

MEMORANDUM

Agenda Item No. 8(O)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 17, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving Settlement Agreement between Miami-Dade County and Tacolcy Edison Gardens, LLC, in the amount of \$933,037.50 to be paid to Tacolcy Edison Gardens, LLC to resolve any and all claims between the parties; and authorizing the County Mayor to execute the Settlement Agreement and exercise all rights contained therein

Resolution No. R-489-22

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Keon Hardemon.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: May 17, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Resolution Approving Settlement Agreement between Miami-Dade County and Tacolcy Edison Gardens, LLC to Resolve a Claim Related to Edison Place 3 Located at 610 N.W. 60th Street Resulting from Discovery of an Encroaching County-Owned 48-Inch Water Main

Executive Summary

The attached resolution seeks approval of a Settlement Agreement between Miami Dade County and Talcocy Edison Gardens, LLC resolving a claim related to the encroachment of a County-owned 48-inch water main into Talcocy’s property.

Recommendation

It is recommended that the Board of County Commissioners (the “Board”) approve the attached resolution approving a Settlement Agreement between Miami-Dade County (the “County”) and Tacolcy Edison Gardens, LLC (“Tacolcy”). The Settlement Agreement, which is attached to the resolution as Exhibit 1, resolves a claim brought by Tacolcy against the County for costs associated with modifications to the design and construction of Tacolcy’s affordable housing project at 610 N.W. 60th Street, Miami, Florida (the “Tacolcy Property”) that were required due to the discovery, while the building was being constructed, of a 48-inch County-owned water main that was encroaching on the Tacolcy Property. The critical water main, which could not be re-located due to its size and proximity to I-95, was outside of the designated utility easement, was encroaching onto Tacolcy’s Property, and was too close in proximity to the footprint of the new building.

Scope

The Tacolcy Property is located at 610 N.W. 60th Street, Miami, Florida, which is in Commission District 3 represented by Commissioner Keon Hardemon.

Delegation of Authority

This item authorizes the County Mayor or County Mayor’s designee to execute the Settlement Agreement on behalf the County and to carry out all obligations and exercise all rights contained therein.

Fiscal Impact/Funding Source

Under the terms of this Settlement Agreement, the County will pay Tacolcy \$933,037.50 as full and final settlement of all disputes relating to the issues arising from the consequences resulting to Tacolcy’s affordable housing project due to the County’s encroaching 48- inch water main. The settlement will be paid from WASD’s Proprietary Revenues.

Track Recorder/Monitor

WASD’s Chief Financial Officer Frances G. Morris will oversee implementation of the Settlement Agreement.

Background

In 2019, TEDC Affordable Communities II, Inc. executed a Developer Agreement with WASD for an affordable housing project “Edison Place.” TEDC intended to build 100 apartments, located at street addresses 610 N.W. 60th Street, 5900 N.W. 6th Avenue, and 651 N.W. 58th Street. The Developer Agreement was later assigned to Tacolcy Edison Gardens, LLC.

In 2020, once construction of the project on the Tacolcy Property began, an existing 48-inch water main (the “Pipe”) owned and operated by the Miami-Dade Water and Sewer Department (“WASD”) was discovered partially outside of a 15-foot platted utility easement, which was encroaching upon the Tacolcy Property. A diagram showing the location of the Pipe relative to the easement as well as the overall surrounding area is attached hereto as Exhibit A. Upon discovery of the encroaching Pipe, Tacolcy contacted WASD in order to work through an approach to address the location of the Pipe relative to the footprint of the middle section of the three-part affordable housing project being constructed at the site.

The Pipe is a critical water main and cannot be shut down for an extended period of time. It is also located in a narrow corridor with close proximity to I-95, making relocation difficult and costly. As a result, WASD requested that the Pipe be allowed to remain in its existing location, and the new building be adjusted to provide better separation between the Pipe and the center section of the building. Tacolcy and its agents undertook a re-design of the center section of the building and incurred additional design and construction costs as a result of the changes made.

Upon completion of the building’s construction, in September 2021, Tacolcy submitted a claim to WASD seeking reimbursement for the costs. Tacolcy provided receipts, invoices and documentation that it believed supported its demand for reimbursement of the costs it allegedly incurred as a result of the Pipe’s encroachment. The claim submitted by Tacolcy sought \$1,185,000.00, which included costs for architectural, geotechnical and structural modifications that it alleged were necessitated by the location of the Pipe. WASD evaluated the documentation submitted, and the parties negotiated a settlement of the claim.

