

UTL.03

Date: December 17, 2012  
This instrument prepared  
under the direction of:  
Kristen Carlson, Chief Counsel  
Post Office Box 1249  
City: Bartow, Florida 33831-1249  
Department of Transportation

F.P. NO. 4295031  
PARCEL 102.2  
SECTION 13010-000  
STATE ROAD 45 (US 41)  
COUNTY Manatee

R-13-065

R E S O L U T I O N

ON MOTION of Commissioner John Chappie,  
seconded by Commissioner Robin DiSabatino,  
the following Resolution was adopted:

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 45 (US 41), Section No. 13010-000, in Manatee County, Florida: and

WHEREAS, it is necessary that certain easement rights now owned by Manatee 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 Manatee 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 Manatee County, should be drawn and executed by this Board of County Commissioners. Consideration shall be \$ -0-.

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 MANATEE

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.

COUNTY OF MANATEE, FLORIDA,  
by and through its BOARD OF  
COUNTY COMMISSIONERS:

By: Larry Bustle  
Chairman

ATTEST: R. B. SHORE  
Clerk of the Circuit Court

R. B. Shore



**NOTE: Board Records has exhausted all efforts to secure a fully-executed Subordination of County Utility Interests document.**

23-UTL.02-05/09

Date: December 17, 2012  
This instrument prepared  
under the direction of:  
Dean W. Strickland,  
Interim Chief Counsel  
Post Office Box 1249  
City: Bartow, Florida 33831-1249  
Department of Transportation

F.P. NO. 4295031  
PARCEL 102.2  
SECTION 13010-000  
STATE ROAD 45 (US 41)  
COUNTY Manatee

**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 MANATEE COUNTY, hereinafter called the Utility.

**W I T N E S S E T H:**

WHEREAS, the Utility presently has an interest in certain lands that have been determined necessary for highway purposes; and

WHEREAS, the proposed use of these lands for highway purposes will require subordination of the interest claimed in such lands by Utility to the FDOT; and

WHEREAS, the FDOT is willing to pay to have the Utility's facilities relocated if necessary to prevent conflict between the facilities so that the benefits of each may be retained.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Utility and FDOT agree as follows:

Utility hereby subordinates to the interest of FDOT, its successors, or assigns, any and all of its interest in the lands as follows, viz:

**SEE EXHIBIT "A"**

RECORDED

INSTRUMENT	DATE	FROM	TO	O.R. BOOK/PAGE
Easement	11-09-87	Precision Properties, Ltd #1	County of Manatee	OR 1242 Pg. 687
Easement	01-25-05	Hupp Retail Flamingo, LLC, a Florida limited liability company	" "	OR 1995 Pg. 5010
Easement	01-25-05	" " "	" "	OR 1995 Pg. 5014
Easement	01-25-05	" " "	" "	OR 1995 Pg. 5018
Easement	01-25-05	" " "	" "	OR 1995 Pg. 5022
Easement	01-25-05	" " "	" "	OR 1995 Pg. 5026
Easement	01-25-05	" " "	" "	OR 1995 Pg. 5030

PROVIDED that the Utility has the following rights:

1. The Utility shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon the lands described herein in accordance with the FDOT's current minimum standards for such facilities as required by the FDOT Utility Accommodation Manual in effect at the time the agreement is executed. Any new construction or relocation of facilities within the lands will be subject to prior approval by the FDOT. Should the FDOT fail to approve any new construction or relocation of facilities by the Utility or require the Utility to alter, adjust, or relocate its facilities located within said lands, the FDOT hereby agrees to pay the cost of such alteration, adjustment, or relocation, including, but not limited to the cost of acquiring appropriate easements.
2. Notwithstanding any provisions set forth herein, the terms of the utility permits shall supersede any contrary provisions, with the exception of the provision herein with reimbursement rights.

3. The Utility shall have a reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 1 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that such rights do not interfere with the operation and safety of the FDOT's facilities.
4. The Utility agrees to repair any damage to FDOT facilities and to the extent provided by Florida Statutes 768.28 indemnify the FDOT against any loss or damage resulting from the Utility exercising its rights outlined in Paragraphs 1 and 3 above.

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

Legal Review:

\_\_\_\_\_  
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: Wabi Tessmer DC  
Signature

Vicki Tessmer DC  
Print/Type Name

Clerk(or Deputy Clerk)

Manatee County,  
Florida,  
By Its Board of County  
Commissioners

Larry Bustle  
Signature

LARRY BUSTLE  
Print/Type Name 5/7/13

Its Chairperson  
(or Vice-Chairperson)

Grantor(s)' Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F.P. NO. 4295031

SECTION 13010-000

PARCEL 102

RIGHT OF WAY

A) That portion of Lot 11, Block 2, Spring SUBD'N. (Corrected Plat) a subdivision in Section 14, Township 35 South, Range 17 East, as per plat thereof recorded in Plat Book 8, Page 60, Public Records of Manatee County, Florida.

