Memorandum

MIAMI-DADE COUNTY

Date: January 21, 2010

Agenda Item No. 8(P)(1)(F)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Amendment to the Approved Facilities Relocation Agreement for the Reimbursement Cost Estimated at $1,196,230.29 between Miami-Dade County and Florida Power and Light Company for the Relocation of Transmission Facilities Required for the Construction of the People's Transportation Plan Project (Project No. 20070682) Entitled Roadway Improvements Along SW 160 Street, from SW 147 Avenue to SW 137 Avenue

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Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the amendment to the approved Resolution No. R-37-08 authorizing the execution of a Facilities Relocation Agreement for the reimbursement cost estimated at $1,196,230.29 between Miami-Dade County (County) and Florida Power and Light Company (FPL) for the relocation of transmission facilities required for the roadway improvements of SW 160 Street, from SW 147 Avenue to SW 137 Avenue (Project No. 20070682). This amendment is to allow for additional work to be done beyond the originally planned limits of relocation, including an option to de-energize the power lines in lieu of relocation. Proceeds from the Charter County Transit Surtax (the Surtax) will be used to fund this project, therefore approval by the Board BCC and the Citizens' Independent Transportation Trust (CITT) is required.

Scope

The Facilities Relocation Agreement is specifically for reimbursing the cost for the relocation and/or alternatives to the relocation of the transmission facilities that are within an easement. The project is located within Commission District 9.

Fiscal Impact/Funding Source

The fiscal impact to the Surtax will not exceed $1,196,230.29 for the relocation of transmission facilities. The aforementioned project is listed in the People's Transportation Plan (PTP) Ordinance under Board requested projects in Commission District 9.

Track Record/Monitor

FPL has met all relocation requirements in a satisfactory manner and Miami-Dade County Public Works Department (PWD) Project Manager, Mr. Octavio Marin, P.E, will monitor this project.

Background

Exhibit 1 of the PTP includes the major roadway construction project to widen SW 160 Street, from SW 147 Avenue to SW 137 Avenue. A portion of this road widening project, between SW 147 Avenue and SW 142 Avenue, is in conflict with FPL high voltage transmission lines. The original agreement was to address the existing transmission facilities located in an easement that existed prior to the establishment of the road right-of-way for SW 160 Street requiring that the existing 15 poles be relocated and provided for PWD to reimburse FPL for their cost of the relocation of those transmission facilities to the south right-of-way line. This recommended amendment is to add to the original scope of the agreement, but will not increase the amount of the agreement total cost. The additional work needed is to address existing transmission lines that are impacting the ability to safely construct the new bridge called for in this project. Said transmission lines will need to be temporarily relocated or de-energized in order protect workers and equipment constructing the new bridge. This amendment will not increase the total amount approved in the original agreement. PWD is working with FPL to develop a plan for de-energizing the transmission lines in lieu of temporary relocation and should the de-energizing be determined to be feasible, the cost savings to County could be greater than $200,000.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 21, 2010

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

SUBJECT: Agenda Item No. 8(P)(1)(F)

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)(F)
1-21-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE AMENDMENT TO THE APPROVED FACILITIES RELOCATION AGREEMENT FOR THE REIMBURSEMENT COST ESTIMATED AT $1,196,230.29 BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER AND LIGHT COMPANY FOR THE RELOCATION OF TRANSMISSION FACILITIES REQUIRED FOR THE CONSTRUCTION OF THE PEOPLE'S TRANSPORTATION PLAN PROJECT (PROJECT NO. 20070682) ENTITLED ROADWAY IMPROVEMENTS ALONG SW 160 STREET, FROM SW 147 AVENUE TO SW 137 AVENUE; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSIT SURTAX FUNDS

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Amendment to the Facilities Relocation Agreement for the reimbursement cost estimated at $1,196,230.29 between Miami-Dade County and Florida Power and Light for the relocation of transmission facilities required for the construction of SW 160 Street, (Project No. 20070682) funded by the People's Transportation Plan (PTP), in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or the County Mayor's designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of January, 2010. This resolution shall become effective as follows: (1) 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, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

By:_____
Deputy Clerk

Bruce Libhaber

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: January 10, 2008

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

Agenda Item No. 8(P)(1)(F)

From: George M. Burgess
County Manager

R-37-08

Subject: Resolution Authorizing the Approval of a Facilities Relocation Agreement for the Reimbursement Cost Estimated at $1,196,230.29 between Miami-Dade County and Florida Power and Light Company for the Relocation of Transmission Facilities Required for the Construction of SW 160 Street
MDCPWD Project No. 20030190

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Facilities Relocation Agreement for the reimbursement cost estimated at $1,196,230.29 between Miami-Dade County (County) and Florida Power and Light Company (FPL) for the relocation of transmission facilities required for the construction of SW 160 Street, from SW 147 Avenue to SW 137 Avenue (Project No. 20030190). Proceeds from the Charter County Transit Surtax (the Surtax) will be used to fund this project, therefore approval by the Board of County Commissioners (BCC) and the Citizens' Independent Transportation Trust (CITT) is required.

Scope

The Facilities Relocation Agreement is specifically for reimbursing the cost for the relocation of the transmission facilities that are within an easement. The project is located within Commission District 9.

Fiscal Impact/Funding Source

The fiscal impact to the Charter County Transit Surtax is the one time reimbursement cost estimated at $1,196,230.29 for the relocation of transmission facilities to the south right-of-way line of SW 160 Street. The aforementioned project is listed in the People's Transportation Plan (PTP) Ordinance under Board requested projects in Commission District 9.

Track Record/Monitor

FPL has met all relocation requirements in a satisfactory manner and Miami-Dade County Public Works Department (PWD) Project Manager, Mr. Modesto Nunez, will monitor this project.

Background

Exhibit 1 of the PTP includes the major roadway construction project to widen SW 160 Street, from SW 147 Avenue to SW 137 Avenue. A portion of this road widening project, between SW 147 Avenue and SW 142 Avenue, is in conflict with FPL high voltage transmission lines. The existing transmission facilities are located in an easement that existed prior to the establishment

of the road right-of-way for SW 160 Street requiring that the existing 15 poles be relocated. As such, PWD will reimburse FPL for their cost of the relocating of these transmission facilities to the south right-of-way line.