The settlement between the County and Tacolcy, attached as Exhibit 1 to the resolution, includes the following terms:

- 1) Tacolcy will grant WASD a new three-foot easement that is adjacent to the platted easement for the 48-inch Pipe so that the Department has adequate ingress and egress access to the Pipe going forward;
- 2) Tacolcy, through its Engineer-of-Record, will supply a letter to WASD, which states that the building foundation system does not encroach on the platted utility easement or the granted supplemental easement and the grout columns have been designed and constructed to support the required loads of the building with the adjacent soil not carrying any loads; and

3) WASD will pay Tacolcy \$933,037.50 as full and final satisfaction of all costs associated with the re-design and additional construction expenses incurred as a result the Pipe's encroachment onto the Tacolcy Property, and Tacolcy will execute a release of any and all claims it may have against the County.



Jimmy Morales
Chief Operations Officer

5



NOTE: THE JET GROUT COLUMNS APPROXIMATE SIZE, LOCATION AND DEPTH AS PROVIDED BY ARDAMAN & ASSOCIATES, INC., GEOTECHNICAL, ENVIRONMENTAL AND MATERIALS CONSULTANTS, AS PER REPORT PROVIDED, DATED SEPTEMBER 23, 2020, FILE NO. 19-2522.

Revision Type	Date	by

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Member American Institute of Architects
AIA09000006080 - AIA0012106

project title: WATER MAIN PIPE LOCATE SECTIONS FOR:
EDISON PLACE 3
ALONG EAST SIDE OF BUILDING FROM NORTH TO SOUTH
NEW EDISON PLACE BUILDING NO. 9 - 48 STORIES
100 APARTMENTS + TOTAL NEW SITE DEVELOPMENT
610 NORTHWEST 60 STREET
CITY OF MIAMI, MIAMI-DADE COUNTY, FLORIDA 33127

CONSULTANT

Drawing date: NOVEMBER 20, 2020	Drawn by: JOJRDGS	Chkd by: FC
Drawing Scale: AS NOTED		
Project Number: FCA-1822		

Sheet title:
● REVISED GROUND
FLOOR MASTER
PLAN SETBACKS TO
PROPERTY LINE/
UTILITY EASEMENT

Date: _____ Sheet Number: A-00	Date: _____ Sheet Number: _____
Signature: _____ FRANK COSTOVA, JR. A.I.A. FL REG. NO. AR001208	Signature: _____ _____
Date: _____ Sheet Number: _____	Date: _____ Sheet Number: _____



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 17, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(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(O)(1)
5-17-22

RESOLUTION NO. _____ R-489-22

RESOLUTION APPROVING SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TACOLCY EDISON GARDENS, LLC, IN THE AMOUNT OF \$933,037.50 TO BE PAID TO TACOLCY EDISON GARDENS, LLC TO RESOLVE ANY AND ALL CLAIMS BETWEEN THE PARTIES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN

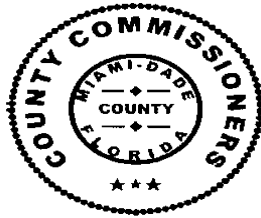
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement, in substantially the form attached hereto as Exhibit 1, between Miami-Dade County and Tacolcy Edison Gardens, LLC in the amount of \$933,037.50 to be paid to Tacolcy Edison Gardens, LLC to resolve any and all claims between the parties. This Board further authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County and to exercise all rights contained therein.

The foregoing resolution was offered by Commissioner **Kionne L. McGhee** , who moved its adoption. The motion was seconded by Commissioner **Sen. Rene Garcia** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	absent	Danielle Cohen Higgins	absent
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of May, 2022. 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

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis

**SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS
BETWEEN MIAMI-DADE COUNTY AND
TACOLCY EDISON GARDENS, LLC**

This Settlement Agreement and General Release of All Claims (the “Agreement”) is made and entered as of this ____ day of _____, 2022 (the “Effective Date”), by and between Miami-Dade County, a political subdivision of the State of Florida (the “County”), and TacolcyEdison Gardens, LLC , a Florida corporation, whose principal place of business is 5900 NW 7th Ave., Miami, Florida 33127 (hereinafter, “Tacolcy,” and collectively, with the County, the “Parties”).

