOT a work progress schedule explaining how the UAO will meet the FDOT's production schedule. The work progress schedule shall include the review stages, as well as other milestones necessary to complete the Plans Package within the time specified in Subparagraph a. above.

- g. In the event that the FDOT finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the FDOT will notify the UAO in writing of the deficiencies and the UAO will correct the deficiencies and return corrected documents within the time stated in the notice. The FDOT's review and approval of the documents shall not relieve the UAO from responsibility for subsequently discovered errors or omissions.
- h. The FDOT shall furnish the UAO such information from the FDOT's files as requested by the UAO; however, the UAO shall at all time be and remain solely responsible for proper preparation of the Plans Package and for verifying all information necessary to properly prepare the Plans Package, including survey information as to the location (both vertical and horizontal) of the Facilities. The providing of information by the FDOT shall not relieve the UAO of this obligation nor transfer any of that responsibility to the FDOT.
- i. The Facilities and the Utility Work will include all utility facilities of the UAO which are located within the limits of the Project, except as generally summarized as follows: N/A

These exceptions shall be handled by separate arrangement.

- j. The UAO shall fully cooperate with all other right of way users in the preparation of the Plans Package. Any conflicts that cannot be resolved through cooperation shall be resolved in the manner determined by the FDOT.
- k. Upon completion of the Utility Work, the Facilities, shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to the Utility Permit _____

(Note: It is the intent of this line to allow either attachment of or separate reference to the permit).

- l. The cost of any design work performed pursuant to this paragraph 1 shall be reimbursed by a separate agreement.
- m. As part of the final submittal of the Plans Package, the UAO shall also submit an estimate of the amount of the cost of the Utility Work that should be paid for by the UAO, hereinafter referred to as the "UAO Participating Amount". The determination of that amount shall be based on the credit required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:
- (1) Increase in value credit.
 - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies.
 - (b) Upgrading. A percentage of the total cost of the Relocation Work, based on the extent of the betterment obtained from the new Facilities will be applied.
 - (2) Salvage Value. The FDOT shall receive fair salvage value credit for any salvage which will become available to the UAO as a result of the Utility Work.

The submittal shall show the calculation of the UAO Participating Amount in detail for each of the credits required above. The FDOT shall review the calculations and advise the UAO of any objections. In the event that the parties cannot come to an agreement as to the UAO Participating Amount, the FDOT's determination of the amount shall prevail.

2. **Performance of Utility Work**

- a. The FDOT shall incorporate the Plans Package into its contract for construction of the Project.
- b. The FDOT shall procure a contract for construction of the Project in accordance with the FDOT's requirements.
- c. The UAO shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package except for the following activities:

N/A

and will furnish the FDOT with daily diary records showing approved quantities and amounts for weekly, monthly, and final estimates in accordance with the format required by the FDOT.

- d. Except for the inspection, testing, monitoring and reporting to be performed by the UAO in accordance with Subparagraph 2. c., the FDOT will perform all contract administration for its construction contract.
- e. The UAO shall fully cooperate with the FDOT and the FDOT's contractor in all matters relating to the performance of the Utility Work.
- f. The FDOT's engineer has full authority over the Project and the UAO shall be responsible for coordinating and cooperating with the FDOT's engineer. In so doing, the UAO shall make such adjustments and changes in the Plans Package as the FDOT's engineer shall determine are necessary for the prosecution of the Project.
- g. The UAO shall not make any changes to the Plans Package after the date on which the FDOT's contract documents are mailed to Tallahassee for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the FDOT's contract pursuant to Section 337.11, Florida Statutes. All changes, regardless of the nature of the change or the timing of the change, shall be subject to the prior approval of the FDOT.

3. **Cost of Utility Work**

- a. Except as otherwise provided herein, the FDOT shall be responsible for all costs of the Utility Work and all costs associated with any adjustments or changes to the Utility Work determined by the FDOT's engineer to be necessary, including, but not limited to the cost of changing the Plans Package and the increase in the cost of performing the Utility Work, unless the adjustments or changes are necessitated by an error or omission of the UAO. The FDOT shall not be responsible for the cost of delays caused by such adjustments or changes to the extent they are attributable to the UAO pursuant to Subparagraph 4.a.
- b. At such time as the FDOT prepares its official estimate, the FDOT shall notify the UAO of the UAO Participating Amount, determined in accordance with Subparagraph 1.m. hereof.
- c. At least Thirty (30) days prior to the date on which the FDOT advertises the Project for bids, the UAO will pay to the FDOT the UAO Participating Amount.
- d. If the UAO's percentage contribution to the portion of the bid of the contractor selected by the FDOT which is for performance of the Utility Work (calculated by dividing the UAO's Participating Amount by the amount of the FDOT's official estimate) exceeds the amount of the deposit made pursuant to Subparagraph c. above, then the UAO shall, within fourteen (14) calendar days from notification from the FDOT, or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to the FDOT to bring the total amount paid to the total percentage contribution of the UAO. If said portion of the bid is less than the amount on deposit, the excess deposit shall be returned to the UAO.
- e. The FDOT may use the funds paid by the UAO for payment of the cost of the Utility Work.

