

ST. PETERSBURG CITY COUNCIL

Consent Agenda

Meeting of April 16, 2009

TO: The Honorable Jeff Danner, Chair, and Members of City Council

SUBJECT: Authorizing the Mayor or his designee to execute a subordination agreement with the Florida Department of Transportation ("FDOT") to subordinate the City of St Petersburg's interest in a portion of the City's water transmission main easement located generally at U.S. 19 North and Nursery Road (S.R. 55) associated with FDOT's Roadway Improvement Project No. 256881-1-52-01 concurrent with the execution of Utility Work by Highway contractor Agreements and Loan Agreements between the City and FDOT for FDOT's Roadway, Bridge and Drainage improvements to U.S. 19 from south of Seville Boulevard to north of State Road 60, FPID #256881-2-56-01. (Engineering Project No. 06100-411; Oracle No. 11380) and U.S. 19 from north of Whitney Road to south of Seville Boulevard, FPID #256881-1-56-01. (Engineering Project No. 06100-311; Oracle No. 11382)

EXPLANATION: As part of the Accelerate Florida Initiative to stimulate Florida's economy as quickly as possible, the FDOT is proceeding with plans to construct road widening, bridge and drainage improvements within FDOT's right-of-way along US 19 from north of Whitney Road to South of Seville Boulevard. Those plans necessitate the relocation of the City's 48 inch water transmission main which lies within FDOT right of way, at City expense. On March 19, 2009, City Council authorized the Mayor or his designee to negotiate and execute agreements with FDOT for the relocation of the City's transmission main at those locations with initial funding for the City's cost of the project being provided by FDOT through a loan agreement.

In conjunction with the project agreements authorized previously by City Council, FDOT has also asked the City to subordinate a portion of its 36-Inch Water Transmission Main Easement at U.S. 19 North and Nursery Road for FDOT Roadway Improvement Project 256881-52-01. The FDOT has purchased a 2.012 acre parcel (former Don Pablo Restaurant) on Nursery Road adjacent to the roadway improvements, for the purpose of constructing stormwater treatment ponds. The City has a 50 foot wide easement for the City's 36" diameter water transmission main easement across the 2.012 acre site. The FDOT has requested a subordination agreement at this location in conjunction with the proposed construction of two 24" storm drainage pipes which will cross the City's easement under the 36" water transmission main. Although this project does not require the relocation of the City's transmission main, FDOT has indicated that the subordination is necessary in order for them to proceed with the overall project. If the City elected not to subordinate its interest, FDOT would have to consider condemning the City's easement interest.

In order to accommodate FDOT's request but still protect the City's easement interest, a Subordination Agreement was developed with the City's Legal Department and FDOT that maintains City's essential easement rights. The Subordination Agreement provides that in the event the City's facilities need to be relocated, the associated costs with any such relocation will be at FDOT's expense. The City has agreed to similar subordination agreements with FDOT at other locations along U.S. 19.

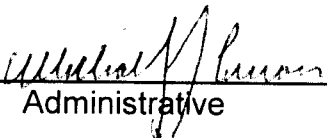
City staff is working to complete negotiations with FDOT on the Utility Work by Highway Contractor Agreements and associated loan agreements and is waiting for FDOT to provide final documents. Staff recommends that all of the agreements be finalized and executed at the same time so that the subordination agreement is executed concurrently with the other agreements.

RECOMMENDATION: Administration recommends authorizing the Mayor or his designee to execute a Subordination Agreement between the City of St. Petersburg and FDOT to subordinate the City of St Petersburg's interest in a portion of the City's water transmission main easement located generally at U.S. 19 North and Nursery Road (S.R. 55) associated with FDOT's Roadway Improvement Project No. 256881-1-52-01 concurrent with the execution of Utility Work by Highway contractor Agreements and Loan Agreements between the City and FDOT for FDOT's Roadway, Bridge and Drainage improvements to U.S. 19 from south of Seville Boulevard to north of State Road 60, FPID #256881-2-56-01. (Engineering Project No. 06100-411; Oracle No. 11380) and U.S. 19 from north of Whitney Road to south of Seville Boulevard, FPID #256881-1-56-01. (Engineering Project No. 06100-311; Oracle No. 11382)

COST/FUNDING/ASSESSMENT INFORMATION: Not Applicable.