RECITALS

WHEREAS, the County, through the Miami-Dade Water and Sewer Department (“WASD”), and Developer TEDC Affordable Communities II, Inc. executed a Developer Agreement (the “Agreement”), pursuant to which WASD would supply water and sewer services to an affordable housing project that TECD Affordable Communities II, Inc. planned to construct; and

WHEREAS, TEDC Affordable Communities II, Inc.’s development was to include 100 apartments located at 610 N.W. 60 Street, 5900 N.W. 6 Avenue, and 651 N.W. 58 Street (the “Project”); and

WHEREAS, the Agreement was later assigned to a new developer for the Project, Tacolcy, which bought the subject properties; and

WHEREAS, in 2020, an existing 48-inch water main owned and operated by WASD was discovered to be encroaching onto the property owned by Tacolcy; and

WHEREAS, the 48-inch water main was located outside of the 15-foot utility easement in which the Parties originally believed it was located, and, as a result, affected the footprint of the building being constructed by Tacolcy; and

WHEREAS, the encroaching 48-inch water main is a critical water main for the County that could not be shut down for long periods of time and could not be relocated due to its close proximity to I-95; and

WHEREAS, the County requested that Tacolcy leave the 48-inch water main in place, provide the County with an easement for the portion of the pipe encroaching on its property, and re-design the portion of its development that was in too close proximity to the pipe; and

WHEREAS, the discovery of the encroaching 48-inch water main caused considerable delay and increased costs to Tacolcy because extensive revisions to the construction plans for the building were required in order to avoid the 48-inch water main; and

WHEREAS, on September 12, 2021, Tacolcy submitted a claim to the County, including extensive back-up documentation and receipts to justify its demand for \$1,185,668.61 (the "Claim"); and

WHEREAS, the County reviewed the Claim and all documentation in support of the Claim; and

WHEREAS, the County and Tacolcy wish to amicably settle all outstanding issues between the Parties regarding the Project and the Claim under the terms of this Agreement; and

WHEREAS, the Parties wish to avoid the associated expense and uncertainty of litigation, and, therefore, desire to amicably resolve their dispute and settle any and all issues between them; and

WHEREAS, the County and Tacolcy agreed to resolve the matter for \$933,037.50, subject to approval by the County Mayor and Board of County Commissioners; and

WHEREAS, in exchange for the County's payment to Tacolcy, Tacolcy agrees: (1) to release its Claim and any and all claims it could have raised against the County in connection with this Project; (2) to provide the County with an easement for the portion of the 48-inch water main encroaching into its property using WASD's standard easement; and (3) provide a letter from its structural engineer that states that the foundation system of the Project does not encroach on the platted utility easement or the supplemental easement, and the grout columns were designed to support the required loads of the building with the soil adjacent to the grout columns not carrying any loads.

NOW, THEREFORE, in consideration of the foregoing recitals and following premises, terms and conditions, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Parties agree that the above recitals are true and correct and that the recitals are incorporated by reference and form a part of this Agreement.

2. **Effective Date.** The Effective Date of this Agreement shall be the sooner of: (1) the date of the expiration of the County Mayor's veto period subsequent to the approval of this Agreement by the Board of County Commissioners of Miami-Dade County (the "BCC") without the County Mayor vetoing the BCC's resolution approving same, or (2) the date on which the County Mayor approves the BCC-approved resolution authorizing the execution of this Agreement, as set forth in Section 3 of this Agreement.

3. **County Approval Process.** Tacolcy acknowledge that, before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of the County Mayor or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor's veto by the "BCC" Approval.

a. **BCC Approval.** Tacolcy acknowledge that County Resolution No. 130-06 requires that all non-County parties must execute this Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, Tacolcy agrees to execute this Agreement before the County ("Tacolcy's Execution") and as a precondition to the presentation of this Agreement to the County Mayor or the County Mayor's designee or to the BCC. After such execution, Tacolcy (in exchange for sufficient consideration, the receipt of which is acknowledged, and which consideration includes the County Mayor or County Mayor's designee's recommendation of this Agreement to the BCC) agrees that it may not withdraw from or modify the terms of its settlement with the County, as presented in this Agreement.

b. **The Parties' Obligations Before BCC Approval.** Neither party shall be required to file any document compromising any claims it may have against the other party and shall not have released the other party until the Effective Date of this Agreement.

c. **Consequence Upon Failure to Obtain BCC Approval.** If the BCC does not approve this Agreement, and after all opportunities for BCC reconsideration have passed, the Parties shall return to the status quo existing before the Parties' preparation of this Agreement, and the fact that the County and Tacolcy sought to negotiate a resolution to their dispute concerning the Project, including any supporting documents necessary to present this Agreement to the BCC, shall

be inadmissible for all reasons and shall not prejudice any of their pre-existing rights and remedies with respect to each other or any other person or entity.

