

UTL.03

Date: August 21, 2013

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. 4295061

PARCEL 126.3

SECTION 13010-000

STATE ROAD 45 (US 41)

COUNTY Manatee

R-13-129

R E S O L U T I O N

ON MOTION of Commissioner DiSabatino,  
seconded by Commissioner Benac,  
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.

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.

DULY ADOPTED with a quorum present and voting this 10 day of September, 2013.



BOARD OF COUNTY COMMISSIONERS  
OF MANATEE COUNTY, FLORIDA

By: Larry Bustle  
Chairperson

ATTEST: R. B. SHORE  
CLERK OF THE CIRCUIT COURT

By: R. B. Shore  
Deputy Clerk

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that the foregoing is a true and copy of a Resolution adopted by the Board of County Commissioners of \_\_\_\_\_ County, Florida at the meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name:

Clerk  
Board of County Commissioners  
\_\_\_\_\_  
County,  
Florida

23-UTL.02-05/09

Date: July 15, 2013

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. 4295061

PARCEL 126.3

SECTION 13010-000

STATE ROAD 45(US 41)

COUNTY Manatee

#### **SUBORDINATION OF COUNTY UTILITY INTERESTS**

THIS AGREEMENT, entered into this 10th day of September, 20 13, 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
Utility Easement	11-06-73	Albert C. Haug, a single man	Manatee County	OR 677 PG 610

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

\_\_\_\_\_  
Signature

Legal Review:

\_\_\_\_\_  
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: *R.B. Shore*  
Signature

R.B. Shore, Clerk of Circuit Court  
Print/Type Name

Clerk(or Deputy Clerk)



Manatee County,  
Florida,  
By Its Board of County  
Commissioners

*Larry Bustle*  
Signature 9/10/13

Larry Bustle  
Print/Type Name

Its Chairperson  
(or Vice-Chairperson)

Grantor(s) ' Mailing Address:

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

1870

1871

1872



REVISED September 10, 2013 - Regular Meeting  
Agenda Item #26

Subject

Subordination of Utility Interests to FDOT, Parcel 126.3

Briefings

None

Contact and/or Presenter Information

Paul Johnson, Property Management, Ext. 6284

Joaquin Servia, Division Manager, Property Management, Ext. 3021

**APPROVED** in Open Session

Manatee County Board of County  
Commissioners

Action Requested

ADOPT Resolution R-13-129; Execute Subordination of County Utility Interests with the State of Florida Department of Transportation (FDOT) for highway purposes. The property is located north of 60th Avenue West on the west side of U.S. 41.

Enabling/Regulating Authority

Florida Statutes 125.35 - County Government

Background Discussion

At the May 7, 2013 Regular Meeting the BCC adopted Resolution R-13-066 and executed the Subordination of County Utility Interests for the same project, Parcel 105.3.

The Resolution and Subordination for Parcel 126.3 is one of the continuous action requests from FDOT.

On November 6, 1973 a Utility Easement recorded in O.R. Book 677 Page 610, was granted to Manatee County from Albert C. Haug.

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

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 Paul Johnson, Property Acquisition, for forwarding to FDOT for execution and recording.

- Snt res to NC & DB, Snt all copies to PJ and added Res to M Drive - 9/11/13 - 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-13-129 for Parcel 126.3 .pdf](#)  
Attachment: [Subordination Parcel 126.3 .pdf](#)  
Attachment: [RLS-13-007 by Wade .pdf](#)  
Attachment: [Parcel 126 location map Utility Subordination Description .pdf](#)

F.P. NO. 4295061

SECTION 13010-000

PARCEL 126

RIGHT OF WAY

That portion of the northwest 1/4 of Section 14, Township 35 South, Range 17 East, Manatee County, Florida.

Being described as follows:

Commence at the northwest corner of said Section 14; thence along the north line of said Section 14, South 89°12'29" East a distance of 1,305.79 feet to the survey base line of State Road 45 (US 41); thence along said survey base line South 00°27'52" West a distance of 692.43 feet; thence South 89°52'19" 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 continue South 89°52'19" East a distance of 5.20 feet; thence South 00°27'52" West a distance of 10.74 feet; thence South 89°32'08" East a distance of 1.41 feet; thence South 00°27'52" West a distance of 14.00 feet; thence North 89°32'08" West a distance of 1.51 feet; thence South 00°27'52" West a distance of 21.53 feet; thence South 00°26'52" West a distance of 15.31 feet; thence South 26°06'02" East a distance of 8.75 feet; thence South 00°26'52" West a distance of 41.30 feet; thence South 27°01'46" West a distance of 5.54 feet; thence South 00°26'52" West a distance of 17.60 feet; thence North 89°33'08" West a distance of 1.53 feet; thence South 00°26'52" West a distance of 50.61 feet to the north right of way line of 54th Street Court West of Hidden Lake Subdivision (as per plat thereof recorded in Plat Book 19, Page 79, Public Records of Manatee County, Florida); thence along said north right of way line North 89°27'29" West a distance of 5.00 feet to said east existing right of way line of said State Road 45; thence along said east existing right of way line North 00°26'52" East a distance of 137.59 feet; thence continue along said east existing right of way line North 00°27'52" East a distance of 46.24 feet to the POINT OF BEGINNING.

