



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.7.

1/23/2024

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### Subject:

Resolution authorizing the subordination of utility interest for the Florida Department of Transportation to perform improvements at the State Road 528 and Courtney Parkway (SR 3) - District 2

### Fiscal Impact:

None

### Dept/Office:

Utility Services

### Requested Action:

It is requested that the Board of County Commissioners (1) execute a Subordination of Utility Interest on Parcel 104.04 (see attachment 1); and (2) approve the resolution authorizing the subordination of the County's utility interest on Parcel 104.04 (see attachment 2).

### Summary Explanation and Background:

The Florida Department of Transportation (FDOT) is proposing improvements to State Road 528 and State Road 3 (see attachment 3) which include:

- Widen and reconstruct State Road 528 from 4 to 6 lanes east of State Road 524 to east of State Road 3 (+/- 3.8 miles).
- Replace the State Road 528 bridges over U.S Route 1, State Road 3, and the Indian River Canal.
- Improvements to the vertical curves of the bridges replaced.
- Create a shared-use path on the north side of State Road 528.

The proposed work requires the expansion of the FDOT right-of-way (ROW) into Parcel 104.04 (see attachment 2), identified as tax account 2411985, which has an existing DUE (Drainage and Utility Easement). No existing Brevard County Utility Services Department utilities are within the DUE and none are anticipated to be installed within the DUE.

Due to this FDOT project requiring a wider ROW at the improvement location, FDOT is seeking to have Brevard County execute the attached Subordination of County Utility Interests and Resolution forms, attachments 1 and 2 respectively. Executing the attached Subordination of Utility Interests on Parcel 104.4 and Resolution forms enables FDOT to obtain the real estate interest for their State Road 528 widening and reconstruction project. The execution of the forms is anticipated to have no impact to the Utility Services Department.

### Clerk to the Board Instructions:

E-mail Clerk Memo to [karina.perez@brevardfl.gov](mailto:karina.perez@brevardfl.gov) and mail original memo to Utility Services.



January 24, 2024

**M E M O R A N D U M**

**TO:** Ed Fontanin, Utility Services Director

**RE:** Item F.7., Resolution Authorizing the Subordination of Utility Interest for the Florida Department of Transportation (FDOT) to Perform Improvements at the State Road 528 and Courtenay Parkway (SR 3)

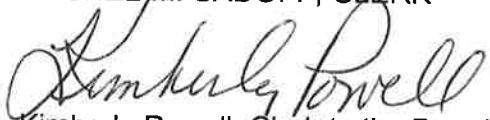
The Board of County Commissioners, in regular session on January 23, 2024, executed and approved the Subordination of Utility Interest on Parcel 104.04 for the FDOT to perform improvements at the State Road 528 and Courtenay Parkway (SR 3); and executed and adopted Resolution No. 24-009, authorizing the Subordination of County Utility Interest. Enclosed is the executed Subordination of County Utility Interest and the fully-executed Resolution.

**Upon execution by FDOT, please return a fully-executed Subordination of County Utility Interest to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/dm

Encls. (2)

23-BREVARDUTL-10/11

November 1, 2023

This instrument prepared by

Meg Hardy

Under the direction of

DANIEL L. MCDERMOTT, ATTORNEY

Department of Transportation

719 South Woodland Boulevard

DeLand, Florida 32720-6834

PARCEL NO. 104.04

SECTION 70070

F.P. NO. 407402 3

STATE ROAD 528

COUNTY BREVARD

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

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the F.D.O.T., and BREVARD COUNTY, a political subdivision of the State of Florida, hereinafter called County.

### **WITNESSETH:**

WHEREAS, the County 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 the County to the F.D.O.T.; and

WHEREAS, the F.D.O.T. is willing to pay to have the County'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, County and F.D.O.T. agree as follows:

County hereby subordinates to the interest of F.D.O.T., its successors, or assigns, any and all of its interest in the lands as follows, viz:

**PARCEL 104  
FEE SIMPLE**

**SECTION 70070  
F.P. NO. 407402-3**

THAT PART OF:

PARCEL NO. 104.04  
SECTION 70070  
F.P. NO. 407402 3  
PAGE 2

Lot 37, The Villas at Indian River Unit One, Planned Unit Development, according to the Plat thereof, as recorded in Plat Book 24, page 84, of the Public Records of Brevard county, Florida.

