

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20060092

1. ACTION REQUESTED/PURPOSE: Approve the Agreement of Assignment for the Edison Avenue Public Road Crossing Easement by and between the City of Fort Myers and the Seminole Gulf Railway.

2. WHAT ACTION ACCOMPLISHES: Relinquishes the County of all duties and obligations for the Edison Avenue railroad crossing including all maintenance responsibilities.

3. MANAGEMENT RECOMMENDATION: Recommend approval.

4. Departmental Category: <u>12</u> <u>C12A</u>		5. Meeting Date: <u>02-21-2006</u>
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other	
		8. Request Initiated: Commissioner _____ Department _____ <u>County Attorney</u> Division _____ <u>General Services</u> By: <u>Jed R. Schneck</u> <u>Assistant County Attorney</u>

9. Background:

Lee County accepted roadway maintenance responsibility for Edison Avenue from the City of Fort Myers in 1982. The following year, Lee County accepted the maintenance responsibility for the railroad crossing on Edison Avenue. A 1998 interlocal agreement transferred the roadway maintenance responsibility back to the City of Fort Myers, but the railroad crossing maintenance was never officially transferred back to the City of Fort Myers.

Staff recommends transferring the maintenance responsibilities back to the appropriate agency, the City of Fort Myers.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services <i>CFM 277</i>				County Manager/P.W. Director
					Analyst	Risk	Grants	Misc	
	N/A	N/A		<i>[Signature]</i> 2/3/06	<i>RK:js</i>	<i>JR:slp</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY.
FORWARDED
TO CO. ADMIN.
2-3-06

RECEIVED BY 2/6/06
COUNTY ADMIN:
2/3/06
446
COUNTY ADMIN
FORWARDED TO: [Signature]
2/3/06
[Signature]

**AGREEMENT OF ASSIGNMENT FOR THE
EDISON AVENUE PUBLIC ROAD
CROSSING EASEMENT**

This Agreement of Assignment is made and effective this _____ day of _____, 2005 among Lee County ("Assignor"), the City of Fort Myers ("Assignee"), and Seminole Gulf Railway, L.P. ("Railroad").

WITNESSETH:

WHEREAS, Assignor entered into an agreement with the Railroad on February 10, 1993 defining the right-of-way easement and maintenance responsibilities at the Edison Avenue Railroad Crossing; and

WHEREAS, Assignor desires to assign the Agreement to the Assignee and the Assignee is willing to assume all remaining duties and obligations under the Agreement in accordance with the terms and conditions of the Assignment.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration flowing among the parties hereto, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby grants, bargains, sells, conveys, transfers, assigns and sets over its entire rights and delegates its entire duties under the Agreement to Assignee subject to the covenants and conditions herein mentioned.
2. Assignee hereby assumes all obligations of Assignor for all obligations and payment under the Agreement for all work undertaken by the Railroad including but not limited to existing liabilities and obligations; and Assignee hereby assumes the Agreement and shall hereinafter perform faithfully all of the covenants, stipulations and agreements contained therein.
3. The Railroad consents to the assignment of the Agreement to Assignee. This Assignment shall not be deemed to effect a novation.

4. All sums which become payable to the Railroad under the Agreement for services rendered on and after the date of this Assignment will be made by the Assignee, as between the Railroad and the Assignee. In the event a dispute arises between the Railroad and the Assignee as to the allocation or division of payment due, such dispute will be resolved strictly between the Railroad and the Assignee and the Assignor will have no liability or responsibility whatsoever in regard to resolving and such dispute. The Railroad and the Assignee hereby agree that money paid to the Railroad pursuant to work performed under the Agreement shall constitute payment in full by the Assignor and the Assignor shall have no further obligation for payments under the Agreement. With respect to work and materials heretofore furnished by the Railroad pursuant to the Agreement, the Railroad shall, to the extent that it has not been paid, look solely to the Assignee for payment of such work and materials.

5. The Railroad specifically acknowledges and agrees that no requests for additional compensation shall be granted due to this Assignment and understands that the Assignee shall stand in the place of Assignor as though no assignment has occurred.

6. The Railroad hereby represents that there are no claims or demands against the Assignor arising out of or related to the performance under the Agreement prior to the effective date hereof, and any such claims, other than contractual compensation, are hereby waived and released.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials on the date first above written.

ATTEST: CITY CLERK

~~BY~~ Marie Adams
City Clerk Marie Adams, CMC

CITY OF FORT MYERS

By: Jim Humphrey
Mayor Jim Humphrey

Date: January 9, 2006

APPROVED AS TO FORM:

By: Grant W. Alley
City Attorney Grant W. Alley

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

Date: _____

APPROVED AS TO FORM:

By: _____
Office of County Attorney

WITNESSES:

SEMINOLE GULF RAILWAY, L.P.

Scott E. Albee
Sharon A. Wisley

By: Harry E. Neaves
Title: V.P., ENG. & R.E.
Date: 11/24/06