ATTACHMENTS: Resolution
Subordination Agreement

APPROVALS:


7136 Administrative


Budget

RESOLUTION NO. 2009-_____

AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A SUBORDINATION AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") TO SUBORDINATE THE CITY OF ST. PETERSBURG'S INTEREST IN A PORTION OF THE CITY'S WATER TRANSMISSION MAIN EASEMENT LOCATED AT U.S. 19 NORTH AND S.R. 55 ASSOCIATED WITH FDOT'S ROADWAY IMPROVEMENT PROJECT NO. 256881-1-52-01; AND TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, CONCURRENT WITH THE EXECUTION OF UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENTS AND LOAN AGREEMENTS BETWEEN THE CITY OF ST. PETERSBURG AND FDOT FOR FDOT'S ROADWAY, BRIDGE AND DRAINAGE IMPROVEMENTS TO U.S. 19 FROM SOUTH OF SEVILLE BOULEVARD TO NORTH OF STATE ROAD 60, FPID# 256881-2-56-01 (ENGINEERING PROJECT NO. 06100-411; ORACLE NO. 11380) AND U.S. 19 FROM NORTH OF WHITNEY ROAD TO SOUTH OF SEVILLE BOULEVARD, FPID #256881-1-56-01 (ENGINEERING PROJECT NO. 06100-311; ORACLE NO. 11382); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Transportation ("FDOT") has requested the City to subordinate a portion of its 36-Inch Water Transmission Main Easement at U.S. 19 North and State Road 55 (Nursery Road) for FDOT Roadway Improvement Project No. 256881-1-52-01 (the "Project"); and

WHEREAS, the Project does not require the City to remove or relocate its water transmission main at that location but does involve construction activity within the City's easement; and

WHEREAS, the portion of the easement to be subordinated consists of a 50 foot wide strip across approximately 2.012 acres acquired by FDOT for road purposes; and

WHEREAS, the Subordination Agreement was developed with the City's Legal Department and FDOT to maintain essential City Easement rights; and

WHEREAS, the Subordination Agreement also provides that in the event the City's facilities need to be relocated at a future time, the costs associated with such relocation will be at FDOT's expense.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St Petersburg, Florida, that the Mayor or his Designee, is authorized to execute a Subordination Agreement with the Florida Department of Transportation to subordinate the City's interest in a portion of the City's Water Transmission Main Easement at U.S. 19 North and State Road 55 (Nursery Road) associated with the FDOT's Roadway Improvement Project No. 256881-1-52-01, concurrent with the execution of Utility Work by Highway contractor Agreements and Loan Agreements between the City and FDOT for FDOT's Roadway, Bridge and Drainage improvements to U.S. 19 from south of Seville Boulevard to north of State Road 60, FPID #256881-2-56-01. (Engineering Project No. 06100-411; Oracle No. 11380) and U.S. 19 from north of Whitney Road to south of Seville Boulevard, FPID #256881-1-56. (Engineering Project No. 06100-311; Oracle No. 11382); and to execute all documents to effectuate the same.

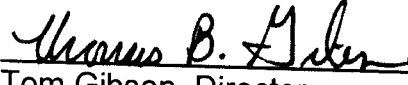
This Resolution shall become effective immediately upon its adoption.

APPROVED:



City Attorney (Designee)

APPROVED:



Tom Gibson, Director
Engineering

By: Kim Streeter
Assistant City Attorney

This instrument prepared by,
or under the direction of
MARTIN D. HERNANDEZ, Esq.
Department of Transportation
11201 N. Malcolm McKinley Drive
Tampa, Florida 33612

PARCEL : 111.03
WPI/SEG : 7116967/2568811
S.R. NO.: 55
COUNTY : PINELLAS
SECTION : 15150-2579
MANAGING DISTRICT: SEVEN

Legal Description Approved:
Date: 08/27/2004 By: Fred W. Edwards

UTL.STP

SUBORDINATION OF CITY UTILITY INTERESTS

THIS AGREEMENT, entered into by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the FDOT, and the City of ST. PETERSBURG, Florida, a municipal corporation, acting as a 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 lands that have been determined necessary for a transportation facility; and

WHEREAS, the proposed use of the real property for a transportation facility requires subordination of the UAO's interest to the FDOT; and

WHEREAS, the FDOT is willing to pay to have the UAO'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 the UAO and FDOT agree as follows:

1. The UAO hereby subordinates to the interest of FDOT, its successors, or assigns, all interest the UAO has in the real property described as follows:

Lot 1, DON PABLO'S - NURSERY ROAD, as per plat thereof recorded in Plat Book 118, Pages 31 and 32, Public Records of Pinellas County, Florida, lying within Section 20, Township 29 South, Range 16 East.

Containing 2.012 acres, more or less.

The interest of the UAO being subordinated hereby includes, but is not necessarily limited to, the interest created by the following document(s):

INSTRUMENT	DATE	FROM	TO	OR Bk/Pg

EASEMENT	02/17/30	KATIE KILGORE	PINELLAS WATER COMPANY	1465/184
ASSIGNMENT	12/04/40	PINELLAS WATER COMPANY	CITY OF ST. PETERSBURG, FLORIDA	1465/188
EASEMENT	02/13/30	MARY KILGORE et al	PINELLAS WATER COMPANY	1465/199
ASSIGNMENT	12/04/40	PINELLAS WATER COMPANY	CITY OF ST. PETERSBURG, FLORIDA	1465/203

1. The UAO shall continue to have all rights under the UAO's real property interest documents identified above, including the right to construct, operate, maintain, repair, improve, add to, upgrade, remove and relocate facilities on, within, and upon the lands described herein. The UAO shall do so in accordance with the FDOT standards as set forth in the FDOT's then current Utility Accommodation Manual, and the uses of the real property interest created by the documents identified above shall be subject to the control of the FDOT in accordance with the terms of this Subordination Agreement.

