

MEMORANDUM

Agenda Item No. 8(N)(1)

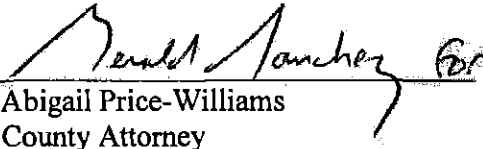
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 5, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution authorizing the County Mayor to accept a counteroffer in the amount of \$39,100.00 from Florida Power & Light (FPL) for the acquisition of Parcel 3 for improvements to NW 58 Street from NW 97 Avenue to Palmetto Expressway; granting FPL a utility easement over the property acquired by the County at no additional cost for maintenance of existing power lines and other infrastructure subject to FPL's subordination of such easement to the County; and directing the County Mayor to execute same and to perform all acts necessary to effectuate same

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.


Abigail Price-Williams
County Attorney

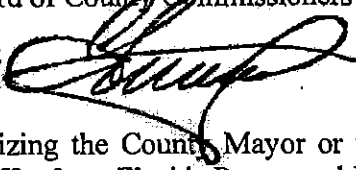
APW/uw

Memorandum



Date: May 5, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Resolution Authorizing the County Mayor or the County Mayor's Designee to Accept a Counteroffer from Florida Power and Light (FPL) for the Acquisition of Parcel 3 and Granting FPL a Utility Easement Over the Property Acquired, Subject to FPL's Subordination of Such Easement to the County

Recommendation

It is recommended the Board of County Commissioners (Board) authorize the County Mayor or the County Mayor's Designee to approve the attached resolution authorizing the County Mayor or the County Mayor's Designee to accept a counteroffer from Florida Power and Light (FPL) for the acquisition of property described in Exhibit "A" to this memorandum, as part of the NW 58 Street roadway project from NW 97 Avenue to the Palmetto Expressway, known as Parcel 3, located at theoretical address 8000 NW 58 Street. Approval of this matter would grant FPL a utility easement at no additional cost for maintenance of existing power lines and other infrastructure, and FPL would accept a subordination of such utility easement to the County for County purposes, including construction and maintenance of the NW 58 Street Project.

Scope

The impact of this project is Countywide; however, the NW 58 Street roadway project is located within Commission District 12, represented by Commissioner Jose "Pepe" Diaz.

Fiscal Impact/ Funding Source

The total cost of the project is estimated at \$13,283,851.04, of this amount \$39,100.00 is allocated for the acquisition of Parcel 3 from FPL, along with an easement and a subordination agreement. Funding for the construction is included in the adopted FY 2019-20 Multi-year and Capital Plan Budget under the Arterial Roads – Countywide (2000000538) / Site 77230 –Reconstruct NW 58 Street from NW 97 Avenue to SR 826) for projects in RIF District 1 project, with the right-of-way acquisition included within the Rights-of-Way Acquisition – Countywide (2000000537) / Site 3000015 – Right-of-Way Acquisition for projects in RIF District 1.

Track Record/Monitor

Francisco Fernandez, Chief Real Estate Officer, Department of Transportation and Public Works (DTPW), Roadway Engineering and Right-of-Way Division, is responsible for overseeing this item.

Delegated Authority

In accordance with Section 2-8.3 of the Code of Miami-Dade County (Code) related to identifying delegation of Board authority, there are no authorities beyond that specified in this resolution.

Background

In September 2018, pursuant to Resolution No. R-896-18, the Board declared a public necessity to permit the acquisition in fee simple of the property known as Parcel 3 from FPL, which is located underneath the utility company's power transmission lines. Although FPL has agreed to sell the property for the value authorized in the original authorizing resolution, FPL has requested that the County grant FPL a utility easement at no additional cost over Parcel 3 in order to allow for the continuance of its operations. Granting this easement is consistent with the County's proposed use for the roadway project and FPL will simultaneously provide a subordination of such easement to the County. The utility easement, as well as the subordination, will be in a form similar to Exhibits "B" and "C," which are attached to this memorandum, as approved by the County Attorney's Office. In order to expedite the acquisition process, avoid substantial costs of eminent domain proceedings and mitigate potential damages, it is in the best interest of the County to accept the counteroffer, granting FPL a utility easement that will be subordinated to the County.