Assistant County Manager

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MEMORANDUM
(Revised)

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

DATE: January 10, 2008

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

SUBJECT: Agenda Item No. 8(P)(1)(F)

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

8

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 8(P)(1)(F)

01-10-08

RESOLUTION NO. **R-37-08**

RESOLUTION AUTHORIZING THE APPROVAL OF A FACILITIES RELOCATION AGREEMENT FOR THE REIMBURSEMENT COST ESTIMATED AT $1,196,230.29 BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER AND LIGHT COMPANY FOR THE RELOCATION OF TRANSMISSION FACILITIES REQUIRED FOR THE CONSTRUCTION OF SW 160 STREET (PROJECT NO. 20030190)

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Facilities Relocation Agreement for the reimbursement cost estimated at $1,196,230.29 between Miami-Dade County and Florida Power and Light Company for the relocation of transmission facilities required for the construction of SW 160 Street, Project No. 20030190, funded by People's Transportation Plan (PTP), in substantially the form attached hereto and made a part hereof, and authorizes the Mayor or his designee to execute same for and on behalf of Miami-Dade County.

X 9

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of January, 2008. This resolution shall become effective as follows: (1) 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, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

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

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. B.L.

Bruce Libhaber

FACILITIES RELOCATION AGREEMENT
(Government Entity)

THIS AGREEMENT made and entered into this _____ day of _____ 2007 by and between Board of County Commissioners, Miami-Dade County with address 111 NW 1st Street, Miami, Florida, 33128-1970, hereinafter called the Applicant, and FLORIDA POWER & LIGHT COMPANY, a Florida corporation with its principal place of business in Dade and Palm Beach Counties, Florida, hereinafter called FPL.

WITNESSETH:

WHEREAS the Applicant intends to construct widening of SW 160th Street from SW 137th Ave to SW 147th Ave in Richmond West, Miami-Dade County, Florida and will require the relocation of certain incompatible and conflicting portions of FPL's Facilities and equipment, and

WHEREAS FPL will incur costs in the Relocation of FPL's existing and proposed Facilities which costs would not have occurred but for the Applicant's construction,

NOW THEREFORE, in consideration of the mutual promises of the Applicant and FPL and other good and valuable consideration, the Parties agree that FPL shall Rearrange the FPL Facilities and the Applicant shall reimburse FPL for the actual cost of such Relocation as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement the following terms, whether used in the singular or plural, shall have the meanings set forth below when used with initial capitalization:

1.1 Betterment is any increase in service capacity of the Replacement FPL Facilities, not attributable to Contractor's construction, over the service capacity of the FPL Facilities prior to Relocation and any upgrading of a Replacement FPL Facility above FPL's current minimum standard practices, as specified in Article III of this Agreement, that normally would be used on projects financed solely by FPL. Betterment does not include: (a) any increase in service capacity required by federal, state or local law which applies to FPL Facilities as of the date of construction of the Replacement FPL Facilities; (b) any increase in service capacity resulting solely from the replacement of devices or materials which at the time of construction of the Replacement FPL Facility are no longer manufactured, processed, or installed and used by FPL in projects financed entirely by FPL, (c) any upgrading of a Replacement FPL Facility requested by the Applicant, (d) any upgrading of a Replacement FPL Facility required by any agency responsible for regulation of FPL Facilities, (e) any upgrading of the Replacement FPL Facility which is necessitated by the Applicant's construction, if the replacement is the same as that used by FPL on FPL's own projects, or (f) any upgrading that will result in a reduction in the overall project cost.

1.2 Conversion is the replacement of existing overhead facilities with underground facilities.

1.3 Credit Ratio is the credit given to the Applicant in the form of a percentage derived by dividing the sum of the Betterment and the Non-Reimbursable Work Credit by the Total cost of the Relocation:

$$\text{Credit Ratio} = \frac{\text{Dollar Amount of Betterment} + \text{Non-Reimbursable Work Credit}}{\text{Total Cost of Relocation} - \text{The Land and Land Right Cost}}$$

1.4 Date Cost Estimate Received, for purposes of this Agreement, shall be deemed to be the day that the cost estimate was hand-delivered or transmitted by facsimile, or if mailed, five days from the date of postmark.

1.5 FPL's Facility or Facilities shall be, but shall not be limited to, any structure consisting of manholes, conduits, poles, wires, cables, substations, system protection equipment or other appurtenances, and associated equipment, and used by FPL in connection with the transmission and/or distribution of electric power.

1.6 Relocation and/or Relocate includes the terms "rearrange or rearrangement" and is the work performed by FPL under this Agreement and any activity made necessary by Applicant's construction which conflicts with or affects FPL, its Facilities, or service. Relocations shall include conversion of transmission facilities and shall include, but shall not be limited to, permanent or temporary support, protection, relocation, rearrangement, design, redesign, abandonment or reconstruction of the FPL Facilities and all other work required to provide continuity of service to FPL's customers which is a result of a conflict.

1.7 Replacement FPL Facility is any facility which will be constructed under the terms of this Agreement as a consequence of Relocation of an FPL Facility or portion thereof.

1.8 Salvage is the credit to the Applicant for the reusable materials recovered or removed by FPL less the Salvage Adjustment Credit.

ARTICLE II - IDENTIFICATION OF CONFLICTS, CONVERSIONS

2.1 Known Conflicts. The Applicant shall reimburse FPL for costs associated with the Relocation of the FPL Facilities more particularly described and located on property described in Exhibit A attached hereto and incorporated herein.

2.2 Other Conflicts. The identification of any other conflicting facilities of FPL requiring Relocation shall be undertaken by FPL pursuant to a subsequent written agreement between FPL and the Applicant.

2.3 Distribution Conversion. If an Applicant has requested a conversion of distribution facilities as part of a Relocation of Facilities, the FPL Distribution Facilities Conversion Agreement which is approved by the Florida Public Service Commission shall be attached hereto and incorporated herein. The Indemnity and Insurance provisions of this Agreement shall apply to all Distribution Conversions which are part of a Relocation. In addition, all other terms and conditions of this Agreement which are not expressly modified by the Addendum attached hereto shall remain in full force and effect. If there is a direct conflict between this Agreement and the attached Addendum, then the Underground Distribution Conversion Tariff and the Underground Distribution Conversion Agreement shall prevail as to that specific term or condition.

