Memorandum

MIAMI-DADE COUNTY

Date: October 7, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 9(A)(1)

From: George M. Burgess
County Manager

Subject: Resolution Ratifying an Agreement with Florida Power & Light for Property Use during the 2008 Countywide Elections and Future Elections

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Recommendation

It is recommended that the Board of County Commissioners (Board) ratify an agreement with Florida Power & Light (FPL) for the use of vacant property adjacent to the West Dade Regional Library as vehicle parking during Early Voting and on Election Day for the August 26, 2008 Primary Election and the November 4, 2008 General Election. It is also recommended that delegated authority is granted to enter into substantially similar agreements for other elections. The West Dade Regional Library is utilized as an Early Voting location and an Election Day Precinct.

Scope

The property is located within Commission District 10. The proposed resolution will have a positive impact on the County due to its alleviation of parking congestion in the library parking lot. Voters who live throughout the County use the West Dade Regional Library to vote early, in addition to voters who live in Commission District 10 on Election Day.

Fiscal Impact/Funding Source

The proposed resolution does not have a fiscal impact to Miami-Dade County.

Track Record/Monitoring

The Supervisor of Elections will be responsible for monitoring and adhering to the terms of the contract.

Background

The West Dade Regional Library is the busiest Early Voting location in this County and a popular Election Day precinct. The large voter turnout coupled with library staff, patrons, and Elections staff makes parking at this location difficult for voters. In an effort to alleviate this problem, making the voting experience more convenient, FPL has agreed to allow the County to use their vacant property adjacent to the Library upon execution of the attached agreement. This property will be used for Library staff and Elections staff, allowing voters to park in the library parking lot. There is no fee associated with the execution of this agreement as FPL has waived any/all fees associated with the use of this property. The agreement contains the County's standard indemnification and hold harmless clause.

As with all cases where the delegation of authority is exercised, such action will be in accordance with established County policies and procedures, including prior review for legal sufficiency by the County Attorney.

This item is submitted for ratification because the agreement was not received from FPL until August 4th, one week before the start of Early Voting.

Alina T. Hudak
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: October 7, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 9(A)(1)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(1)
10-7-08

RESOLUTION NO. _____

RESOLUTION RATIFYING AGREEMENT WITH FLORIDA POWER & LIGHT FOR PROPERTY USE DURING THE 2008 COUNTYWIDE ELECTIONS AND AUTHORIZING SUBSTANTIALLY SIMILAR AGREEMENTS WITH FLORIDA POWER & LIGHT DURING FUTURE ELECTIONS WHERE THE NEED IS REQUIRED

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the large voter turnout at the West Dade Regional Library during Early Voting and on Election Day makes parking difficult for voters; and

WHEREAS, the County wants the voting experience to be as pleasant and convenient as possible, entering into agreement with Florida Power & Light to use their vacant property, adjacent to the Library, as vehicle parking will help alleviate congestion; and

WHEREAS, execution of the attached agreement authorizes its use; and

WHEREAS, with all cases where the delegation of authority is exercised, such action will be in accordance with established County policies and procedures,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board ratifies agreement with Florida Power & Light for property use during the 2008 countywide elections and authorizing the County Mayor or his designee to enter into substantially similar

agreements with Florida Power & Light during future elections when the need is required.

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of October, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

General Services Administration
Risk Management Division
Property and Casualty Unit
111 NW 1st Street • Suite 2340
Miami, Florida 33128-1987
T 305-375-4282 F 305-375-1477

miamidade.gov

MIAMI-DADE COUNTY

ADA Coordination
Agenda Coordination
Art in Public Places
Audit and Management Services
Aviation
Building Code Compliance
Building
Business Development
Capital Improvements
Citizen's Independent Transportation Trust
Communications
Community Action Agency
Community & Economic Development
Community Relations
Consumer Services
Corrections & Rehabilitation
Countywide Healthcare Planning
Cultural Affairs
Elections
Emergency Management
Employee Relations
Enterprise Technology Services
Environmental Resources Management
Fair Employment Practices
Finance
Fire Rescue
General Services Administration
Historic Preservation
Homeless Trust
Housing Agency
Housing Finance Authority
Human Services
Independent Review Panel
International Trade Consortium
Juvenile Assessment Center
Medical Examiner
Metropolitan Planning Organization
Park and Recreation
Planning and Zoning
Police
Procurement Management
Property Appraiser
Public Library System
Public Works
Safe Neighborhood Parks
Seaport
Solid Waste Management
Strategic Business Management
Team Metro
Transit
Urban Revitalization Task Force
Vizcaya Museum and Gardens
Water and Sewer

August 7, 2008

TO: Florida Power & Light

RE: Early Voting
West Dade Regional Library
Parking

To Whom It May Concern:

This is to inform you that Miami-Dade County has an on-going self-insurance program for Worker's Compensation, Public Liability and Automobile Liability covering employees and officials of the County.

Since the County does not carry insurance with an insurance company, we cannot provide you with a Certificate of Insurance.