(BEING the lands described in Official Records Book 7553, Page 1393, of the Public Records of Brevard County, Florida.)

DESCRIBED AS FOLLOWS:

Commence at a 3/4" iron pipe with no identification marking the Southwest corner of the Northwest 1/4 of Section 14, Township 24 South, Range 36 East, Brevard County, Florida, as shown on the Florida Department of Transportation Right of Way Map for State Road 528, Section 70070, Financial Project Number 407402-3; thence North 00°12'53" West, along the West line of the Northwest 1/4 of said Section 14, a distance of 2494.50 feet to the POINT OF BEGINNING; thence departing said West line, run North 88°17'29" West, a distance of 0.57 feet to the intersection with the West line of Lot 37, The Villas at Indian River Unit One, as described in Plat Book 24, Pages 84 and 85, of the Public Records of Brevard County, Florida; thence North 00°13'41" West along said West line, a distance of 21.95 feet to the intersection with the North line of said Lot 37, said point being on a non-tangent curve, concave Southerly and having a radius of 1417.39 feet; thence departing said West line, from a tangent bearing of South 89°23'33" East, run Easterly 82.87 feet along the arc of said curve and along said North line, through a central angle of 03°21'00" to the intersection with the East line of said Lot 37; thence departing said North line, run South 00°19'28" East along said East line, a distance of 21.12 feet; thence departing said East line, run North 88°17'29" West, a distance of 82.29 feet to the POINT OF BEGINNING.

CONTAINING 1,816 square feet, more or less.

**RECORDED**

Drainage easement in favor of BREVARD COUNTY, a political subdivision of the State of Florida, per plat of The Villas at Indian River Unit One, recorded in Plat Book 24, Page 84

PARCEL NO. 104.04  
SECTION 70070  
F.P. NO. 407402 3  
PAGE 3

PROVIDED that the County has the following rights:

1. The County shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate road and utility facilities on, within, and upon the lands described herein in accordance with the F.D.O.T.'s current minimum standards for such facilities as required by the F.D.O.T. Utility Accommodation Manual in effect at the time the agreement is executed. However, the County shall not be required to upgrade the system in the event of modification of existing facilities. Any new construction or relocation of facilities within the lands will be subject to prior approval by the F.D.O.T. Should the F.D.O.T. fail to approve any new construction or relocation of facilities by the County or require the County to alter, adjust, or relocate its facilities located within said lands, the F.D.O.T. 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 held by Brevard County shall supersede any contrary provisions, with the exception of the provision herein with reimbursement rights.
3. The County 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 F.D.O.T.'s facilities.

PARCEL NO. 104.04  
SECTION 70070  
F.P. NO. 407402 3  
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IN WITNESS WHEREOF, the F.D.O.T. hereto has executed this agreement on the day and year first above written.

Signed, sealed and delivered  
in the presence of witnesses:

STATE OF FLORIDA DEPARTMENT  
OF TRANSPORTATION

\_\_\_\_\_  
SIGNATURE LINE  
PRINT/TYPE NAME: \_\_\_\_\_

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

\_\_\_\_\_  
District Director Of  
Transportation Development  
for District Five  
719 S. Woodland Blvd.  
DeLand, Florida 32720

\_\_\_\_\_  
SIGNATURE LINE  
PRINT/TYPE NAME: \_\_\_\_\_

Legal Review

By: \_\_\_\_\_  
Office of the General Counsel

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, District Director of Transportation Development for District Five, who is personally known to me or who has produced \_\_\_\_\_ as identification.

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

PARCEL NO. 104.04  
SECTION 70070  
F.P. NO. 407402 3  
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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.

Signed, sealed and delivered in the presence of: Two witnesses required by Florida Law

BREVARD COUNTY, FLORIDA,  
By Its Board of  
County Commissioners

Nicole Summers  
SIGNATURE LINE  
PRINT/TYPE NAME: Nicole Summers

Kimberly Powell  
SIGNATURE LINE  
PRINT/TYPE NAME: Kimberly Powell

By: Jason Steele  
Jason Steele, Chair  
Its Chairperson  
(or Vice-Chairperson)

ATTEST: Rachel M. Sadoff  
Rachel M. Sadoff, Clerk  
Clerk (or Deputy Clerk)

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 23<sup>rd</sup> day of January, 2024, by Jason Steele, Chairperson (or Vice-Chairperson), who is personally known to me or who has produced \_\_\_\_\_ as identification.