Jennifer Moon
Deputy Mayor

LEGAL DESCRIPTION
(Parcel 3)

The South 10 feet of the North 45 feet of the West 132.185 feet of the East 660.925 feet of the North 1/2 of the North 1/2 of the NW 1/4 of the NE 1/4 of Section 22, Township 53 South, Range 40 East, in Miami-Dade County, Florida.

Containing 1,322 Square Feet/ 0.030 Acres more or less.

EXHIBIT A

PROJECT NO. 20140019
PARCEL 3

Exhibit "B"

To Resolution to Accept Counteroffer

Form of Easement

Prepared by and after recording
Return to:

Seth Sheitelman, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408

EASEMENT
(Corporate)

KNOW ALL MEN BY THESE PRESENTS that MIAMI-DADE COUNTY, a political subdivision of the State of Florida, and successors in interest, whose address for notices is 111 NW 1st Street, Miami, Florida 33128-1970 ("Grantor") in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grants and gives to FLORIDA POWER & LIGHT COMPANY, its affiliates, licensees, agents, successors, and assigns ("FPL"), a a non-exclusive easement forever for a right-of-way to be used for the construction, operation and maintenance of one or more overhead and underground electric transmission and distribution lines, including but not limited to, wires, poles, "H" frame structures, towers, cables, conduits, anchors, guys, roads, trails and equipment associated therewith, attachments and appurtenant equipment for communication purposes and one or more pipelines, and appurtenant equipment for the transmission of substances of any kind (all of the foregoing hereinafter referred to as "facilities"), over, under, in, on, upon and across the entire Property described in attached Exhibit A ("Easement Area"); together with the right and privilege from time to time to reconstruct, inspect, alter, improve, enlarge, add to, change the voltage, as well as the nature or physical characteristics of, replace, remove or relocate such facilities or any part of them upon, across, over or under the Easement Area with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the herein described purposes, including, but not limited to, the right to cut and keep clear all trees and undergrowth and other obstructions within the Easement Area and on lands of Grantee adjoining the Easement Area that may interfere with the proper construction, operation and maintenance of such facilities or any part of them, the right to mark the location of any underground facilities by above ground and other suitable markers and the right of ingress and egress for personnel and equipment of Grantor, its contractors, agents, successors or assigns over the adjoining lands of Grantee, for the purpose of exercising and enjoying the rights granted by this easement and any or all of the rights granted hereunder.

No portion of the Easement Area shall be excavated, altered, obstructed, improved, surfaced or paved without the prior written permission of Grantor, or its successors or assigns, and no building, well, irrigation system, structure, obstruction or improvement (including any

Exhibit "B"

improvements for recreational activities, except for bicycle facilities) shall be located, constructed, maintained or operated over, under, upon or across the Easement Area by Grantee, or the heirs, personal representatives, successors or assigns of Grantee.

By the execution hereof, Grantor covenants that it has the right to convey this easement and that Grantor and its successors and assigns shall have quiet and peaceful possession, use and enjoyment of this easement and the rights granted hereby.

[Signature appears on following page]

Exhibit "B"

The foregoing was authorized and approved by Resolution No. R-896-18 of the Board of County Commissioners of Miami-Dade County, Florida, on the 5th day of September, A.D. 2018.

ATTEST:

HARVEY RUVIN,
CLERK OF SAID BOARD

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

By: _____
Clerk

By: _____
County Mayor or County Mayor's
Designee

Approved as to form
and legal sufficiency.