Containing 1,170 square feet.

Legal Description Approved by:

  
James C. Myers, P.E. #5922  
Date: 07-13-2013  
NOT VALID UNLESS EMBOSSED

EXHIBIT "A"



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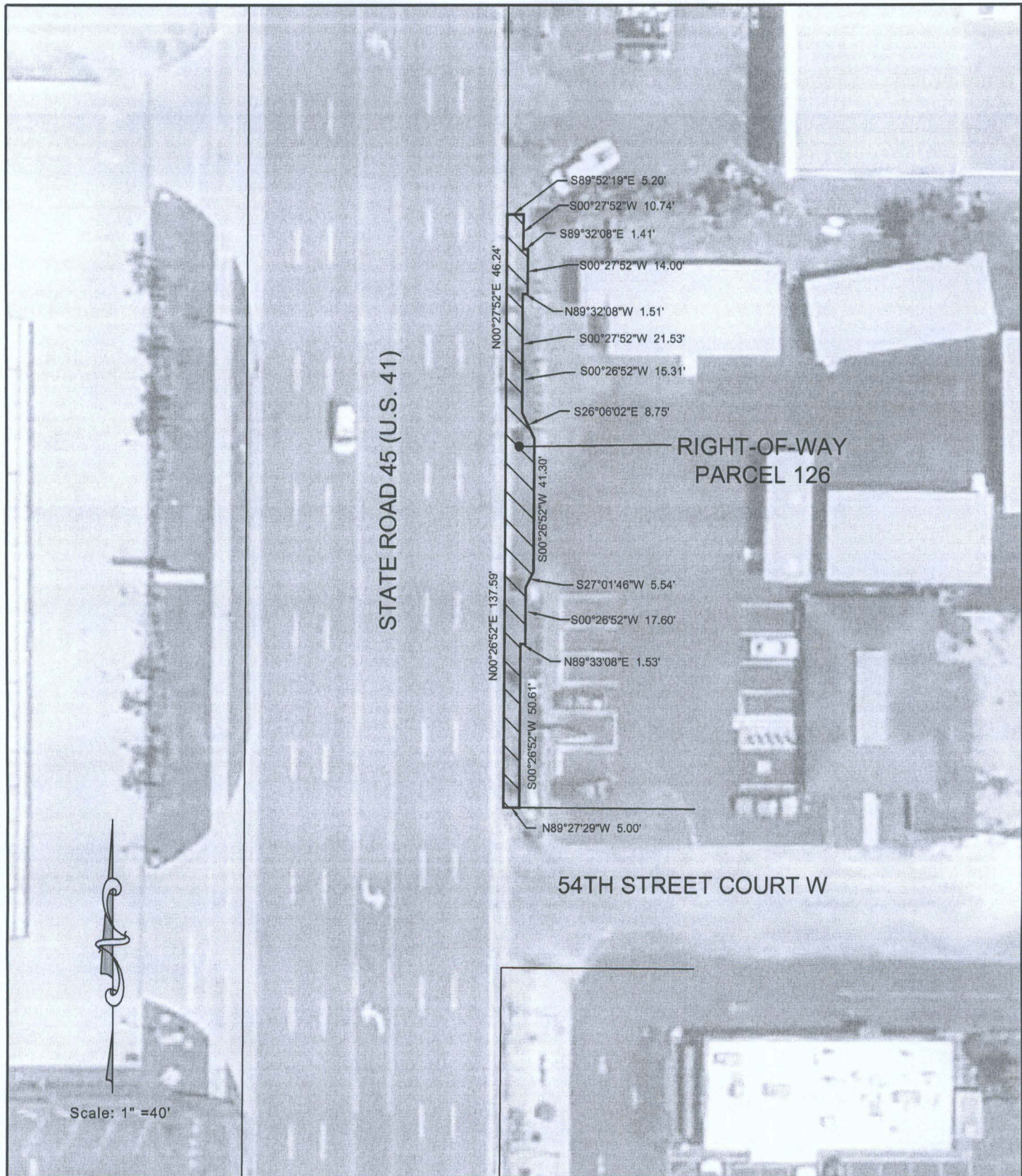
This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

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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MANATEE COUNTY PROPERTY  
MANAGEMENT DEPARTMENT



1112 MANATEE AVENUE WEST  
BRADENTON, FLORIDA, 34205,  
(941)748-4501

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

DWG. Date: August, 2013

DWG. No:

Sheet 1 OF 1

PARCEL 126

Drawn By: S. Cooke