___ Underground Distribution Facilities Conversion Agreement is attached hereto and incorporated herein.

_X_ This Project does not involve a conversion of electric distribution facilities.

ARTICLE III - DESIGN AND CONSTRUCTION OF REPLACEMENT FACILITIES

3.1 Design Standards. Engineering design standards and material specified shall meet FPL's Current Design Standards. In addition, the design of Relocations will be in conformity with all laws and regulations.

3.2 Construction Standards. Materials and construction procedures shall meet FPL's Current Construction Standards. In addition, Relocations or Replacement Facilities will be accomplished in conformance with all laws, codes and regulations.

ARTICLE IV - REPLACEMENT RIGHT-OF-WAY

4.0 Replacement Right-of-Way. The Applicant shall provide FPL with replacement rights-of-way in one of the following manners:

___ (a) The Applicant shall reimburse FPL for costs associated with the identification and acquisition of replacement rights-of-way, including, but not limited to, FPL's attorney fees for costs in prosecuting or in connection with any condemnation actions for the acquisition of necessary rights-of-way.

_X_ (b) The Applicant shall convey or grant to FPL replacement rights-of-way sufficient to permit FPL to accomplish Relocations of the FPL Facilities and to operate and maintain the Replacement Facilities in accordance with FPL's customary practices. Such conveyances or grants of replacement rights-of-way shall be accomplished at no cost to FPL and in a form and substance satisfactory to FPL.

4.1 Location of Replacement Right-of-Way. The Location of the aforesaid replacement rights-of-way are generally set forth in Exhibit B attached hereto.

ARTICLE V - COST ESTIMATES, CREDITS AND BILLING

5.1 Full Cost. The Applicant shall pay FPL for the full cost of Relocation of the FPL Facilities. The work to be performed by FPL will be in accordance with the construction drawings attached hereto as Exhibit B.

5.2 Cost Estimate. The Applicant shall be responsible for the total cost of the project. The estimated cost to Relocate the FPL Facilities is (a) or (b) below:

a. Relocation: $1,196,230.29. This cost estimate is set out in detail in Exhibit C attached hereto; or

b. Relocation Conversion:

Relocation:		$_____	(Exhibit C)
Distribution Conversion:	+	$_____	(Addendum)
		= Total Project Cost Estimate:	
		$1,196,230.29	

The Applicant understands and agrees that the amount set forth in Exhibit C is an estimate only. The Applicant shall be responsible for the total cost of the project. The cost for the Relocation portion shall not exceed 110% of a valid Relocation cost estimate, except as provided herein.

5.3 Duration of Cost Estimate.

A cost estimate is valid only:

a. Prior to construction, for 90 days from the date of the estimate is received by Applicant (this includes the estimate attached as Exhibit C and any subsequent estimate) or

b. As long as the scope of work (Relocation) upon which the estimate is based has not been changed; whichever first occurs.

5.4 Re-estimates, Scope of Work Changes.

5.4.1 Pre-construction. If the construction of the Relocation of the FPL Facilities has not commenced within 90 days of the date that the latest cost estimate is received by Applicant or if the scope of work ("Relocation") has been changed on any individual work order, prior to any construction, the estimate is invalid. A new estimate is required. FPL shall provide a re-estimate of the work prior to commencement of the Relocation by FPL. The Applicant shall agree in writing to pay the re-estimated cost and shall be responsible for the full cost of Relocation, not to exceed 110% of the re-estimate.

5.4.2 After Start of Construction. If after the start of construction, the Applicant requests a change in the scope of work (Relocation) of FPL Facilities or if FPL determines that there is a need for a change in the scope of work (Relocation) and such change causes either the credit ratio to change or the reimbursable cost of the project to change by 10% or more, FPL shall provide the Applicant with a new estimate as soon as practicable. The Applicant shall provide FPL with written approval of the re-estimate. The Applicant shall be responsible for any increased cost due to unknown or unforeseen physical conditions at the site which differ materially from those originally encountered. Increased costs due to differing site conditions are in addition to the estimated amount and are not subject to the 110% cap on estimated costs.

5.5 Credits.

5.5.1 The Applicant shall receive a credit for Betterment and Salvage.

5.5.2 The Applicant shall receive a credit for the payment of any non-refundable deposit required for estimates for underground installation included within a Relocation according to the terms of the FPL Distribution Conversion Tariff and FPL's Underground Distribution Conversion Agreement.

5.5.3 The Applicant shall receive a credit for payment made to FPL for a detailed cost estimate, if payment is required by FPL prior to issuing such estimate and if the Facilities Relocation Agreement has been entered into within 90 days of the date that estimate was received by the Applicant and the Relocation performed.

5.5.4 The Applicant shall receive no credit for payment for an estimate, and such payment shall not be refunded: (a) if the Applicant has not executed a Facilities Relocation Agreement within 90 days of the date that estimate was received by the Applicant, (b) if a subsequent estimate is required or (c) if the Applicant terminates the Agreement.

5.5.5 Any estimate provided to the Applicant after the initial, detailed estimate shall be done at additional cost and expense to Applicant. Applicant's payment for estimates shall be credited or retained by FPL as provided above.

5.6 Billing and Payment. Prior to the commencement of any Relocation of FPL Facilities under this Agreement:

The Applicant shall pay the full estimated cost of such Relocation. Upon completion of the work, FPL at the earliest date practicable shall furnish the Applicant with a final and complete billing of all outstanding costs incurred in connection with the Relocation. The Applicant shall have thirty-five (35) days from the date of an invoice to approve and pay the invoice. Failure to provide FPL with written notice to the contrary within the thirty-five (35) day period shall constitute approval by the Applicant of the invoice against which payment must be remitted in full to FPL within thirty-five (35) days of the date of the invoice. If payment by the Applicant is not postmarked within thirty-five (35) days of the date of the invoice, then a late payment charge shall be assessed in the amount of one and one-half (1 1/2) percent of the amount of the billing per month, charged on a daily basis or highest interest allowable under law.

5.7 Final Bill. Upon completion of the work, FPL shall at the earliest date practicable furnish to the Applicant a final and complete billing of all costs incurred in connection with performance of Relocation of the FPL Facilities less any prepaid credits for additional cost estimates.