f. Payment of the funds pursuant to this paragraph will be made (choose one):

- directly to the FDOT for deposit.
- as provided in the attached Memorandum of Agreement between the UAO, the FDOT, and the State of Florida, Department of Insurance, Division of Treasury. Deposits of less than \$100,000 to be escrowed must be pre-approved by the Department of Insurance and FDOT Comptroller's Office prior to execution of this agreement.

g. Upon final payment to the contractor, the FDOT intends to have its final and complete billing of all costs incurred in connection with the Utility Work within three hundred sixty (360) days. All cost records and accounts shall be subject to audit by a representative of the UAO within three (3) years after final close out of the Project.

4. Claims Against UAO

- a. The UAO shall be responsible for all costs incurred as a result of any delay to the FDOT or its contractors caused by errors or omissions in the Plans Package (including inaccurate location of the Facilities) or by failure of the UAO to properly perform its obligations under this Agreement in a timely manner.
- b. In the event the FDOT's contractor provides a notice of intent to make a claim against the FDOT relating to the Utility Work, the FDOT will notify the UAO of the notice of intent and the UAO will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- c. In the event the FDOT's contractor makes any claim against the FDOT relating to the Utility Work, the FDOT will notify the UAO of the claim and the UAO will cooperate with the FDOT in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the UAO and the FDOT's contractor shall be in writing, shall be subject to written FDOT concurrence and shall specify the extent to which it resolves the claim against the FDOT.

5. Out of Service Facilities

No Facilities shall be placed out of service unless specifically identified as such in the Plans Package. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The UAO acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- b. The FDOT agrees to allow the UAO to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by UAO. In the event of a breach of this Agreement by UAO, the Facilities shall be removed upon demand from the FDOT in accordance with the provisions of Subparagraph e. below.
- c. The UAO shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the UAO to use due care in its dealings with others. The UAO shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The UAO shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests of the FDOT or other permittees using or seeking use of the right of way.
- e. The UAO shall remove the Facilities at the request of the FDOT in the event that the FDOT determines that removal is necessary for FDOT use of the right of way or in the event that the FDOT determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. In the event that the out of service Facilities would have qualified for reimbursement only under Section 337.403(1)(a), Florida Statutes, removal shall be at the sole cost and expense of the UAO and without any right of the UAO to object or make any claim of any nature whatsoever with regard thereto. In the event that the out of service Facilities would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the FDOT as though it had not been placed out of service. Removal shall be completed within the time specified in the FDOT's notice to remove. In the event that the UAO fails to perform the removal properly within the specified time, the FDOT may proceed to perform the removal at the UAO's expense pursuant to the provisions of Sections 337.403 and 337.404, Florida Statutes.

- f. Except as otherwise provided in Subparagraph e. above, the **UAO** agrees that the **Facilities** shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the **Facilities** within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the **Facilities** or from the presence of any hazardous substance or material in or discharging from the **Facilities**. Nothing in this paragraph shall be interpreted to require the **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

6. Default

- a. In the event that the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:
1. Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from **FDOT**.
 2. Pursue a claim for damages suffered by the **FDOT** or the public.
 3. If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by **FDOT** to third parties.
 4. If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **FDOT** or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
 5. Suspend the issuance of further permits to the **UAO** for the placement of **Facilities** on **FDOT** property if the breach is material and has not been cured within sixty (60) days from written notice thereof from **FDOT** until such time as the breach is cured.
 6. Pursue any other remedies legally available.
 7. Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
1. Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from the **UAO**.
 2. If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
 3. Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties nor from any statutory obligations that either party may have with regard to the subject matter hereof.

7. Force Majeure

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

8. **Indemnification**

FOR GOVERNMENT-OWNED UTILITIES,

To the extent provided by law, the UAO shall indemnify, defend, and hold harmless the FDOT and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the UAO, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which FDOT or said parties may be subject, except that neither the UAO, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the FDOT or any of its officers, agents, or employees during the performance of this Agreement.