Being described as follows:

Commence at the southwest corner of said Section 14; thence along the south line of said Section 14, South 89°26'42" East a distance of 1,320.30 feet to the survey base line of State Road 45(US 41); thence along said survey base line North 00°27'52" East a distance of 470.71 feet; thence South 89°32'08" East a distance of 42.00 feet to the east existing right of way line of said State Road 45 (per Section 1301-(117)-(201) 119-2502) and for a POINT OF BEGINNING; thence along said east existing right of way line North 00°27'52" East a distance of 13.00 feet; thence South 89°32'08" East a distance of 5.50 feet; thence South 00°27'52" West a distance of 13.00 feet; thence North 89°32'08" West a distance of 5.50 to the POINT OF BEGINNING.

Containing 72 square feet. .

ALSO

B) That portion of Lot 12, Block 2, Spring SUBD'N. (Corrected Plat) a subdivision in Section 14, Township 35 South, Range 17 East, as per plat thereof recorded in Plat Book 8, Page 60, Public Records of Manatee County, Florida.

Being described as follows:

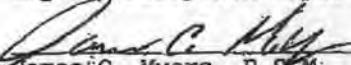
EXHIBIT "A"



Commence at the southwest corner of said Section 14; thence along the south line of said Section 14, South 89°26'42" East a distance of 1,320.30 feet to the survey base line of State Road 45 (US 41); thence along said survey base line North 00°27'52" East a distance of 603.21 feet; thence South 89°32'08" East a distance of 42.00 feet to the east existing right of way line of said State Road 45 (per Section 1301-(117)-(201) 119-2502) for a POINT OF BEGINNING; thence along said east existing right of way line North 00°27'52" East a distance of 6.55 feet to the east existing right of way line of said State Road 45 (as Dedicated to Manatee County, per Official Records Book 1159, Page 2687, Public Records of Manatee County, Florida); thence along said east existing right of way line North 33°01'45" East a distance of 33.44 feet to the south right of way line of Spring Street (per said plat), also being 60th Avenue, West; thence along said south right of way line North 89°52'59" East a distance of 2.10 feet; thence South 00°27'52" West a distance of 5.86 feet; thence South 44°22'37" West a distance of 7.93 feet; thence South 00°27'52" West a distance of 16.11 feet; thence South 44°55'50" West a distance of 9.91 feet; thence North 89°32'08" West a distance of 7.66 feet to the POINT OF BEGINNING.

Containing 277 square feet.

Legal Description Approved by:

  
James C. Myers P.S.M. #5922

Date: 12-17-2012

NOT VALID UNLESS EMBOSSED

EXHIBIT "A"

Page 7 of 7 for Parcel 102.2

REVISED May 7, 2013 - Regular Meeting  
Agenda Item #28

Subject

Subordination of Utility Interests to FDOT, Parcel 102.2

Briefings

None

Contact and/or Presenter Information

Moonlin Johnson  
Ext. 6289

Bill Pearce  
Ext. 6281

Joaquin Servia, Manager  
Property Acquisition/Ext. 3021

**APPROVED** in Open Session

Manatee County Board of County  
Commissioners

Action Requested

Adoption of Resolution R-13-065 subordinating Manatee County's utility interests to Florida Department of Transportation (FDOT).

Authorization for Chairman to execute Subordination of County utility interests to FDOT.

Enabling/Regulating Authority

Florida Statute 125.35 – County Government. Comp Plan - Goal 5.1 addresses adequacy of roadway systems.

Background Discussion

On February 26, 2013, Regular Meeting the BCC adopted Resolution R-13-038 and executed the Subordination for the same project, Parcel 102.4.

The Resolution and Subordination for parcel 102.2 is one of the continuous action requests from FDOT.

On November 9, 1987, a Utility Easement, recorded in O.R. Book 1242 Page 687, was granted to Manatee County from Precision Properties, Ltd. #1.

On January 25, 2005, six Utility and Right of Way Easements recorded in O.R. Book 1995 pages 5010, 5014, 5018, 5022, 5026 and 5030, were granted to Manatee County from Hupp Retail Flamingo, LLC.

The FDOT is requesting that Manatee County convey its interest in the portion of the easements that lies

Manatee County Government Administrative Center  
Commission Chambers, First Floor

9:00 a.m. - May 7, 2013

within in the right of way for future road improvements. The project is identified as FPD Number 4295031, Section 13010-000, Parcel 102.2.

The FDOT is willing to pay for the relocation of the Utility's facilities, if necessary.

The property being conveyed is needed for transportation purposes which are in the interest to the community.

