



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Chief Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney
Douglas E. Polk, Assistant County Attorney

MEMORANDUM

DATE: August 1, 2019

TO: Joy Leggett-Murphy, Property Acquisition Division Manager, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney *Approved by M. Palmer 8-6-2019*

FROM: Pamela J. D'Agostino, Assistant County Attorney *Approved by P. D'Agostino 8-1-2019*

RE: **Subordination of Easement Agreements – FDOT and Manatee County; CAO Matter No. 2019-0390**

Issue Presented:

In this Request for Legal Services (RLS), you have asked the County Attorney's Office (CAO) to review the two types of subordination agreements provided by the Florida Department of Transportation (FDOT) and determine whether they are legally acceptable to present to the Board of County Commissioners of Manatee County, Florida (Board).

Brief Answer:

I have reviewed the two types of subordination agreements and determined that they are not legally acceptable to present to the Board. Attached are revised agreements for staff's use which are legally acceptable. Provided staff proceeds consistent with my advice, I have no objection from a legal standpoint to the attached revised agreements being presented to the Board for review and consideration. The decision to subordinate the County's interests is a business decision that the Board has the authority to make.

Facts:

According to this RLS, the FDOT has furnished staff with 57 proposed subordination

* Board Certified in Construction Law

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

agreements and wants the County to subordinate numerous temporary and perpetual easements so that the FDOT can proceed with Project #4335921 which is to construct sidewalks along State Road 45 (U. S. 41/14th Street West) from 69th Avenue West (Bay Drive) to Cortez Road. Staff has determined that there are two form agreements being used by the FDOT: 23-UTL.02-05/09 for perpetual easements and 23-UTL.01-06/93 for temporary easements.

Discussion:

These agreements include terms which are customary in these types of transactions. I trust that staff has reviewed and analyzed the business aspects of these agreements and determined that it is appropriate and reasonable for the County to agree to subordinate its interests in the manner described. The only substantive change I have made is to insert language relative to the County's limitations to indemnify in accordance with Section 768.28, Florida Statutes. The FDOT should be willing to revise the agreements in this fashion as they have done so in the past on agreements like this and others.

I have not reviewed or analyzed the instruments listed in the table of each agreement. Staff will need to thoroughly review and analyze each of the 57 agreements and the listed instruments within each one to ensure that the agreements list the correct instruments and to determine whether or not subordination of the interests listed is appropriate.

The attached revised agreements have been drafted in 12-point Arial font and otherwise reformatted in an effort to adhere to Americans with Disabilities (ADA) requirements consistent with County policy. It has been my experience that the FDOT generally does not allow any reformatting or revisions to its standard forms, but I have on several occasions been able to convince the FDOT to permit certain revisions or reformatting. Staff should discuss with the FDOT the recent ADA litigation and seek approval of these reformatted forms.

Manatee County enters into numerous agreements and transactions with the FDOT each year and the FDOT's cooperation will be a critical factor in whether or not the County is able to make the documents in furtherance of these agreements and transactions accessible to the entire community, including those with disabilities. Staff would be wise to approach the FDOT to discuss how to comprehensively balance both the FDOT's desire to use standardized forms state-wide with our obligation to comply with the ADA.

Conclusion:

The agreements provided are not legally acceptable to present to the Board. Staff should use the attached agreements instead. Provided staff uses the attached agreements and

otherwise proceeds consistent with my advice, I have no objection to these agreements being presented to the Board for consideration. I express no opinion as to the business judgment of entering into these agreements. This completes my response to your RLS. Please contact me if you have any questions or if I can be of further assistance.

Copies with attachments to:

Cheri Coryea, County Administrator
John Osborne, AICP, Infrastructure and Strategic Planning Official – Deputy
County Administrator
Karen M. Stewart, CECD, Economic Development Official – Acting Deputy
County Administrator
Charlie Bishop, Director, Property Management Department
Dave Branning, Senior Engineering Technician, Public Works Department
Brandie Adams, Real Property Specialist, Property Management Department
Carmine DeMilio, ADA Compliance Coordinator, Property Management
Department

23-UTL.02-05/09

Date: May 1, 2019

This instrument prepared under the direction of:
Angela D. Tucker, Chief Counsel
Post Office Box 1249
City: Bartow, Florida 33831-1249
Department of Transportation

F.P. NO. 4335921
PARCEL 815.2
SECTION 13010-000
STATE ROAD 45 (US 41)
COUNTY: Manatee

SUBORDINATION OF COUNTY UTILITY INTERESTS

THIS AGREEMENT, entered into this _____ day of _____, 2020, 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, a political subdivision of the State of Florida, hereinafter called the Utility.