5.8 Refund and Effect of Termination.

5.8.1 Consistent with the terms of this Agreement, FPL shall refund to the Applicant any amounts which the Applicant has paid to FPL beyond the full cost of Relocation.

5.8.2 In the event that this Agreement is terminated due to the cancellation or indefinite suspension of work in furtherance of the Applicant's construction, the Applicant shall be responsible for the costs of Relocation already incurred, including but not limited to all engineering, design, equipment, and materials cost, labor costs, and if any, the costs of replacement facilities already installed, necessary to place FPL's Facilities into a permanent condition suitable to provide continuous, reliable electric service to the public in accordance with all applicable laws, regulations and FPL's usual practices as set forth in Article III herein. Nothing in this section shall be construed to modify or abrogate FPL's legal duty to mitigate damages.

ARTICLE VI - AUDITS

6.1 Audits. All cost records and accounts of FPL directly related to the work performed under this Agreement shall be subject to audit by the Applicant for a period of one year from the completion date of all work performed under this Agreement. Such audits shall be performed by the Applicant and in accordance with the following considerations:

(a) the Applicant shall provide FPL with thirty (30) days written notice requesting an audit,

(b) the specific time of audit must be mutually agreed to,

(c) information required for audit purposes shall be accounts and records kept by FPL directly related to Relocation and reimbursable costs,

(d) the Applicant may request only information reasonably required by it concerning Relocation and such request for information shall be in writing and shall include the purpose of the audits,

(e) FPL shall make available the requested information at its offices during normal business hours, Monday through Friday,

(f) the Applicant shall bear any costs associated with any audits, including FPL costs, if any, and (g) information available under this Agreement shall not be used in violation of any law or regulation.

ARTICLE VII - GENERAL CONDITIONS

7.1 Benefit of Agreement; Assignment. The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the Parties to this Agreement but shall not inure to the benefit of any third party or other person. This Agreement shall not be assigned by either Party except upon receipt of the prior written permission of the other Party. Such permission shall not be unreasonably withheld.

7.2 Nonwaiver. The failure of either Party at any time to require performance by the other Party of any provision hereof shall not affect the full right to require such performance at any time thereafter. Waiver by either Party of a breach of the same provision or any other provision shall not constitute a waiver of the provision itself.

7.3 Limitations of Liability. Neither Party shall be liable in contract, in tort (including negligence), or otherwise to the other Party for any incidental or consequential loss or damage whatsoever including but not limited to loss of profits or revenue on work not performed, for loss of use or underutilization of the Party's facilities, or loss of use of revenues or loss of anticipated profits resulting from either Party's performance, nonperformance, or delay in performance of its obligations under this Agreement.

7.4 Indemnification. The Applicant shall indemnify, defend and hold harmless FPL, its parent, subsidiaries or affiliates and their respective officers, directors and employees (collectively "FPL Entities") from and against any liabilities whatsoever, occasioned wholly or in part by the negligence of the Applicant, its contractors, subcontractors or employees, including attorney fees, for injury to or death of person(s) and property damage arising or resulting in connection with any activity associated with work or service under this Agreement, **EXCEPT** if the liability arises out of a claim made by an employee of the Applicant, its contractors or assigns, the Applicant shall indemnify FPL Entities whether or not the damage or liability is due to or caused by the sole negligence of FPL Entities. The Applicant's obligation to protect, defend and hold FPL Entities free and unharmed against such liabilities shall be subject to the limitation set forth in Section 768.28(5) Florida Statutes, except in the event the Applicant purchases insurance covering the liability with limits in excess of the statutory limits, the Applicant's obligation shall extend up to but shall not exceed the limits of that insurance.

7.5 Insurance. If the Applicant utilizes its own personnel in the construction or maintenance work around the subject Facilities, the Applicant shall furnish FPL with evidence of insurance maintained by Applicant insuring FPL Entities from liabilities assumed under the above indemnification. Said insurance shall contain a broad form contractual endorsement or, alternatively, the Applicant shall cause FPL, its parent, subsidiaries and affiliates and their respective officers, directors and employees to be named as additional named insureds on the Applicant's comprehensive general liability policy. Such liability coverage shall be primary to any liability coverage maintained by or on behalf of FPL up to the $1,000,000 limit of liability.

In the event that the policy is on a "claims made" basis, the retroactive date of the policy shall be the effective date of this Agreement or such other date as to protect the interest of FPL and the coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions

based in contract or in tort (currently, five years). If coverage is on an "occurrence" basis, such insurance shall be maintained by the Applicant during the entire term of this Agreement. The policy shall not be canceled or materially altered without at least thirty (30) days written notice to FPL.

The Applicant shall provide FPL with evidence of such liability insurance coverage on the standard insurance industry form (ACORD) without modification. A copy of the policy shall be made available for inspection by FPL upon reasonable request.

7.6 Contractor Indemnification. The Applicant further agrees to include the following indemnification in all contracts between the Applicant and its general contractors who perform or are responsible for construction or maintenance work on or around the subject FPL Facilities:

> "The Contractor hereby agrees to release, indemnify, defend, save and hold harmless the Applicant and FPL, its parent, subsidiaries, affiliates or their respective officers, directors, or employees, from all claims, demands, liabilities and suits whether or not due to or caused by negligence of the Applicant or FPL for bodily injuries or death to person(s) or damage to property resulting in connection with the performance of the described work by Contractor, its subcontractor, agents or employees. This indemnification shall extend up to but shall not exceed the sum of $1,000,000.00 for bodily injury or death of person(s) or property damage combined single limit and $3,000,000 occurrence aggregate. In the event the Contractor is insured for liability with limits in excess of these amounts, Contractor's said obligation shall extend up to but shall not exceed the limits of that insurance. Contractor's costs of defending Applicant and FPL, including attorneys' fees are excluded from and are in addition to the aforesaid limitation of liability for injury, death and property damage."

7.7 Contractor Insurance and Notice. The Applicant agrees to require its contractors to obtain insurance to cover the above indemnity and further agrees to verify with its contractors that such insurance is in full force and effect. The Applicant shall provide FPL Group Inc.'s Risk Management Department with notice of the name and address of Applicant's contractors as specified in section 7.6 above, prior to the commencement of the Relocation of FPL Facilities by FPL.