Catherine Louise Lively  
PRINT/TYPE NAME: Catherine Louise Lively  
Notary Public in and for the  
County and State last aforesaid.  
My Commission Expires: October 29, 2024  
Serial No., if any: HH 058533

UTL03-09/01

This instrument prepared by  
Meg Hardy  
Under the direction of  
DANIEL L. MCDERMOTT, ATTORNEY  
Department of Transportation  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

PARCEL NO. 104.04RES  
SECTION 70070  
F.P. NO. 407402 3  
STATE ROAD 528  
COUNTY BREVARD

**RESOLUTION NO. 2024-009**

**A RESOLUTION OF THE BREVARD COUNTY BOARD OF COUNTY  
COMMISSIONERS AUTHORIZING THE SUBORDINATION OF  
COUNTY UTILITY INTEREST**

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 528, Section No70070, F.P. No. 407402-3, in Brevard County, Florida: and

WHEREAS, it is necessary that certain easement rights now owned by Brevard County be subordinate to the rights of the State of Florida Department of Transportation: and

WHEREAS, said use 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 Brevard 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 Brevard County, should be drawn and executed by Jason Steele, Chair, on behalf of this Board of County Commissioners.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at 719 South Woodland Blvd., DeLand, Florida, 32720-6834.



PARCEL NO. 104.04RES  
SECTION 70070  
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STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the Board of County Commissioners of Brevard County, Florida at a meeting held on the 23rd day of January, 2024.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

BY:

  
Rachel M. Sadoff, Clerk

BY:

  
Jason Steele, Chair

As approved by the Board 01/23/2024.

CURVE DATA		
CURVE	Δ	RADIUS
C1	35°33'30"N	15.877
C2	37°44'45"N	15.877
C3	37°44'45"N	15.877
C4	37°44'45"N	15.877
C5	37°44'45"N	15.877
C6	37°44'45"N	15.877
C7	37°44'45"N	15.877
C8	37°44'45"N	15.877
C9	37°44'45"N	15.877
C10	37°44'45"N	15.877

CURVE DATA		
CURVE	Δ	RADIUS
C11	35°33'30"E	15.877
C12	37°44'45"E	15.877
C13	37°44'45"E	15.877
C14	37°44'45"E	15.877
C15	37°44'45"E	15.877
C16	37°44'45"E	15.877
C17	37°44'45"E	15.877
C18	37°44'45"E	15.877
C19	37°44'45"E	15.877
C20	37°44'45"E	15.877
C21	37°44'45"E	15.877
C22	37°44'45"E	15.877
C23	37°44'45"E	15.877
C24	37°44'45"E	15.877
C25	37°44'45"E	15.877
C26	37°44'45"E	15.877
C27	37°44'45"E	15.877
C28	37°44'45"E	15.877
C29	37°44'45"E	15.877
C30	37°44'45"E	15.877

CURVE DATA		
CURVE	Δ	RADIUS
C31	35°33'30"E	15.877
C32	37°44'45"E	15.877
C33	37°44'45"E	15.877
C34	37°44'45"E	15.877
C35	37°44'45"E	15.877
C36	37°44'45"E	15.877
C37	37°44'45"E	15.877
C38	37°44'45"E	15.877
C39	37°44'45"E	15.877
C40	37°44'45"E	15.877
C41	37°44'45"E	15.877
C42	37°44'45"E	15.877
C43	37°44'45"E	15.877
C44	37°44'45"E	15.877
C45	37°44'45"E	15.877
C46	37°44'45"E	15.877
C47	37°44'45"E	15.877
C48	37°44'45"E	15.877
C49	37°44'45"E	15.877
C50	37°44'45"E	15.877

LINE DATA	
LINE	DISTANCE
L1	100.00
L2	100.00
L3	100.00
L4	100.00
L5	100.00
L6	100.00
L7	100.00
L8	100.00
L9	100.00
L10	100.00