However, in compliance with and subject to the limitations of Florida Statutes, Section 768.28, provisions have been made in this office to process any claims that may arise and the same protection will be afforded as would be provided by a policy of insurance.

Sincerely,

Barbara Dunlop

Barbara Dunlop, ARM
Risk Management Property and Casualty Manager

BD/lv

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT, hereinafter also referred to as "License" and/or "Agreement", is made upon this 4th day of August, 2008 between FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is PO Box 14000, Juno Beach, Florida 33408, Attn. Corporate Real Estate Department, hereinafter referred to as "Company" and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, whose mailing address is 111 NW 1st Street, Miami, Florida 33128 hereinafter referred to as "Licensee".

WITNESSETH

WHEREAS, Company is the owner of title in fee simple to property in Miami-Dade County, Florida, hereinafter referred to as "Land" and described as follows:

The East Half (E ½) of the South 160 feet of the West Half (W ½) of the East Half (E ½) of the West Half (W ½) of the West Half (W ½) of Section 9, Township 54 South, Range 40 East in Miami-Dade County, Florida; more particularly shown upon **"Exhibit A"**, attached hereto and incorporated herein by this reference.

AND, WHEREAS, Licensee desires to occupy and use the Land as stated herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Company hereby grants and Licensee hereby accepts this License to use and occupy the Land upon the following terms:

TERMS, CONDITIONS AND PROVISIONS

1. **Use**: Licensee shall be permitted to use the Land solely for the parking of personal motor vehicles by active, on-duty employees of Licensee between the hours of 6:00 A.M. (Eastern Time) and 10:00 P.M. (Eastern Time) each day during the Term(s) of this agreement, but for no other purpose. Licensee shall be solely responsible for obtaining any and all applicable federal, state, and local permits required in connection with Licensee's use of the Land and provide to Company copies of any permits it obtains for the use of the Land. Licensee shall pay for all utility and other services furnished to or for Licensee on the Land.

2. **Term**: This License is for two separate terms of Seventeen (17) days each, unless earlier terminated as provided herein, the first term beginning upon the 11th day of August, 2008, and ending upon the 27th day of August, 2008; and the second term beginning upon the 20th day of October, 2008, and ending upon the 5th day of November, 2008.

3. **Rental**: Licensee hereby covenants and agrees with Company, that during the initial term of this License, Licensee shall pay to the Company the total amount of Zero Dollars and Zero Cents ($0.00) payable in advance, plus sales tax if applicable, commencing on the first day of the term of this License.

Rent Schedule / Payment Amount
Rent is waived

4. **Company's Rights**: Licensee hereby acknowledges that Company is the owner of fee simple title to the Land described herein and agrees never to claim any interest or estate of any kind or extent whatsoever in the Land by virtue of this License or the occupancy or use hereunder. Licensee's use of the Land shall always be subordinate to Company's rights in the Land. Company reserves the right to enter upon the Land at any time for its purposes and Licensee shall notify its employees, agents, contractors, invitees, and licensees accordingly. Company and its contractors will not be responsible or liable for any damage or loss to Licensee resulting from Company's use thereof for such purposes. Further, Company may at its discretion install or permit others to install upon the Land other overhead or underground facilities.

5. **Condition of Land**: Company makes no warranty, guarantee, promise or indication of any type whatsoever to Licensee or to any other entity, party or individual regarding the condition, suitability, fitness, safety or usefulness of the Land for any type of use or operation. The Land is used and maintained by Company solely for the installation and operation of a utility right-of-way and is not maintained for use as a public or private parking lot, or any other type of operation or use. Licensee hereby accepts permission to use the Land in an "As Is" condition for a temporary employee parking area. Licensee is solely responsible to determine if the Land is suitable for the use for which this License is granted, including, but not limited to, the right and responsibility of Licensee to inspect the Land prior to and during the Term(s) granted herein, and determine if Licensee's use of the Land can be carried out in a safe manner. Licensee is solely responsible for installing and/or providing traffic safety and lighting devices, security personnel, signage and other facilities to ensure the safety of Licensee's employees.

6. **Restrictions on Use**: Licensee shall not use the Land in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Land or may tend to cause a hazardous condition to exist. Licensee shall use traffic cones, or some other effective device(s) to contain the parking area immediately adjacent to the property line shared by Company and Licensee. Specifically, Licensee shall not cause or permit any waste of the Land, including the removal of soil, addition of fill or altering of existing grade, without the written permission of Company. Licensee shall keep the Land clean and clear so as to prevent it from becoming unsightly and shall not store materials and will see to it that no debris or trash is dumped or deposited thereon. Licensee shall drill no well on the Land nor construct or erect any building, structure, fixture, fences, shelter, attachment, or other improvement, whether the same be permanent or temporary, without prior written permission of Company. It is understood by Licensee that electrical equipment and appurtenances, including overhead and underground wires installed or to be installed on the Land by Company are conductors of high-voltage electricity. Licensee understands that disturbance of any of these facilities may cause a hazardous condition. Licensee will exercise extraordinary precautions so as to prevent damage or injury to property or persons in the vicinity of such facilities. Licensee agrees to notify its employees, agents, contractors, invitees and licensees of the existence of said high-voltage facilities and other installations. No equipment capable of extending greater than fourteen feet (14') above existing grade shall be permitted on the Land.