The subject property is located south of 60th Avenue West on the east side of U.S. 41.

Resolution and Subordination of County Utility Interests are hereby presented to the BCC for adoption and execution.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney

Wade

Instructions to Board Records

Please return two certified copies of the Resolution and two original, executed Subordination of Utility Interests to Moonlin Johnson or Bill Pearce, Property Acquisition, for forwarding to FDOT for execution and recording. - Snt all copies and docs (added to penddoc) to Moonlin via interoffice, emailed res to NC & DB on 5/9 - SS

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Cost and Funds Source Account Number and Name

N/A

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Amount and Frequency of Recurring Costs

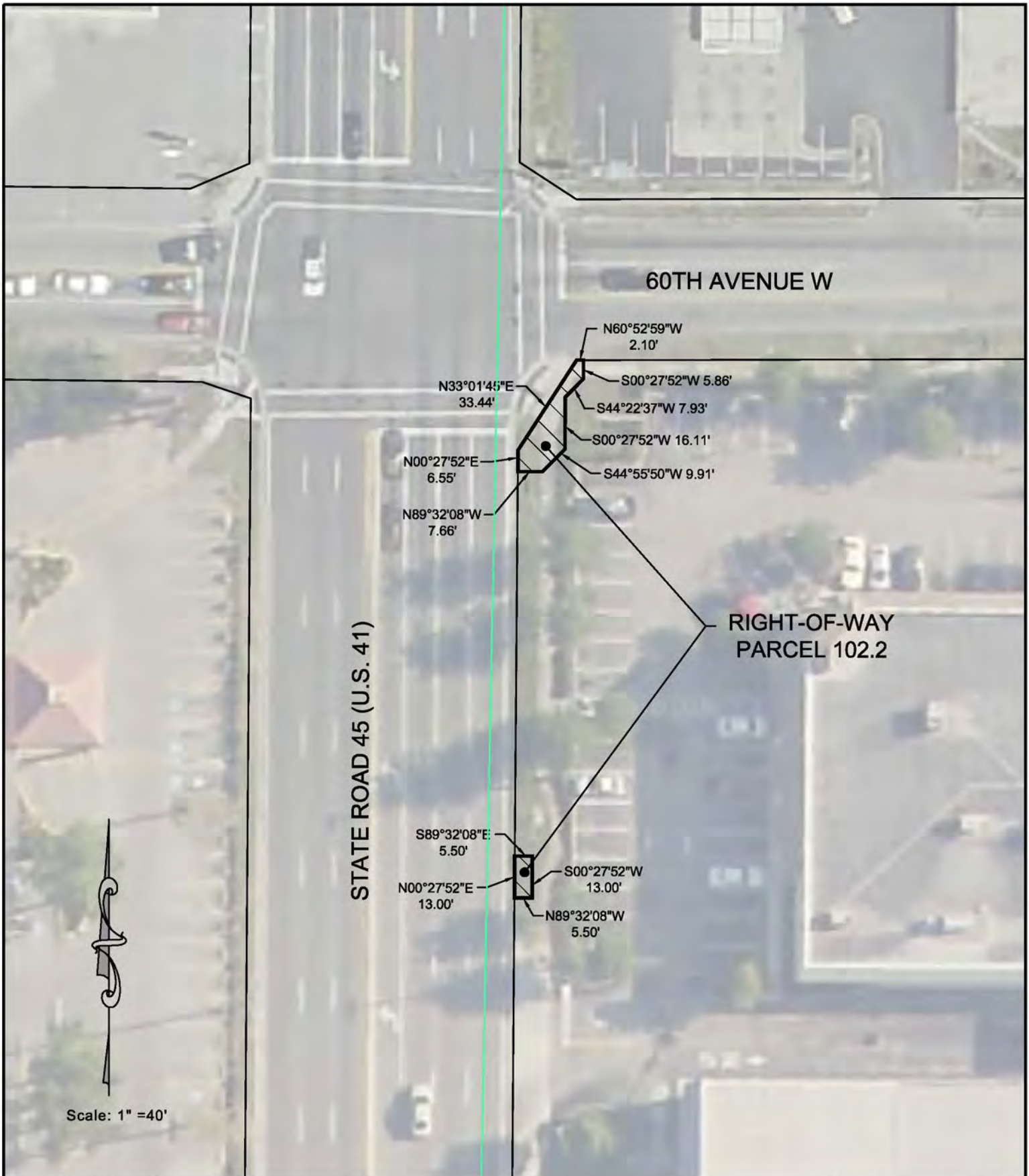
N/A

Attachment: [Resolution R-13-065 for Parcel 102.2.pdf](#)

Attachment: [Subordination - Parcel 102.2.pdf](#)

Attachment: [Parcel 102.2 location map. 60th Ave W. U.S.41 plot desc Survey LEGAL.pdf](#)