When the FDOT receives a notice of claim for damages that may have been caused by the UAO in the performance of services required under this Agreement, the FDOT will immediately forward the claim to the UAO. The UAO and the FDOT will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the FDOT will determine whether to require the participation of the UAO in the defense of the claim or to require the UAO to defend the FDOT in such claim as described in this section. The FDOT's failure to notify the UAO of a claim shall not release the UAO from any of the requirements of this section. The FDOT and the UAO will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES,

The UAO shall indemnify, defend, and hold harmless the FDOT and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the UAO, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which FDOT or said parties may be subject, except that neither the UAO, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the FDOT or any of its officers, agents, or employees during the performance of this Agreement.

The UAO's obligation to indemnify, defend, and pay for the defense or at the FDOT's option, to participate and associate with the FDOT in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the UAO of the FDOT's notice of claim for indemnification to the UAO. The notice of claim for indemnification shall be served by certified mail. The UAO's obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the UAO's inability to evaluate liability or because the UAO evaluates liability and determines the UAO is not liable or determines the FDOT is solely negligent. Only a final adjudication or judgment finding the FDOT solely negligent shall excuse performance of this provision by the UAO. The UAO shall pay all costs and fees related to this obligation and its enforcement by the FDOT. The FDOT's delay in notifying the UAO of a claim shall not release UAO of the above duty to defend.

9. **Miscellaneous**

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the UAO in accordance with the current Utility Accommodation Manual in effect at the time the Plans Package is prepared and the current utility permit for the Facilities; provided, however, that the UAO shall not be obligated to protect or maintain any of the Facilities to the extent the FDOT's contractor has that obligation as part of the Utility Work pursuant to the FDOT's specifications.
- c. The FDOT may unilaterally cancel this Agreement for refusal by the UAO to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the UAO in conjunction with this Agreement.
- d. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the FDOT has manuals and written policies and procedures which may be applicable at the time of the Project and the relocation of the Facilities.

- e. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The UAO shall have a continuing obligation to notify each District of the FDOT of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the UAO:

Lee County Utilities, Attn: Tom Mamott
PO Box 398
Ft. Myers, FL 33902-0398

If to the FDOT:

District Utilities Administrator
PO Box 1249
Bartow, FL 33831-1249

10. Certification

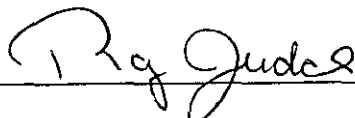
This document is a printout of an FDOT form maintained in an electronic format and all revisions thereto by the UAO in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled "Changes To Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the UAO hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled "Changes To Form Document."

You MUST signify by selecting or checking which of the following applies:

- No changes have been made to this Forms Document and no Appendix entitled "Changes To Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Forms Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: Lee County - Utilities

BY: (Signature) 

DATE: 4/1/03

(Typed Name: Ray Judah)

APPROVED AS TO FORM:

(Typed Title: Chairman of BOCC, Lee County)


Office of the County Attorney

Recommend Approval by the District Utility Office

BY: (Signature) _____ DATE: _____

FDOT Legal Review

BY: (Signature) _____ DATE: _____

District Counsel

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

BY: (Signature) _____ DATE: _____

(Typed Name: _____)

(Typed Title: _____)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: (Signature) _____ DATE: _____

(Typed Name: _____)

(Typed Title: _____)

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 479-8181

April 15, 2003

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing Examiner

Mr. Michael Zembillas
TBE GROUP, INC.
380 Park Place Boulevard
Suite 300
Clearwater, FL 33759

SUBJECT: UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
FP ID: 200966-1-5003
PROJECT: I-75 AT ALICO ROAD
SR: 93
COUNTY/SECTION: 12075
COUNTY: LEE
DESCRIPTION: I-75 AT ALICO ROAD

Dear Mr. Zembillas:

Please find enclosed the following documents that have been executed by the County and are ready for execution by FDOT:

1. Five (5) originals of the Utility Work Agreement

Please have the FDOT return two (2) originals of the Resolution and Agreement to my office for further processing (one for our County Minutes Department and one for our files, so that we may further distribute a copy to our Contracts Section). If you need any additional information, please contact me. Thank you for your assistance.

Sincerely,

LEE COUNTY UTILITIES



Thomas A. Mamott, P.E.
Professional Engineer II

TAM:sdg
Enclosures

SAUTILS\UTIL-ADM\WP\OTHER\SDG\BLUES\DOCS TO BE EXECUTED BY\DOCS TO BE EXECUTED BY FDOT VIA TBE GROUP-ZEMBILLAS.DOC