7.8 Modification or Termination of Agreement. This Agreement may be modified, amended, or terminated at any time by written agreement of the Parties authorized and executed with the same formality as this Agreement. FPL's Underground Facilities Distribution Conversion Agreement, if attached hereto, is approved by the Florida Public Service Commission and may not be modified or amended by the Parties.

7.9 Effect of Headings. The headings set forth herein are for convenience only and shall not be deemed to modify or affect the rights and obligations of the Parties to this Agreement.

7.10 FPL Consent to Relocations. FPL agrees to the Relocation of the FPL Facilities to the extent necessary to eliminate Conflicts with the Applicant's construction in accordance with the terms and conditions of this Agreement. The Applicant shall make all necessary arrangements and agreements with any person or entity which has facilities attached to the FPL poles for the Relocation of those facilities at no expense to FPL.

7.11 Delegation of Power and Duties and Notice. The following persons are designated as the authorized representatives of the Parties for the purposes of this Agreement and all notices or other communications to either Party by the other shall be made in writing and addressed as follows:

To the Applicant: Mr. Modesto Nunez, P.E.
(Name and Title)
Utilities Coordinator
Miami-Dade County
Public Works Department
111 NW 1st Street
Miami, Florida 33128-1970

With Copies to: _____
_____
_____

For FPL: Neelesh P. Shah
(Name and Title)
Transmission Relocation Project Manager
FLORIDA POWER & LIGHT COMPANY
700 Universe Blvd. TLE/JB
Juno Beach, Florida 33408

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7.12 Force Majeure.

(a) Neither Party shall be liable or responsible for any delay in the performance of, or the ability to perform, any duty or obligation required by this Agreement in the event of a force majeure occurrence. Such occurrence shall include, but shall not be limited to acts of civil or military authority (including courts or administrative agencies), acts of God, war, riot, or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics, fires, unusually severe floods or weather, strikes, lockouts or other labor disputes or difficulties. The obligation of either Party to pay money in a timely manner is absolute and shall not be subject to the force majeure provisions. Force majeure as used herein means, without limitation, any cause or event not reasonably within the control of FPL or the Applicant.

(b) In the event of any delay resulting from a force majeure circumstance, the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delays.

(c) In the event of any delay or nonperformance caused by a force majeure circumstance, the Party affected shall promptly notify the other in writing.

7.13 Severability. In the event that any of the provisions or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Applicant and FPL shall negotiate an equitable adjustment in the affected provisions of this Agreement. The validity and enforceability of the remaining independent provisions shall not be affected.

7.14 Effective Date. This Agreement shall become effective upon execution by the Parties and shall continue in effect until completion of all Relocation work by FPL unless otherwise provided herein or earlier termination in accordance with this Agreement.

7.15 Complete Agreement. This Agreement shall be signed by the authorized representatives of both Parties and constitutes the final written expression of all the terms of the agreement between the Parties and is a complete and exclusive statement of those terms. Any and all prior or contemporaneous course of dealing, representations, promises, warranties or statements by the Parties or their agents, employees, or representatives that differ in any way from the terms of this written Agreement shall be given no force or effect.

IN WITNESS WHEREOF, the Parties have executed this Relocation Agreement, to be effective as of the date first above written.

APPLICANT:

_____

_____

By:_____

Title:_____

Date:_____

Attest:

_____(Seal) Title

FLORIDA POWER & LIGHT COMPANY:

_____

_____

By: Eduardo DeVarona

Title: Director, Transmission Engineering & Operations Department

Date:_____

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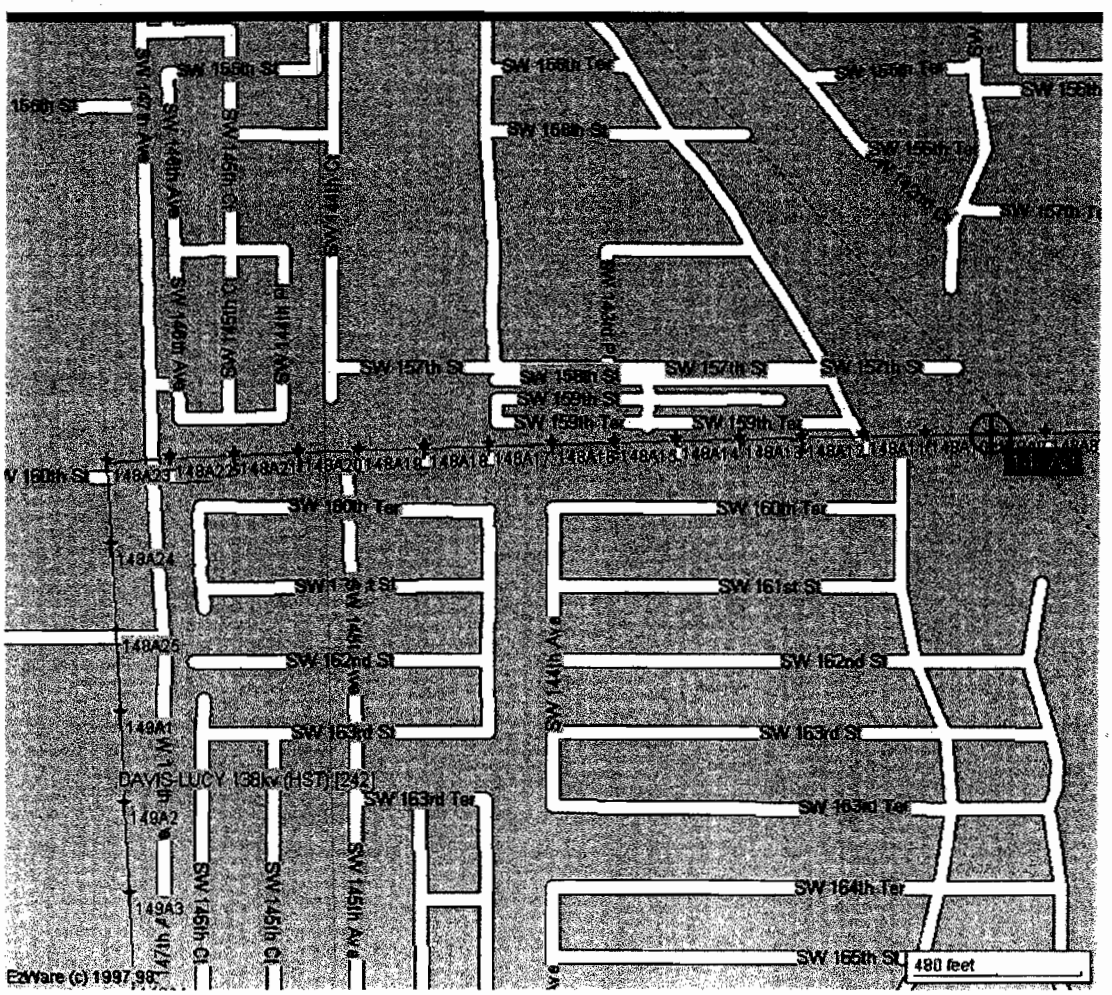
EXHIBIT B