Attachment: [RLS-13-007 by Wade.pdf](#)



**F.P. NO. 4295031**  
**SECTION 13010-000**  
**RIGHT-OF-WAY PER FDOT**  
**UTILITY SUBORDINATION**  
**DESCRIPTION**

DWG. Date: April, 2013
DWG. No:
Sheet 1 OF 1
Checked By:
Drawn By: S. Cooke



Office of  
**MANATEE COUNTY  
ATTORNEY**

Mitchell O. Palmer, County Attorney\*

James A. Minix, Chief Assistant County Attorney  
Maureen S. Sikora, Assistant County Attorney\*\*  
Robert M. Eschenfelder, Assistant County Attorney  
Rodney C. Wade, Assistant County Attorney\*\*  
William E. Clague, Assistant County Attorney  
James R. Cooney, Assistant County Attorney  
Sarah A. Schenk, Assistant County Attorney\*\*

**MEMORANDUM**

DATE: January 16, 2013

TO: Charlie H. Bishop, PMP, Director, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 1-16-13*

FROM: Rodney C. Wade, Assistant County Attorney *Rodney C Wade*

RE: **Subordination of County Utility Interests to Florida Department of Transportation / Road Improvement Project S.R. 45 (US 41 a/k/a 14<sup>th</sup> Street West) Between Bayshore Gardens Parkway and 60<sup>th</sup> Avenue West, Parcels 100.3 and 102.2**  
**RLS-13-007 Received January 10, 2013; CAO File 8003-121**

I have been asked to review a document entitled "Subordination of County Utility Interests" which was presented to Manatee County Public Works Department in a letter dated December 19, 2012, by District One, Florida Department of Transportation ("FDOT"). The letter states that it has attached for our review and execution two subordinations of utility interests covering Parcel 100.3 and 102.2. The letter states that if the facilities need to be adjusted or relocated within the parcels that Manatee County will be eligible for reimbursement pursuant to the agreement. Finally, the letter asks that Manatee County execute the subordination agreements and return them to FDOT office by January 23, 2012, for processing and that FDOT will return one copy of the recorded documents to us for our files.

In reviewing the subordination agreement, I find that the agreement is a standard agreement typically used by FDOT as a utilities form, 23-UTL. 02-05/09. The agreement is between the Florida Department of Transportation and the County of Manatee, Utility Agency Organization. This should be changed to Manatee County Board of County Commissioners or "Manatee County."

Paragraph 1 provides that the Utility (Manatee County) will have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate the facilities on or within the lands

\* Board Certified in Construction Law

\*\* Board Certified in City, County & Local Government Law

described herein, and the lands described herein are an easement recorded October 27, 1992, from Bayshore Gardens Venture to Manatee County in O.R. Book 1411, Page 7459. Continuing in paragraph 1, FDOT agrees to pay the cost of relocation and construction, including the cost of acquisition of appropriate easements should the Utility (Manatee County) require removal or relocation.

Paragraph 2 provides that the terms of the utility permits shall supersede any contrary provisions, except of the provision herein with reimbursement rights.

Paragraph 3 provides that the Utility (Manatee County) has a reasonable right to enter upon the lands for purposes described in paragraph 1, including the right to trim trees and bushes which might endanger the facility, providing that the right do so does not interfere with the operation and safety of FDOT facilities, being the right-of-way U.S. 41.

Paragraph 4 provides that the Utility (Manatee County) agrees to repair any damage to the U.S. 41 facility and indemnify FDOT against any loss or damage resulting from the Utility (Manatee County) exercising its rights outlined in paragraphs 1 and 3. Paragraph 4 should be revised to read as follows:

“4. The Utility agrees to repair any damage to FDOT facilities and to the extent provided by Florida Statutes § 768.28 indemnify the FDOT against any loss or damage resulting from the Utility exercising its rights outlined in paragraphs 1 and 3 above.”

The form of the agreement is consistent with other forms of this nature presented to this office by the Florida Department of Transportation for the subordination of utility interests and with the exception of the additional language required in paragraph 4 above, is in a form that is legal and proper for consideration by the Board of County Commissioners.

Manatee County customarily does not execute these kinds of agreements prior to the execution by the requesting party; however, since Manatee County is granting to the Florida Department of Transportation the subordination of the utility interests, it should execute the agreement first and return it to FDOT for execution and recordation.



Charlie H. Bishop, PMP, Director  
Property Management Department  
Page 3  
January 16, 2013

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

RCW/slm

cc: Ed Hunzeker, County Administrator  
Ron Schulhofer, Director, Public Works Department  
Joaquin Servia, Manager, Property Acquisition Division, Property Management Dept.  
Wayne Troxler, Manager, Utility Engineering Division, Public Works Dept.

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