7. **Company's Right to Cure**: During the term of this License, Company, at its sole discretion, has the right to remove or cause to be removed by it or its contractors, all objects, materials, debris, or structures that create a hazardous condition to Company's facilities or interfere with Company's use of its facilities. Company may, at its sole discretion at any time during the term of this License, require the Licensee to post a bond in an amount determined by the Company to be necessary to protect its facilities. Said bond may be drawn upon by the Company in the event it must expend costs to cure any and all violations under this License, hazardous conditions and restore power resulting from electrical outages. All costs expended by Company pursuant to this paragraph will be the sole obligation of Licensee and will be reimbursed to company immediately upon demand. In the event any of Licensee's activities on or use of Company's land result in electrical outages, all costs incurred by Company to restore power are the sole responsibility of Licensee and will be reimbursed to Company immediately upon demand. Any failure by Licensee to comply with its obligations under the terms of this paragraph will result in the immediate cancellation of this License without waiving Company's right to pursue any other remedies for damages.

8. **Compliance with Laws**: Licensee agrees at its sole cost and expense to comply with all laws, rules, and regulations of any governmental authority having jurisdiction over the Land or use of Land and to employ practices standard in the County in which the Land is located for the purpose for which this License is granted and for the protection of the Land.

9. **No Encumbrances**: Licensee expressly covenants and agrees that the Land shall not be subject to any encumbrance by any mortgage or lien nor shall the Land be liable to satisfy any indebtedness that may result from Licensee's permitted operation.

10. **No Transfer**: Licensee may not, without the prior written consent of Company, transfer, assign, sublet, enter into any license or concession agreement, or mortgage or hypothecate this License.

11. **Termination**: Company may terminate this License at any time without cause by giving Licensee at least Seven (7) days written notice of such termination. Company may, at its election, terminate this License forthwith at any time if Licensee fails to comply with or abide by each and all of the provisions, terms and conditions of this License and keep all and singular Licensee's promises and agreements herein.

12. **Surrender**. Licensee shall vacate the Land in as good a condition as existed prior to the date of commencement hereof and within One (1) business day of such expiration, revocation or termination of this License. Licensee shall remove all personal property placed by it, or allowed to be placed upon the Land and shall repair and restore and save Company harmless from all damage caused by such removal. If such property is not so removed by Licensee, Company shall have the right to take possession of and appropriate to itself, without any payment or offset thereof, any property of Licensee or anyone claiming under Licensee then remaining on the Land. Company shall have the right to make such removal at Licensee's sole cost and expense, the amount of which Licensee agrees to pay to Company upon demand.

13. **Holding Over**: If Licensee remains in possession of the Land, or any part thereof, after any termination of this License, no tenancy or interest in the Land shall result therefrom, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal.

14. **Indemnification and Insurance**: Licensee does hereby agree to indemnify and hold harmless, Company, to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby the Licensee shall not be held liable to pay a personal injury or property damage claim or judgment by any person which exceeds the sum of $100,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the Licensee; and subject to any applicable excess liability insurance coverage which Licensee may carry during the Term(s) of this Agreement. However, nothing herein shall be deemed to indemnify Company from any liability or claim arising out of the negligent performance or failure of performance of Company or any unrelated third party.

15. **Waiver of Jury Trial**: **Licensee knowingly, voluntarily and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this License, or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written) or action of Licensee.**

16. **Time & Entire Agreement**: Time is of the essence, and no extension of time shall be deemed granted unless made in writing and executed by both Company and Licensee. This instrument constitutes the entire agreement between the parties relative to the License hereby granted, and any agreement or representation which is not expressly set forth herein and covered hereby is null and void. Any amendment, modification, or supplement to this License must be in writing and executed by both Company and Licensee. Waiver by Company of any breach of any term or provision hereof shall not be deemed a waiver of subsequent breach of the same or any other term or provision hereof.

17. **Conflict of Law**: Should any provision of this License be determined by a court of competent jurisdiction illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. In the event of any litigation arising out of enforcement of this License, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

18. **Notices**: All notices under this License shall be deemed served when deposited in the United States mail, registered or certified mail or prepaid overnight courier and addressed to the parties at the addresses first written above. Either party may, at any time, designate in writing a substitute address for the address first written above, and thereafter notices shall be directed to such substituted address.

19. **Headings**: The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. All terms used herein shall be construed as embracing such number and gender as the character of the party or parties require(s).

IN WITNESS WHEREOF, the parties hereto have caused this License to be signed the day and year first above written.

Witnesses for Company:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

COMPANY:
FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____
Name: Dina L. Guenther
Its: Director of Corporate Real Estate

Witnesses for Licensee:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

LICENSEE:
MIAMI-DADE COUNTY,
a political subdivision of the State of Florida

By: _____
Name: Alina Hudak
Its: Assistant County Manager

Form 3737 Rev. 4/1/2004