WITNESSETH:

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	10-07-66	The Protane Corporation	Manatee County, Florida	O. R. 299 PG 259
Easement	05-17-74	Allen W. Cook and Mildred A. Cook, h/w	Manatee County, Florida	O. R. 677 PG 570

Easement	06-26-74	Egbert S. Reasoner	Manatee County, Florida	O. R. 679 PG 633
----------	----------	-----------------------	----------------------------	---------------------

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 regarding 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 and subject to the limitations of Section 768.28, Florida Statutes, to 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 _____, 2020, 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 Utility hereto has executed this agreement on the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

Utility's Mailing Address:
Post Office Box 1000
Bradenton, Florida 34206

EXHIBIT "A"

FP. NO. 4335921

SECTION 13010-000

PARCEL 815

Perpetual Easement

That portion of the northwest 1/4 of Section 11, Township 35 South, Range 17 East, Manatee County, Florida.

Being described as follows:

Commence at the northwest corner of said Section 11; thence along the north line of said Section 11, South 89°32'56" East a distance of 1,300.71 feet to the survey base line of State Road 45 (US 41); thence along said survey base line South 00°27'36" West a distance of 871.89 feet; thence continue along said survey base line, South 00°28'36" West a distance of 15.17 feet; thence North 89°31'50" West a distance of 42.00 feet to the west existing right of way line of said State Road 45 (per Section 13010-2502) for a POINT OF BEGINNING; thence along said west existing right of way line South 00°28'36" West a distance of 100.21 feet to the north line of Lot 1, Palm Acres, a subdivision, as per plat thereof recorded in Deed Book 315, Page 507, Public Records of Manatee County, Florida; thence along said north line North 89°30'41" West a distance of 3.42 feet; thence North 00°30'18" East a distance of 7.85 feet; thence North 16°16'09" West a distance of 7.11 feet; thence North 00°25'47" East a distance of 79.13 feet; thence North 17°07'43" East a distance of 2.25 feet; thence North 00°21'39" East a distance of 4.27 feet; thence South 89°31'50" East a distance of 4.90 feet to the POINT OF BEGINNING.

Containing 524 square feet.

Legal Description Approved by:
Richard M. "Mike" Benton, P.S.M. #6447
On April 30, 2019

23-UTL.01-06/93

Date: May 23, 2019

This instrument prepared under the direction of:
Angela D. Tucker, Chief Counsel
Post Office Box 1249
City: Bartow, Florida 33831-1249
Department of Transportation

F.P. NO. 4335921
PARCEL 710.2
SECTION 13010-000
STATE ROAD 45 (US 41)
COUNTY: Manatee

SUBORDINATION OF UTILITY INTERESTS FOR TEMPORARY EASEMENTS

THIS AGREEMENT, entered into this _____ day of _____, 2020, 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, a political subdivision of the State of Florida, hereinafter called the Utility.

WITNESSETH:

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"

It is understood and agreed by the parties hereto that the rights granted herein shall terminate upon completion of this transportation project, but no later than the last day of December, 2024.

RECORDED

INSTRUMENT	DATE	FROM	TO	O. R. BOOK/PAGE
Utility Easement	04-26-66	Chester C. and Eva C. Harris	Manatee County, Florida	O. R. 282 PG 51

Utility Easement	04-25-66	R. Paul and Hazel A. Donahoe	Manatee County, Florida	O. R. 282 PG 62
Utility Easement	04-25-66	R. Paul and Hazel A. Donahoe	Manatee County, Florida	O. R. 282 PG 63
Utility Easement	11-20-73	R. Paul Donahoe and Hazel A. Donahoe, his wife	Manatee County, Florida	O. R. 677 PG 613

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 regarding 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 and subject to the limitations of Section 768.28, Florida Statutes, to 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 _____, 2020, 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 Utility hereto has executed this agreement on the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

Utility's Mailing Address:
Post Office Box 1000
Bradenton, Florida 34206

EXHIBIT "A"

FP. NO. 4335921

SECTION 13010-000

PARCEL 710

Temporary Easement

Those portions of Lot 6, Block A, Patrison Subdivision, a subdivision in Section 23, Township 35 South, Range 17 East, as per plat there of recorded in Plat Book 7, Page 91, Public Records of Manatee County, Florida.

Being described as follows:

Commence at the northwest corner of the southwest 1/4; thence along the north line of said southwest 1/4, South 89°33'59" East a distance of 1,314.06 feet to the survey base line of State Road 45 (US 41); thence South 00°28'52" West a distance of 568.43 feet; thence South 89°31'08" East a distance of 49.02 feet for a POINT OF BEGINNING; thence continue South 89°31'08" East a distance of 6.25 feet; thence South 00°28'52" West a distance of 32.89 feet; North 89°31'08" West a distance of 6.25 feet; thence South 00°28'52" West a distance of 32.89 feet.

Containing 1623 square feet.

Legal Description Approved by:
Richard M. "Mike" Benton, P.S.M. #6447
On April 30, 2019