4. **Agreement to Settle: No Admission of Liability.** Subject to the terms and conditions of this Agreement, including the County's payment of the Settlement Amount, Tacolcy and the County hereby agree that the terms of this Agreement, the payment of any monies, or any other action of forbearance taken pursuant to this Agreement shall in no way constitute, nor be construed as, an admission of liability or acknowledgment of the validity of any allegation, finding or conclusion by Tacolcy, the County, or their respective agents, but rather are made as a contractual settlement by way of compromise to avoid the expense and uncertainty of litigation.

5. **Payment Terms.** As full and final settlement of this matter, the County agrees to pay Tacolcy \$933,037.50 (the "Settlement Amount") for its Claim and any and all claims that it could have brought against the County in connection with the Project. The County shall pay the Settlement Amount within 30 days of the Effective Date of this Agreement. Payment shall be made by wire. Such payment is further conditioned on Tacolcy providing a structural engineering letter that states that the foundation system of the Project does not encroach on the platted utility easement or the supplemental easement, and the grout columns were designed to support the required loads of the building with the soil adjacent to the grout columns not carrying any loads. Additionally, such payment is also conditioned on Tacolcy providing an easement to the County, using WASD's standard easement, for the portion of the 48-inch water main that is encroaching onto Tacolcy's property. This Settlement Agreement will not affect any of the obligations of Tacolcy, or any claims that the County might have against Tacolcy, with regard to the loan the County made for development of the Project.

6. **Release.** Upon the payment of the Settlement Amount, Tacolcy, on behalf of the corporation, its officers, employees, subcontractors, materialmen, suppliers, successors, and assigns, does hereby forever release, acquit and discharge the County, its past, present and future employees, agents, servants, successors, heirs, executors, administrators and officers of and from, any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, choate or inchoate, known or unknown, past or future, related to or in any way arising out of the Project.

7. **Parties to Bear Their Own Costs and Fees.** Each party shall bear its own attorneys' fees and costs in any action, including through all stages of appellate review, relating to or arising out of Tacolcy's claims or the enforcement of the terms of this Agreement.

8. **Florida Law Applies; Exclusive Venue.** This Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively in Miami-Dade County, Florida.

9. **Entire Agreement: Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the Parties to this Agreement with respect to the subject matter of this Agreement. No supplement, modification, or amendment to this Agreement shall be binding unless it is executed in writing by all Parties.

10. **Rule of Construction: Opportunity to Review.** The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction. The Parties declare that: (a) they have completely read the terms of this Agreement,

(b) they have discussed the terms of the Agreement with legal counsel of their choice, and (c) they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, officers, directors, predecessors, affiliates, parents, subsidiaries, successors or assigns in connection with any legal action arising out of the Agreement or the Project.

12. Authority to Execute and Bind. By executing this Agreement, the undersigned warrants and represents that they are authorized to enter into this Agreement and empowered to bind their respective Parties to these terms and, where applicable, their parents, affiliates, subsidiaries, successors, assignees and related entities. Further, the Parties represent that they have not assigned any of their respective rights or claims that are the subject of this Agreement to any third party.

13. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

14. Severability. The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state or county law, whether through legislation or judicial interpretation, which create, eliminate or change the rights and obligations of the Parties. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held to be invalid, void, or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired, or invalidated.

15. **Counterparts; Electronic Signatures.** The Parties agree that this Agreement, and any and all other documents in connection with this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Agreement. This Agreement may be executed as facsimile, email, or electronic originals, and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any Party's authorized representative shall be deemed to be an original.

(THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.
SIGNATURES APPEAR ON THE NEXT PAGE.)

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

ATTEST:

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

By: _____
Clerk of the Board

By: _____
County Mayor

ATTEST:

By: Heidi Rigby
Signature
HEIDI RIGBY, Secretary
Print Name

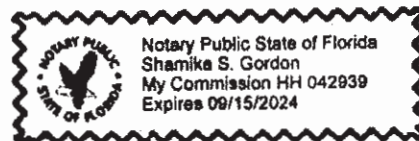
TACOLCY EDISON GARDENS, LLC
(Corporate Seal)
By: Carol Gardner
Signature
Carol Gardner, President
Print Name

STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 11th day of March, 2022, by Carol Gardner, as President, and Heidi Rigby, as Secretary, of Tacolcy Edison Gardens, LLC, on behalf of the corporation. He/She/They is/are personally known to me or has/hasn't/have/haven't produced identification and did/did not take an oath.

Shamika S. Gordon
Notary Public
Shamika Gordon
Print Name

Serial Number



Approved as to form and legal sufficiency.

Assistant County Attorney