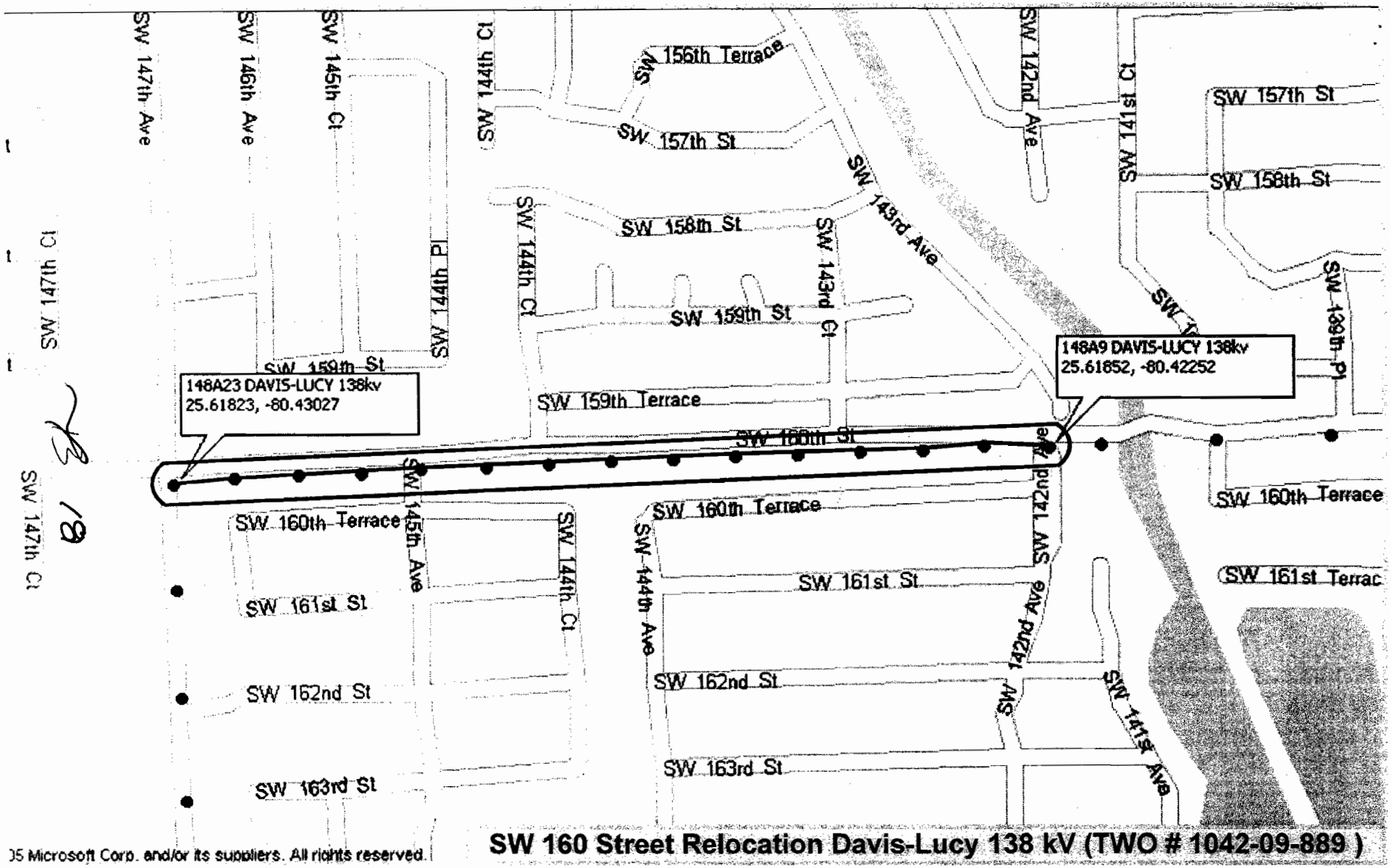
REQUESTER: MIAMI-DADE COUNTY, FLORIDA
PROJECT: WIDEN SW 160TH STREET FROM SW 137TH AVE TO SW 147TH AVE IN RICHMOND WEST, MIAMI-DADE COUNTY, FLORIDA
SCOPE OF WORK UNDER FPL'S WORK ORDER #1042-09-889

Remove (15) structures #148A9 thru' 148A23 on FPL's Davis-Lucy 138KV transmission line and install new replacement structures at locations as shown on the enclosed job-sketch, in order to clear a conflict with the proposed new road widening project.

Location: South side of SW 160th Street from SW 142nd Ave to SW 147th Ave in Richmond West, Miami-Dade County, Florida. Location sketch is as follows; job-sketch also enclosed:



17



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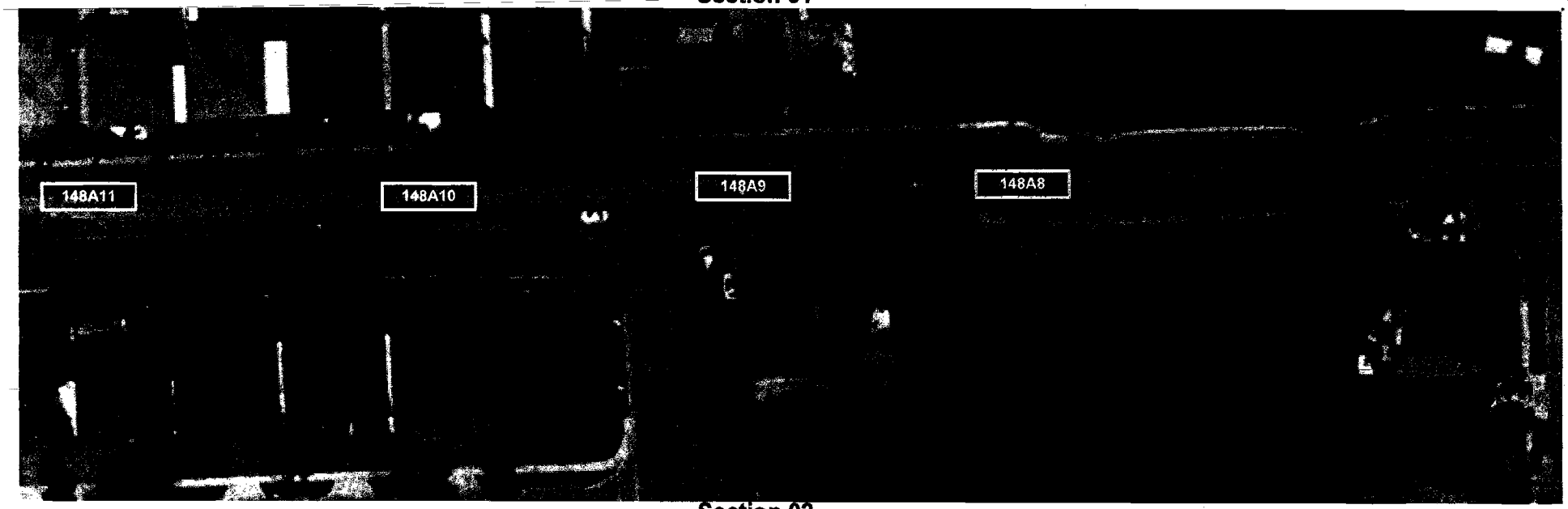
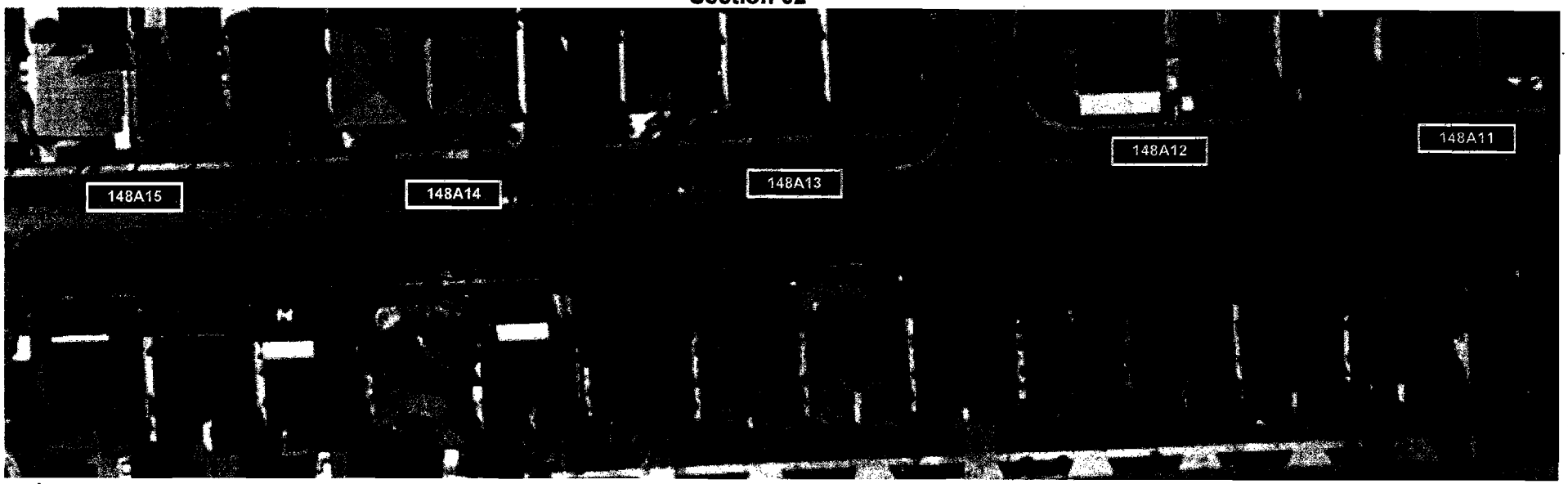
SW 160 Street Relocation Davis-Lucy 138 kV (TWO # 1042-09-889)