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. In the event that any of the above situations occur, the FDOT hereby agrees to pay to the UAO, the actual cost of such location, protection, adjustment or removal of any part of the facility, including, but not limited to, all costs, including attorney fees and other condemnation costs, if necessary, of acquiring easements comparable to the easement being subordinated herein. Payment of the above shall not include any betterment to the UAO. For purposes of this agreement, betterment is defined as any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the UAO.

b. Any new construction or relocation of UAO facilities within the property described in this Agreement will be subject to prior approval by the FDOT. Such approval shall not be unreasonable withheld. Should the FDOT choose not to approve any new construction or relocation of facilities by the UAO or require the UAO to alter, adjust or relocate its facilities located within said lands, the FDOT hereby agrees to pay the actual cost of such alteration, adjustment, or relocation including but not limited to, all costs including attorney fees and other condemnation costs, if necessary, of acquiring easements comparable to the easements being subordinated herein. Payment of said costs shall not include any betterment to the UAO.

c. The FDOT acknowledges that in accordance with the easements referenced herein, the Utility Accommodation Manual, and in accordance with FDOT policies, the UAO is entitled to review the notice of the proposed construction of any other utilities within the property described above, and that such utilities are required to obtain an FDOT permit which states that the new utility may not interfere with any existing utilities within the property described above. If FDOT permits the location of another utility's facility in the property described, and the UAO is precluded from locating additional facilities therein, FDOT agrees to pay all actual and reasonable costs including but not limited to attorney fees and condemnation costs of acquiring easements comparable to the easement being subordinated herein for the UAO to locate additional facilities. Payment of said costs shall not include any betterment to the UAO.

2. The terms of this Subordination Agreement shall supersede any contrary provisions within any utility permit issued to the UAO or any Utility Highway Agreement regarding the property described in this Agreement.

3. The UAO shall have a reasonable right to enter upon the lands described herein for the purpose 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 facilities.

IN WITNESS WHEREOF, the FDOT has executed this agreement effective this _____ day of _____, 200__.

signed, sealed and delivered in the presence of:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____
Director of Transportation Development for District VII

PRINT NAME SCOTT W. COLLISTER, P.E. CPCM
ADDRESS: 11201 N. Malcolm McKinley Dr.
Tampa, Florida 33612

WITNESS
PRINT NAME _____

WITNESS
PRINT NAME _____

Legal Review

By: _____
District Counsel

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by SCOTT W. COLLISTER, DIRECTOR OF TRANSPORTATION DEVELOPMENT for District VII, who is personally known to me or who has produced _____ as identification.

PRINT NAME DEANNA L. ALDERMAN
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: _____
Serial No., if any: _____

IN WITNESS WHEREOF, the City has executed this agreement on the day and year first above written.

Signed, sealed and delivered in
the presence of:

The City of ST. PETERSBURG, Florida,
a municipal corporation

By: _____
RICK BAKER, Mayor

ATTEST: _____
EVA ANDUJAR, City Clerk

ADDRESS P.O. BOX 2842
ST. PETERSBURG FLORIDA 33731

WITNESS
PRINT NAME _____

WITNESS
PRINT NAME _____

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this _____ day of _____, 200_____, by RICK BAKER, Mayor of the City of St. Petersburg, Florida and Eva Andujar, City Clerk for the City of St. Petersburg, who are personally known to me or to have produced _____ as identification.

PRINT NAME _____
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: _____
Serial No., if any: _____

R E S O L U T I O N

ON MOTION of Councilperson _____, seconded by Councilperson _____, the following Resolution was adopted:

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 55, Section No. 15150-2579, in PINELLAS County, Florida: and

WHEREAS, it is necessary that certain easement rights now owned by the City of ST. PETERSBURG, Florida, be subordinated to the rights of the State of Florida Department of Transportation: and

WHEREAS, said subordination is in the best interest of the City: and

WHEREAS, the State of Florida Department of Transportation has made application to said City 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 Department of Transportation, and said request having been duly considered.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of ST. PETERSBURG, Florida, 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 the City of ST. PETERSBURG, Florida, should be drawn and executed by this City Council. Consideration shall be \$ _____.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at 11201 N. Malcolm McKinley Drive Tampa, Florida 33612.

STATE OF FLORIDA

CITY OF ST. PETERSBURG

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the City Council of the City of ST. PETERSBURG, Florida, at a meeting held on the _____ day of _____, 200_____.

Clerk, of City Council
ST. PETERSBURG, Florida
a municipal corporation