Assistant County Attorney

Exhibit "B"

EXHIBIT A
To Easement

Legal Description of Easement Area

The South 10 feet of the North 45 feet of the West 132.185 feet of the East 660.925 feet of the North 1/2 of the North 1/2 of the NW 1/4 of the NE 1/4 of Section 22, Township 53 South, Range 40 East, in Miami-Dade County, Florida.

Containing 1,322 Square Feet/ 0.030 Acres more or less

Exhibit "C"

To Resolution to Accept Conteroffer

Form Subordination Agreement

This instrument prepared by:

Florida Power & Light Company
P O Box 14000
Juno Beach, Florida 33408-0420

SUBORDINATION OF UTILITY INTERESTS AND AGREEMENT FOR
REIMBURSEMENT FOR ADDITIONAL FACILITY RELOCATIONS

THIS SUBORDINATION OF UTILITY INTERESTS AND AGREEMENT FOR REIMBURSEMENT FOR ADDITIONAL FACILITY RELOCATIONS ("Agreement"), entered into this day of _____, 20____, by and between MIAMI-DADE COUNTY, a body politic in the State of Florida, hereinafter called the "COUNTY," and FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P. O. Box 14000, Juno Beach, Florida 33408, hereinafter called "UTILITY."

WITNESSETH:

WHEREAS, Utility presently has an interest in certain lands described in EXHIBIT "A" (the "Lands") attached hereto, all or a portion of which Lands, the County has determined it needs for highway purposes; and

WHEREAS, the proposed use of portions of the Lands for highway purposes will require a subordination of the interest claimed in the Lands by Utility in favor of the County; and

WHEREAS, the County, or its successors or assigns, hereinafter collectively called the "Governmental Entity," if required by the Governmental Entity's originated road improvements, is willing to pay for the initial relocation of the Utility's facilities from portions of the Lands to prevent conflict between the Governmental Entity's use and the Utility's use, and for the benefit of each; and

WHEREAS the Governmental Entity, in addition and in recognition of Utility's interest in the Lands, if required by the Governmental Entity's originated road improvements, is willing to pay for any future relocation of the Utility's facilities from or within the entire width of the public right-of-way as described in EXHIBIT "A," attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Utility and County agree as follows:

Utility subordinates any and all of its interest in the Lands only to the extent described on EXHIBIT "A" attached hereto and made a part hereof, to the interest of the Governmental Entity, for the purpose of constructing, improving, maintaining and operating a road over, through, upon, and/or across such Lands, based on the following:

1. Utility is the owner of the following easement:

Recorded in

Exhibit "C"

Date	From or Against	In Favor of	ORB Book	Page

The County and Utility further agree that:

2. "Public right-of-way," as used herein, shall mean that area which is described in Exhibit "A" and which includes a portion of Utility's easement identified above in Exhibit "A".
3. Utility shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon the public right-of-way described in Exhibit "A," in accordance with the County's current minimum standards for such facilities as of the date of this Agreement. Any new construction or relocation of facilities within the public right-of-way described in Exhibit "A" will be subject to prior approval by the Governmental Entity.
4. The Governmental Entity shall pay for the relocation of existing facilities, if such relocation is required by the Governmental Entity's originated road improvements. In addition, Utility retains the right to be reimbursed either now or in the future, for additional relocation or adjustment of its facilities located presently or to be located on the public right-of-way described in Exhibit "A," if such relocation or adjustment is caused by present or future uses of the right-of-way by the Governmental Entity, including, but not limited to, the cost of acquiring replacement easements.
5. Utility shall have the right to enter upon the lands described in Exhibit "A" for the purposes outlined in Paragraph 3 above, including the right egress and ingress and to trim such trees, brush, growth and undergrowth which might endanger or interfere with such facilities. The Governmental Entity shall provide and insure access to said lands by Utility.
6. Utility agrees to repair any damage to the Governmental Entity facilities caused by Utility and to indemnify the Governmental Entity against any loss or damage resulting from Utility's negligence or intentional misconduct in exercising its rights to construct, operate, maintain, improve, add to, upgrade or remove its facilities on said public right-of-way described in Exhibit "A."
7. This Agreement shall not be assigned by County without Utility's written consent except to the State of Florida but only if the State of Florida agrees to assume the County's obligations hereunder.
8. Notwithstanding anything to the contrary contained herein, road improvements requested and performed to benefit private development would be the sole responsibility of the developer and would be monitored by the appropriate Governmental Entity plan review and/or inspection processes.
9. The terms and conditions of this Agreement shall be superior and controlling over any conflicting permits, agreements or Florida Statute.
10. Utility reserves all rights and interest in the Lands (described in Exhibit "A") not subordinated hereunder.

[Signature Follows on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Exhibit "C"

FLORIDA POWER & LIGHT COMPANY

Address:
P. O. Box 14000
Juno Beach, Florida 33408-0420

Signed, sealed and delivered in
our presence as witnesses

Signature:
Print Name: _____

By: _____
Its: _____
Print Name: _____

Signature:
Print Name: _____

STATE OF FLORIDA
AND COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, _____, of Florida Power & Light Company, a
Florida corporation, on behalf of said corporation who is personally known to me and who did not take an
oath.

Notary Public, State of Florida
My Commission Expires:

Exhibit "C"

The foregoing was authorized and approved by Resolution No. R-896-18 of the Board of County Commissioners of Miami-Dade County, Florida, on the 5th day of September, A.D. 2018.

ATTEST:

HARVEY RUVIN,
CLERK OF SAID BOARD

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

By: _____
Clerk

By: _____
County Mayor or County Mayor's
Designee

Approved as to form
and legal sufficiency.

Assistant County Attorney

Exhibit "C"

Exhibit "A"
To Subordination Agreement

Legal Description of the Lands

The South 10 feet of the North 45 feet of the West 132.185 feet of the East 660.925 feet of the North 1/2 of the North 1/2 of the NW 1/4 of the NE 1/4 of Section 22, Township 53 South, Range 40 East, in Miami-Dade County, Florida.

Containing 1,322 Square Feet/ 0.030 Acres more or less.



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: May 5, 2020

FROM: Arigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(1)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(N)(1)
5-5-20

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ACCEPT A COUNTEROFFER IN THE AMOUNT OF \$39,100.00 FROM FLORIDA POWER & LIGHT (FPL) FOR THE ACQUISITION OF PARCEL 3 FOR IMPROVEMENTS TO NW 58 STREET FROM NW 97 AVENUE TO PALMETTO EXPRESSWAY; GRANTING FPL A UTILITY EASEMENT OVER THE PROPERTY ACQUIRED BY THE COUNTY AT NO ADDITIONAL COST FOR MAINTENANCE OF EXISTING POWER LINES AND OTHER INFRASTRUCTURE SUBJECT TO FPL'S SUBORDINATION OF SUCH EASEMENT TO THE COUNTY; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME

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:

Section 1. This Board ratifies and adopts the matters set forth in the foregoing recitals.

Section 2. This Board authorizes the County Mayor or County Mayor's designee, in connection with the acquisition of Parcel 3, to: (1) convey a utility easement to FPL over Parcel 3 at no cost in a form in substantial accordance with the one attached to the Mayor's Memorandum as Exhibit B, subject to approval by the County Attorney's Office; (2) accept a subordination of such easement to the County in a form in substantial accordance with the one attached to the Mayor's Memorandum as Exhibit C, subject to approval by the County Attorney's Office; (3) execute the easement and the acceptance of the subordination of easement, and (4) perform all acts necessary to effectuate same.

Section 3. Pursuant to Resolution No. R-896-18, this Board directs the County Mayor or County Mayor's designee to record all instruments of conveyance in connection with such purchase in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of the instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and directs the Clerk of the Board to attach and permanently store a recorded copy of said instruments together with this resolution.

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:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared this resolution duly passed and adopted this 5th day of May, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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.



Lauren E. Morse