B 18

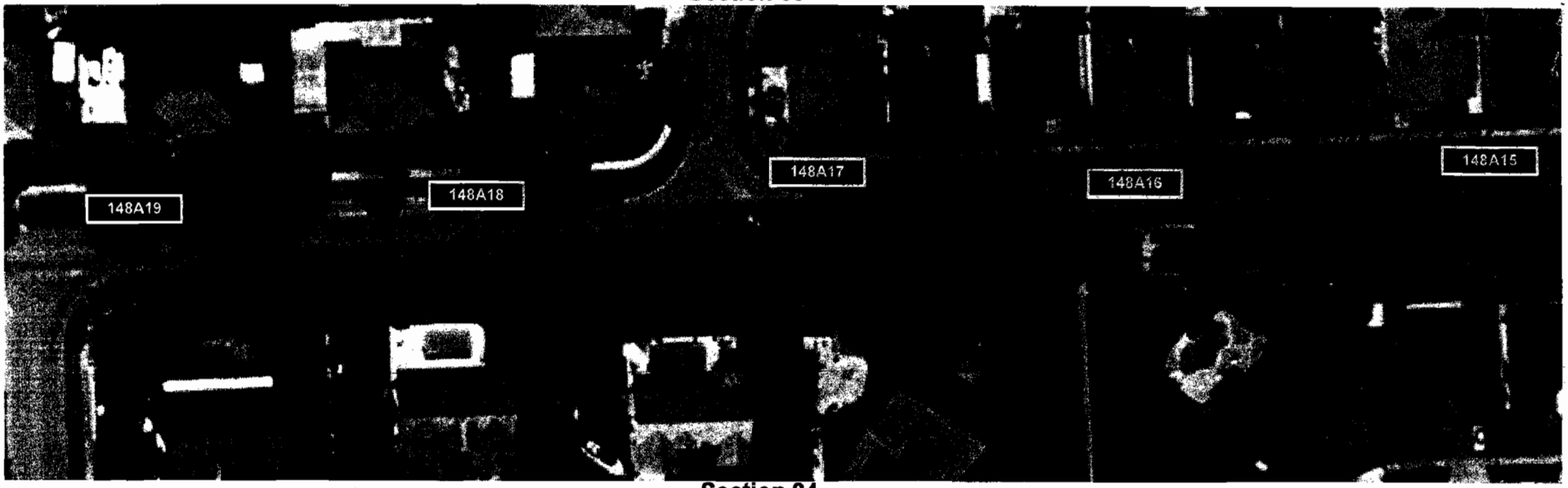
Section 01



Section 02



Section 03



Section 04

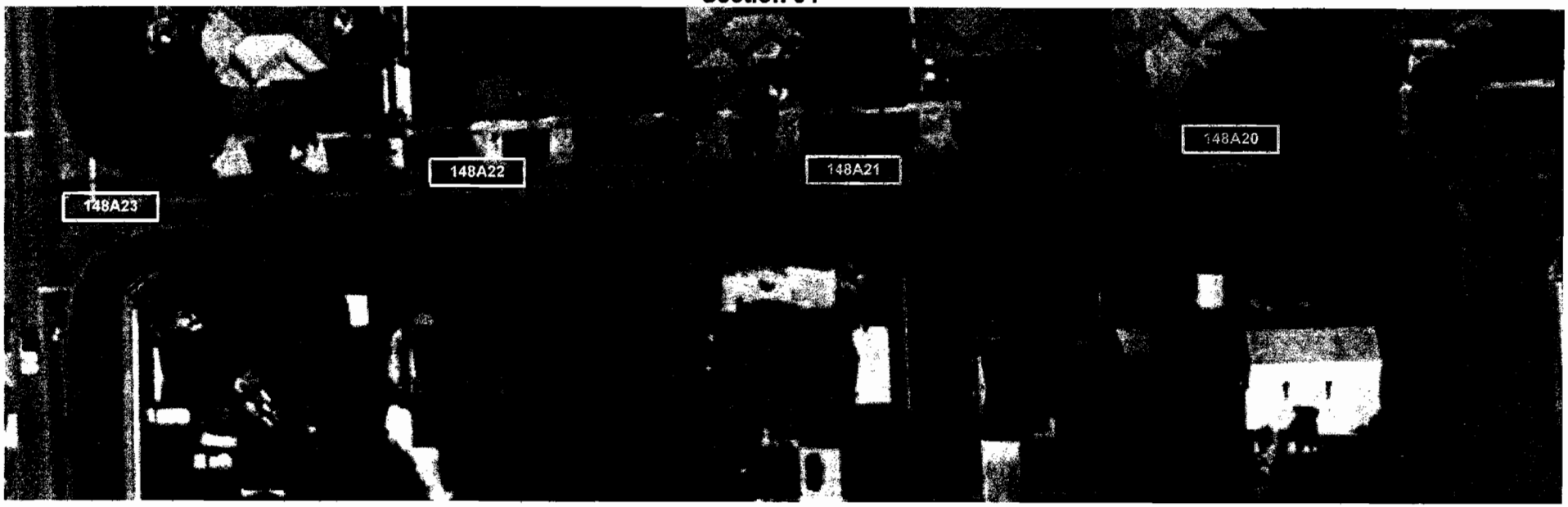


Exhibit C

Estimate Valid Through: November 29, 2007

Florida Power & Light Company

Estimate Printed On: Aug 30, 2007 13:16:16

Project Description

Customer Requested Reimbursable Relocation of Transmission Facilities
Miami-Dade County Project #20030190

Summary Estimate of Cost

Project Level

Work Order 1042-09-889

Project Name:

Road Widening of SW 160th St From SW 137th Ave to SW 147th Ave

Line No	Salvage	Removal	Item	Item Cost	Total
6			**(A) ENGINEERING**		
7			Labor		
8			* Additives of Labor		
9			Transportation		
10			Applied Engineering	$79,418.00	
11			Contractor & Misc. Expenses		
12			* Additives of Contractor/Misc. Expenses		
13			Sub-total	**$79,418.00**	**$79,418.00**
14					
15			**(B) LAND & LAND RIGHTS (RIGHT OF WAY)**		
16			Labor		
17			* Additives of Labor		
18			Transportation Expenses		
19			Purchase and/or Easements		
20			Contractor & Misc. Expenses		
21			* Additives of Contractor & Misc. Expenses		
22			Sub-total		
23					
24			**(C) CONSTRUCTION**		
25		$9,297.74	Labor	$41,702.60	
26			* Additives of Labor		
27		$4,611.46	Transportation Expenses	$20,683.48	
28			Material	$132,116.72	
29			* Stores Loading	$8,567.68	
30		$125,182.80	Contractor & Misc. Expenses	$561,474.72	
31			* Additives of Contractor & Misc. Expenses		
32		**$139,092.00**	Sub-total	**$764,545.20**	**$903,637.20**
33					
34			**(D) OTHER - MAINTENANCE**		
35			Labor		
36			* Additives of Labor		
37			Transportation Expenses		
38			Material		
39			* Stores Handling		
40			Contractor & Misc. Expenses		
41			* Additives of Contractor & Misc. Expenses		
42			Sub-total		
43					
44			**(E) ADMINISTRATIVE & GENERAL COSTS**		
45		$35,085.97	Administrative & General Costs	$178,089.12	
46		**$35,085.97**	Sub-total	**$178,089.12**	**$213,175.09**
47					
48	**$0.00**	**$174,177.97**	**GRAND TOTAL**	**$1,022,052.32**	**$1,196,230.29**

49	TOTAL INSTALLATION AND MAINTENANCE COST	**$1,022,052.32**
50	TOTAL REMOVAL COST	**$174,177.97**
51	SALVAGE () LESS SALVAGE ADJUSTMENT (FACILITIES NOT REPLACED)	**$0.00**
52	SUB-TOTAL	**$1,196,230.29**
53	CREDIT ##.##% (FROM AGREEMENT)	**$0.00**
54	NET REPLACEMENT COST (Sum lines 52 and 53)	**$1,196,230.29**

* Handling Tax & Insurance and Pension & Welfare at Approved Rates

Engineer: NEELESH P. SHAH

Submitted By: