

**Lee County Board of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20051495-UTL**

**1. Action Requested/Purpose:**

Authorize the Chairman, on behalf of the BOCC, to approve "Subordination of County Utility Interests" and "Resolution" documents provided by the Florida Department of Transportation (FDOT).

**2. What Action Accomplishes:**

FDOT proposes to extend Metro Boulevard (SR 739) as a four-lane roadway from Hanson Street to Martin Luther King Jr. Boulevard (SR 82), resulting in a partial realignment of Seminole Gulf Railway (SGR) tracks. This realignment, along with necessary stormwater management improvements, adversely affects Lee County Utilities' (LCU's) 16" diameter water main lying in a LCU purchased easement on the east side of the SGR right-of-way. LCU will subordinate its interests in the easement, in exchange for FDOT reimbursing LCU for relocating the affected water main. FDOT will incur all potential costs to LCU relating to SGR, and FDOT's approval of the relocation of the new water main along the west side of Evans Avenue.

**3. Management Recommendation:**

Approval.

**4. Departmental Category: 10 -**

**CIOF**

**5. Meeting Date:**

**11-01-2005**

**6. Agenda:**

- Consent
- Administrative
- Appeals
- Public
- Walk-On

**7. Requirement/Purpose (specify)**

- Statute
- Ordinance
- Admin. Code
- Other Approval

**8. Request Initiated:**

Commissioner \_\_\_\_\_  
 Department Public Works  
 Division Utilities  
 By: Rick Diaz, P.E., Director 10/13/05

**9. Background:**

FDOT intends to extend Metro Blvd (SR 739), from Hanson Avenue to Martin Luther King Blvd, as a four-lane roadway. LCU has an existing 16" water main along or paralleling Evans Avenue from Collins Avenue north to North Fort Myers. Part of this water main is contained in a LCU purchased easement within the SGR right of way from south of Edison Avenue to Martin Luther King Blvd. Because of the wider roadway, FDOT is acquiring additional right of way from SGR and relocating its tracks. This realignment and the associated stormwater management improvements require that LCU's water main within the easement be relocated.

(CONT'D.)

**10. Review for Scheduling**

Department Director	Purchasing or Contracts	Human Res.	Other	County Attorney	Budget Services				County Manager / P.W. Director
					Analyst	Risk	Grants	Mgr.	
<u>J. Lavender</u> Date: <u>10.13.05</u>	N/A Date:	N/A Date:	<u>M. Crumpton</u> Date: <u>10/12/05</u>	<u>S. Covert</u> Date: <u>10/12/05</u>	<u>PM</u> <u>10/14/05</u>	<u>10/14/05</u>	<u>10/14/05</u>	<u>10/14/05</u>	<u>J. Lavender</u> Date: <u>10.13.05</u>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
 COUNTY ADMIN: PM  
10-14-05  
4:36  
 COUNTY ADMIN  
 FORWARDED TO: ADMIN  
SPM

Rec. by CoAtty  
 Date: 10/14/05  
 Time: 3:45pm  
 Forwarded To:  
Admin

10/14/05  
4:25

FDOT has requested that LCU subordinate its utility interests in the easement. FDOT has agreed to reimburse LCU for the cost of relocating the affected water main. FDOT will incur all potential costs to LCU relating to SGR, and FDOT will approve of the relocation of the new water main along the west side of Evans Avenue. Neither the existing water main, that will be either removed or abandoned in place, nor the relocated water main, will require the use of any part of the existing easement once the relocation is accomplished. LCU received the attached letter from FDOT dated September 27, 2005 stating its compliance with the latter two (2) LCU requirements. LCU has previously executed a reimbursement agreement with FDOT for the reimbursable portions of the relocation work.

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

ORB 2660 Page 3363 – FDOT Parcel 135A

ORB 2660 Page 3363 – FDOT Parcel 135B

Three (3) original document sets are attached for the Chairman's signature. Each set includes a Resolution and Subordination of Utility Interests agreement.

After Chairman's signature, return all documents to LCU for transmittal and subsequent execution by FDOT. FDOT shall then record the document and provide the Lee County Minutes Office with an original signature document set, with a copy to LCU.

Attachments: FDOT Letter dated September 27, 2005 from FDOT Deputy District Utilities Administrator  
Resolution  
Subordination of Utility Interests Agreement

COPY

(REDUCED TO LETTER-SIZE FOR COPYING PURPOSES)

UTL.03

Date: June 20, 2005  
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. 1957661  
PARCEL 135.3  
SECTION 12001-101  
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. 12001-101, 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 \_\_\_\_\_

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 \_\_\_\_\_, 20\_\_\_\_.

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

ATTEST:  
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:

\_\_\_\_\_  
David Owen, County Attorney  
Office of the County Attorney  
Lee County, Florida

23-UTL.02-07/99

Date: June 20, 2005  
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. 1957661  
PARCEL 135.3  
SECTION 12001-101  
STATE ROAD 739 (METRO)  
COUNTY Lee

**SUBORDINATION OF COUNTY UTILITY INTERESTS**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, 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	12-15-95	CSX Transportation, Inc.	Lee County, Florida	OR 2660 Pg. 3363

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:  
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONER  
LEE COUNTY, FLORIDA

By: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson

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

APPROVED AS TO FORM:

\_\_\_\_\_  
David Owen, County Attorney  
Office of the County Attorney  
Lee County, Florida



F.P. NO. 1957661

SECTION 12001-101

PARCEL 135

A) That portion of the southeast  $\frac{1}{4}$  of Section 24, Township 44 South, Range 24 East, Lee County, Florida.

Being described as follows:

Commence at the northwest corner of said southeast  $\frac{1}{4}$  of Section 24; thence along the north line of said southeast  $\frac{1}{4}$ , North  $89^{\circ}03'19''$  East a distance of 1,358.41 feet to the survey base line for Evans Avenue; thence along said survey base line South  $00^{\circ}57'09''$  East a distance of 343.47 feet to the southwesterly existing right of way line of the CSX Transportation, Inc., Railroad (per Deed Book 68, page 167, Public Records of Lee County, Florida) for a POINT OF BEGINNING, said point being the beginning of a curve concave northeasterly having a radius of 1,975.08 feet; thence along said existing right of way line the arc of said curve to the right a distance of 68.60 feet through a central angle of  $01^{\circ}59'24''$  with a chord bearing North  $21^{\circ}37'42''$  West to the end of said curve and to the east existing right of way line of Evans Avenue (per Plat Book 10, Page 120, Public Records of Lee County, Florida); thence along said east existing right of way line North  $01^{\circ}14'11''$  West a distance of 204.43 feet to the beginning of a curve concave easterly having a radius of 2,019.48 feet; thence along the arc of said curve to the left a distance of 80.50 feet through a central angle of  $02^{\circ}17'02''$  with a chord bearing South  $10^{\circ}33'55''$  East to the end of said curve and the beginning of a curve concave westerly having a radius of 2,147.48 feet; thence along the arc of said curve to the right a distance of 111.81 feet through a central angle of  $02^{\circ}58'59''$  with a chord bearing South  $10^{\circ}12'57''$  East to the end of said curve; thence South  $05^{\circ}08'18''$  West a distance of 52.64 feet to the beginning of a curve concave easterly having a radius of 2,135.48 feet; thence along the arc of said curve to the left a distance of 38.04 feet through a central angle of  $01^{\circ}01'15''$  with a chord bearing South  $06^{\circ}50'33''$  East to said southwesterly existing CSX railroad existing right of way line and the end of said curve and the beginning of a curve concave northeasterly having a radius of 1,975.08 feet; thence along said existing right of way line and the arc of said curve to the right a distance of 12.16 feet through a central angle of  $00^{\circ}21'10''$  with a chord bearing North  $22^{\circ}47'59''$  West to the end of said curve and to the POINT OF BEGINNING.

Containing 4,350 square feet.

ALSO

B) That portion of the northeast  $\frac{1}{4}$  of Section 24, Township 44 South, Range 24 East, Lee County, Florida.

EXHIBIT "A"

Page 5

Being described as follows:

Commence at the southwest corner of said northeast  $\frac{1}{4}$  of Section 24; thence along the south line of said northeast  $\frac{1}{4}$ , North  $89^{\circ}03'19''$  East a distance of 1,232.19 feet to the POINT OF BEGINNING; thence North  $00^{\circ}44'30''$  West a distance of 30.81 feet to the southeast corner of Block 11, Anderson Heights, a subdivision in Section 24, Township 44 South, Range 24 East, as per plat thereof recorded in plat Book 3, Page 59, Public Records of Lee County, Florida; thence along the east line of said Block 11, continue North  $00^{\circ}44'30''$  West a distance of 335.55 feet to the northeast corner of said Block 11; thence North  $00^{\circ}30'25''$  West a distance of 50.32 feet to the southeast corner of Block 5 in said subdivision; thence along the east line of said Block 5, North  $00^{\circ}42'18''$  West a distance of 726.30 feet to the northeast corner of said Block 5; thence North  $00^{\circ}59'38''$  West a distance of 50.00 feet to the southeast corner of Block 4 in said subdivision; thence along the east line of said Block 4, North  $00^{\circ}50'21''$  West a distance of 300.00 feet to the northeast corner of Lot 7 of said Block 4; thence North  $89^{\circ}10'13''$  East a distance of 0.69 feet; thence North  $00^{\circ}45'06''$  West a distance of 819.78 feet; thence North  $14^{\circ}14'50''$  West a distance of 51.42 feet; thence North  $00^{\circ}45'06''$  West a distance of 54.67 feet to the beginning of a curve concave easterly having a radius of 2,109.48 feet; thence along the arc of said curve to the right a distance of 149.62 feet through a central angle of  $04^{\circ}03'50''$  with a chord bearing North  $01^{\circ}14'31''$  East to the end of said curve and the southeasterly line of a 20 foot alley as shown on the plat of said Anderson Heights, said point also being the beginning of a curve concave northwesterly having a radius of 1,096.00 feet; thence along said southeasterly line the arc of said curve to the left a distance of 104.93 feet through a central angle of  $05^{\circ}29'08''$  with a chord bearing North  $41^{\circ}58'09''$  East to the end of said curve and to the south existing right of way line of State Road 82 (per State Project No. 12014-2501); thence along said south existing right of way line, North  $89^{\circ}11'31''$  East a distance of 35.07 feet to the west line of the northeast  $\frac{1}{4}$  of said northeast  $\frac{1}{4}$  of Section 24; thence continue along said south existing right of way line and along said west line of the northeast  $\frac{1}{4}$  of the northeast  $\frac{1}{4}$ , South  $00^{\circ}45'29''$  East a distance of 4.79 feet; thence departing said west line of the northeast  $\frac{1}{4}$  of the northeast  $\frac{1}{4}$  and continuing along said south existing right of way line, North  $89^{\circ}57'07''$  East a distance of 10.16 feet to the beginning a curve concave southeasterly having a radius of 38.00 feet; thence along the arc of said curve to the left a distance of 40.60 feet through a central angle of  $61^{\circ}13'20''$  with a chord bearing South  $35^{\circ}13'42''$  West to the end of said curve and the beginning of a curve concave easterly having a radius of 2,019.48 feet; thence along the arc of said curve to the left a distance of 187.85 feet through a central angle of  $05^{\circ}19'46''$  with a chord bearing South  $01^{\circ}57'09''$  West to the end of said curve; thence South  $00^{\circ}45'06''$  East a distance of 7.23 feet; thence South  $12^{\circ}44'39''$  West a distance of 51.42 feet; thence South  $00^{\circ}45'06''$

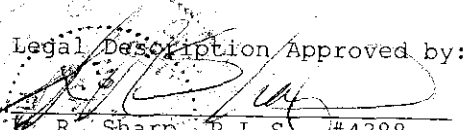
EXHIBIT "A"

Page 6

East a distance of 1,195.00 feet; thence South 00°42'26" East a distance of 936.47 feet to the beginning of a curve concave easterly having a radius of 2,031.48 feet; thence along the arc of said curve to the left a distance of 231.74 feet through a central angle of 06°32'10" with a chord bearing South 03°58'31" East to said south line of the northeast  $\frac{1}{4}$  and to the end of said curve; thence along said south line South 89°03'19" West a distance of 79.19 feet to the POINT OF BEGINNING.

Containing 4.135 acres.

Legal Description Approved by:

  
R. Sharp P.L.S. #4388

Date: June 20, 2005

NOT VALID UNLESS EMBOSSED

EXHIBIT "A"

Page 7