

MEMORANDUM

Agenda Item No. 8(N)(4)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: March 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution accepting the conveyance of a perpetual easement from the United States Department of Agriculture for nominal consideration in connection with the Old Cutler Road project in connection with roadway improvements upon Old Cutler Road at the intersections of SW 67 Avenue and SW 136 Street; authorizing the County Mayor to execute the acceptance of the easement and to perform all acts necessary to effectuate same

Resolution No. R-174-23

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.



Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum



Date: March 7, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Approving the Acceptance of a Perpetual Easement from the United States Department of Agriculture for Nominal Consideration for Right-of-Way Improvements to the Intersection of Old Cutler Road with SW 67th Avenue and SW 136th Street

EXECUTIVE SUMMARY

The purpose of this item is for the Board of County Commissioners (Board) to approve the acceptance of a perpetual easement from the United States Department of Agriculture, for a nominal consideration of \$10.00, needed for the acquisition of right-of-way necessary to improve the intersection at Old Cutler Road with SW 67th Avenue and SW 136th Street. The improvements will consist of the design and construction of new roundabouts with sidewalks, curb and gutters, a storm drainage system, irrigation, pavement markings and signage, and roadway lighting along Old Cutler Road at the intersections of SW 67 Avenue, SW 136 Street, SW 152 Street and SW 184 Street. The objective of the project is to provide safety and operational improvements to help traffic flow smoothly at the subject intersections. The total estimated project cost for construction and acquisition of the needed right-of-way is estimated to be \$4,565,754, to be provided via Road Impact Fee funds.

RECOMMENDATION

It is recommended that the Board approve the attached resolution accepting the conveyance of a perpetual right-of-way easement from the United States Department of Agriculture (USDA) for nominal consideration. The easement, attached hereto as Exhibit 1, is required by the County in order to construct roadway improvements to Old Cutler Road at SW 136 Street and SW 67 Avenue in connection with the Old Cutler Road project.

SCOPE

This project is located within District 8, which is represented by Commissioner Danielle Cohen Higgins; however, the impact is countywide. The subject easement lies within District 8.

FISCAL IMPACT/FUNDING SOURCE

Funding for the construction and right-of-way acquisition of all parcels in this project is estimated at \$4,565,754. Funding for these improvements will be from Road Impact Fee District 5 (RIF) programmed within the FY 2021-22 Adopted Budget and Multi-year Capital Plan. Once the project is built out, annual maintenance and operational costs of approximately \$6,951.05 are anticipated and will be funded through the General Fund. The easement is being conveyed by the USDA to Miami-Dade County for nominal consideration of \$10.

TRACK RECORD/MONITOR

The Department of Transportation and Public Works (DTPW) is the entity overseeing this item, and the person responsible for monitoring same is Javier Bustamante, Assistant Director, Transit Project Management and Support Services Division.

DELEGATED AUTHORITY

This resolution delegates authority to the County Mayor or County Mayor's designee to execute the acceptance of the easement, to take all actions necessary to effectuate same, and to record the easement accepted herein in the public records of Miami-Dade County.

BACKGROUND

The project consists of the design and construction of new roundabouts with sidewalks, curb and gutters, a storm drainage system, irrigation, pavement markings and signage, and roadway lighting along Old Cutler Road at the intersections of SW 67 Avenue, SW 136 Street, SW 152 Street and SW 184 Street. The objective of the project is to provide safety and operational improvements to help traffic flow smoothly at the subject intersections.

On April 20, 2021, pursuant to Resolution No. R-310-21, the Board authorized the acquisition in fee simple of the property known as Parcel 2, as legally described in Exhibit A to the easement attached hereto, at the intersection of SW 67 Avenue and SW 136 Street. Parcel 2 is a 3,241 square foot triangular strip of land along the Northeast corner of a 206.061-acre property owned by the USDA. The USDA currently uses the subject property for a public purpose, as an agricultural research facility.

The acquisition of fee simple property from the USDA, a federal agency, is not possible by condemnation, and the USDA has stated that the voluntary conveyance of any USDA property in fee simple involves a lengthy and complicated process, requiring the involvement and approval of the United States General Services Administration. This could result in undue delays in the construction of the project, which is currently scheduled to commence in early 2023. However, in light of the County's roadway needs, the USDA has agreed to grant the County a perpetual non-exclusive easement for nominal consideration which can be expeditiously conveyed by the USDA, would not unduly delay the construction of the project, and would not interfere with the USDA's prior public use of its property as an agricultural research facility. The Administration has determined that the acquisition of property rights in the form of a perpetual easement is satisfactory to meet the County's current need to timely construct the project while accommodating the USDA's existing governmental use. The USDA has approved the form of the easement attached hereto as Exhibit 1.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: March 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(4)

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)(4)
3-7-23

RESOLUTION NO. _____ R-174-23

RESOLUTION ACCEPTING THE CONVEYANCE OF A PERPETUAL EASEMENT FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE FOR NOMINAL CONSIDERATION IN CONNECTION WITH THE OLD CUTLER ROAD PROJECT IN CONNECTION WITH ROADWAY IMPROVEMENTS UPON OLD CUTLER ROAD AT THE INTERSECTIONS OF SW 67 AVENUE AND SW 136 STREET; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE ACCEPTANCE OF THE EASEMENT 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; and

WHEREAS, the USDA has agreed to convey a perpetual easement to the County for nominal consideration for the construction of roadway improvements in connection with the Old Cutler Road project with respect to property owned by the USDA upon Old Cutler Road at the intersections of SW 67 Avenue and SW 136 Street, attached as Exhibit 1 to the County Mayor's memorandum; and

WHEREAS, upon consideration of the County Mayor's recommendation, this Board finds and determines that the acceptance of the easement would be in the public's best interest,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board incorporates and approves the foregoing recitals and the County Mayor's memorandum as if fully set forth herein.

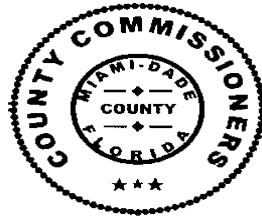
Section 2. This Board approves the acceptance of the perpetual easement in generally the form attached to the County Mayor's memorandum as Exhibit 1, for nominal consideration, and authorizes the County Mayor or County Mayor's designee to execute the acceptance of the easement and to perform all acts necessary to effectuate same.

Section 3. Pursuant to Resolution No. R-974-09, this Board directs the County Mayor or County Mayor's designee to record the easement in the Public Records of Miami-Dade County, Florida; and provide a recorded copy of the instrument to the Clerk of the Board within 30 days of execution of said instrument; and the Clerk of the Board shall attach and permanently store a recorded copy of said instruments together with this resolution.

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

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	absent
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of March, 2023. 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

LUIS G. MONTALDO, CLERK AD INTERIM

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Andrea Gonzalez Mateo

Exhibit "1"

United States Department of Agriculture
Agricultural Research Service

Non-Exclusive EASEMENT DEED

THE UNITED STATES OF AMERICA, acting by and through the United States Department of Agriculture, Agricultural Research Service

first party (hereinafter called *Government*), hereby grants and conveys an easement to Miami-Dade County, political subdivision of the State of Florida 111 NW 1st St. 15th Floor Miami, FL 33128

second party (hereinafter called *Grantee*) to construct, maintain and use Construction of new roundabout with sidewalks, curb and gutters, a storm drainage system, irrigation, pavement markings and signage, and roadway lighting along Old Cutler Road at the intersection with SW 67 Avenue.

(hereinafter referred to as facilities, in, on, across, over or under, as may be, of the property of the Government, described as follows (insert legal description):

That portion of the East 1/2 of Section 24, Township 55 South, Range 40 East, in Miami-Dade County, Florida, also subdivided as part of the THE AVOCADO LAND CO'S, according to the plat thereof recorded in Plat Book 2 at page 44 of the Public Records of Miami-Dade County, which lies within the external area formed by a 125 foot radius arc, concave to the Southeast, tangent to the East line of the West 35.00 feet thereof, and tangent to the South line of the North 35.00 feet thereof.

Map Attached as Exhibit A

All as shown on a map marked Exhibit "A", attached hereto and made a part hereof.

The foregoing easement is given pursuant to 43 U.S.C. 345c and is made subject to the following terms and conditions:

1. The Location Coordinator is designated as the onsite representative of the USDA ARS Subtropical Horticulture Research Station for the administration of this easement.
2. The Government does not warrant the title to any of said land, and the rights and privileges herein granted shall be subject to any mineral reservation or other rights, if any, now outstanding in third parties.
3. The rights and privileges hereby granted shall not be assigned by the Grantee without the written consent of the Government.
4. The Grantee shall be liable for any damage resulting to the Government from the use of the property by the Grantee and shall hold the Government harmless from any and all claims or damages by third parties from the use of the property by Grantee.
5. The Government reserves unto itself, its nominees and assigns, the right to use any part of said lands for any purpose, provided such use does not interfere with the rights and privileges hereby granted.
6. The Grantee shall be responsible for the maintenance and security of all of its equipment located within the easement area covered by this grant.
7. No soil or materials shall be placed on property of the Government outside of the granted area, and refuse, if any, resulting from clearing of the land shall be disposed of to the satisfaction of the onsite representative or designee.
8. Any property of the Government damaged in connection with said construction will be repaired by the Grantee at no expense to the United States.
9. The Grantee shall not use an "active ingredient" as defined in Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Acts June 25, 1947, c. 125, §§ 2-13, 61 Stat. 163, now codified at 7 U.S.C. §§ 136 *et seq.*), in violation of said Act on the land described in this easement.
10. The easement may be modified, adapted, or discontinued if found by the ARS Real Estate Lease Contracting Officer, or his/her designated representative, to be necessary, without liability or expense to the Government, so as not to conflict with the use and occupancy of the Property for any authorized works which may be hereafter constructed thereon under the authority of the Government.
11. In the event the Grantee fails to use the easement for a consecutive 2 year period from the date hereof, or in the event the Grantee shall at any time abandon the use of the property for the purpose for which granted, or in the event the Grantee shall violate any of the provisions of this grant, the Government may terminate this grant by giving the Grantee notice in writing 60 days in advance of such termination and the rights thereby granted shall thereupon terminate.
12. ~~This easement may be terminated at will, by Grantee or Government, upon receipt of written notice of its cancellation by either party. Any notice of termination or cancellation of this easement must be given to the non-termination party, at least 90 days prior to the actual proposed termination date. This period of notice shall commence from the date notice is actually received by the non-terminating party.~~
~~If any site preparation or construction has begun at the time of the termination, Grantee will be responsible for removing any structures associated with the project from Government property and restore the site to its original condition, or better, within 60 days of the effective date of the termination, unless otherwise agreed upon by the parties to this easement.~~
12. The terms of this easement shall be subject to and limited by the provisions of Section 768.28, Florida Statutes, and nothing herein shall be deemed a waiver thereof.
13. The Grantee does by the acceptance of this easement covenant and agree for itself, its assigns, and its successors in interest to the property herein conveyed or any part thereof, that the covenants set forth below shall attach to and run with the land:
(a) That the aforesaid granted easement area will be used in full compliance with Title VI of the Civil Rights Act of 1964, and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date of this deed to the end that no person in the Government shall, on the ground of race, color, religion, sex, age, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any programs or activities provided thereon; and

County Initial

USDA Initial

(b) That the Government shall have the right to judicial enforcement of these covenants not only as to the Grantee, its successors and assigns, but also as to lessees and licensees doing business or extending services under contractual or other arrangements on the land herein conveyed.

(c) In the event of a breach of any of the conditions set forth above, all right, title, and interest in and to the above-described property shall, at the option of the Government, revert to and become the property of the United States of America, which shall have an immediate right-of-entry thereon, and the Grantee, its successors or assigns, shall forfeit all right, title and interest in and to the above-described property and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Government to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, with respect to such future performance, shall continue in full force and effect.

14. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this grant or to any benefit to arise therefrom. This provision shall not be construed to extend to this grant if made with a corporation for its general benefit.
15. This easement shall be granted for a period of in perpetuity. years and terminate on N/A.
16. This easement was granted in consideration of \$10 dollars paid by the Grantee to the Government.
17. The Grantee shall be exclusively responsible to pay for or perform all claims, costs, expenses, fines, penalties, fees, actions, or sanctions arising out of or relating to any condition or circumstance which requires or may in the future require investigation, cleanup, removal, remedial action, or other response under any Environmental Laws which are now or may in the future become applicable to or affect the easement area, except that the Government shall be responsible for any solid waste, hazardous substances, hazardous waste, toxic or hazardous material, pollutants or contaminants contributed after this date to the Lands by the Government. For purposes of this easement deed, the term "Environmental Laws" shall mean all Federal, State and local laws including statutes, regulations, ordinances, codes, rules and other governmental restriction and requirements relating to the environment or solid waste, hazardous substances, hazardous waste, toxic or hazardous material. Pollutants or contaminants including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., now or at any time hereafter in effect.

List any additional provisions or conditions. If none, so state.

18. During the construction period, the Grantee's access to the site is 8:00 am until 4:00 pm, Monday - Friday. The site is not available on weekends or Federal Holidays. No visits between 12:00 pm - 1:00 pm.

19. The Grantee will construct a temporary fence to secure SHRS facilities during construction.

20. The Grantee agrees to keep all traffic away from experimental sites located near the construction site.

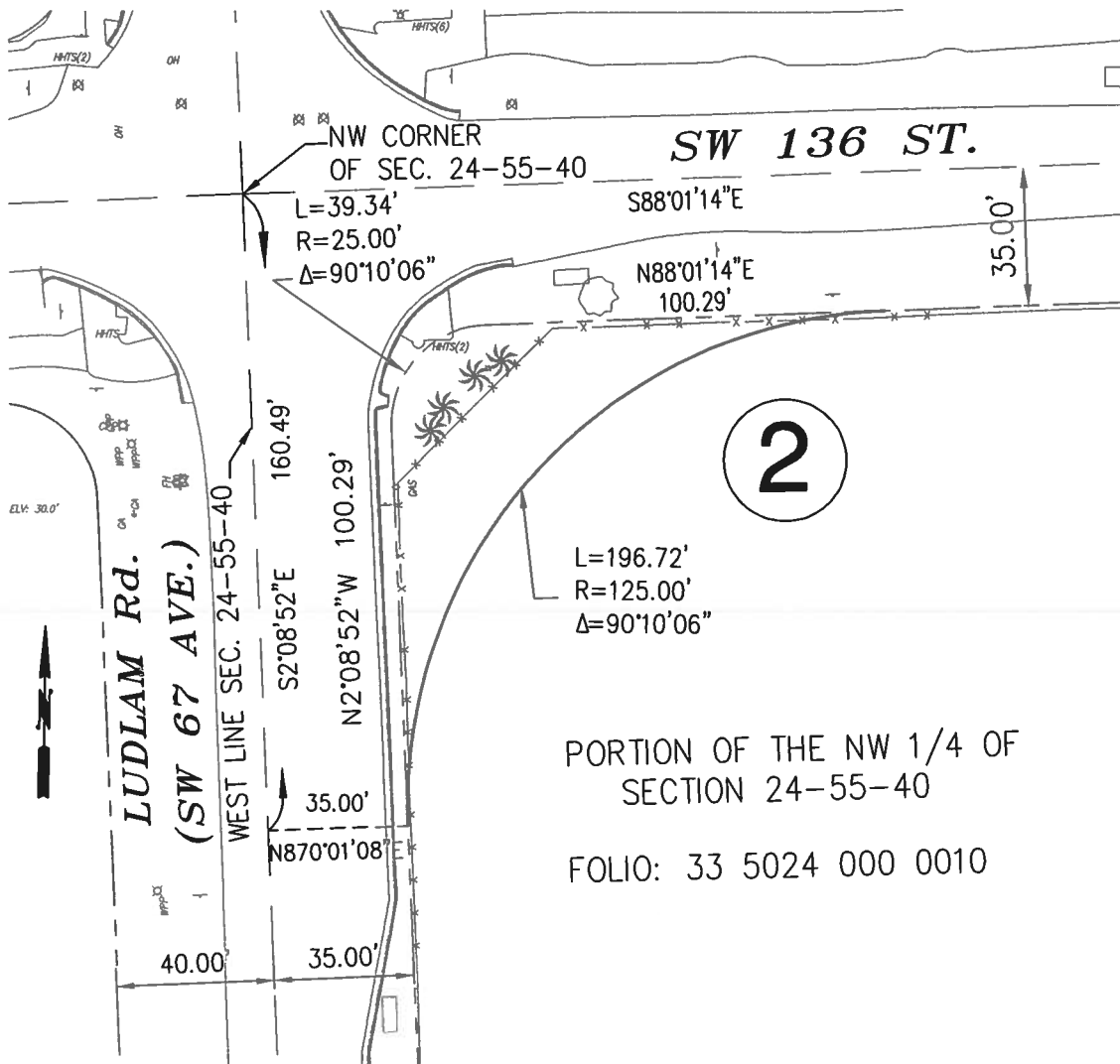
21. The Grantee, at it's own expense, will replace the Government's sign according to Government specifications.

<i>IN WITNESS WHEREOF, the United States of America acting by and through the Agricultural Research Service, United States Department of Agriculture, has executed these presents.</i>	Signature
	Authorized Warranted Official
	Date
	USDA Real Estate Lease Contracting Officer
WITNESSES (Signatures)	GRANTEE'S ACCEPTANCE
	Signature
	Authorized Representative's Title
	Date

UNITED STATES OF AMERICA

On this _____ day of _____ before me appeared _____ to me personally known who being duly sworn by me, did say that he is the _____, Agricultural Research Service, United States Department of Agriculture, and that the seal affixed to this instrument is the seal of the United States Department of Agriculture and that instrument was signed and sealed on behalf of the United States of America by authority duly given, and the said _____ acknowledged said instrument to be the free act and deed of the United States of America.

Given under my hand and notarial seal, this the _____ day of _____



LEGEND

	PROPERTY LINE		CENTER LINE		PARCEL AREA
	SECTION LINE		SEC.		PROPERTY LINE
	RIGHT-OF-WAY LINE		P.B.		OFFICIAL RECORD BOOK
	PARCEL LINE		§		PAGE
	R/W		(L)		BASE LINE
	(R)		(Δ)		FPL
	RADIUS				FLORIDA POWER & LIGHT

Easement Area to be granted = 3,241 square-feet = 0.074 acres
 Area of Parent Tract = 8,978,047 square-feet = 206.061 acres

Folio: 33-5024-000-0010 & 33-5024-001-0010
 Section: 24-55-40

THIS IS NOT A SURVEY



MIAMI-DADE COUNTY DEPARTMENT
 OF TRANSPORTATION AND PUBLIC WORKS
 STORMWATER & RIGHT OF WAY DIVISION
 ROW ENGINEERING SECTION

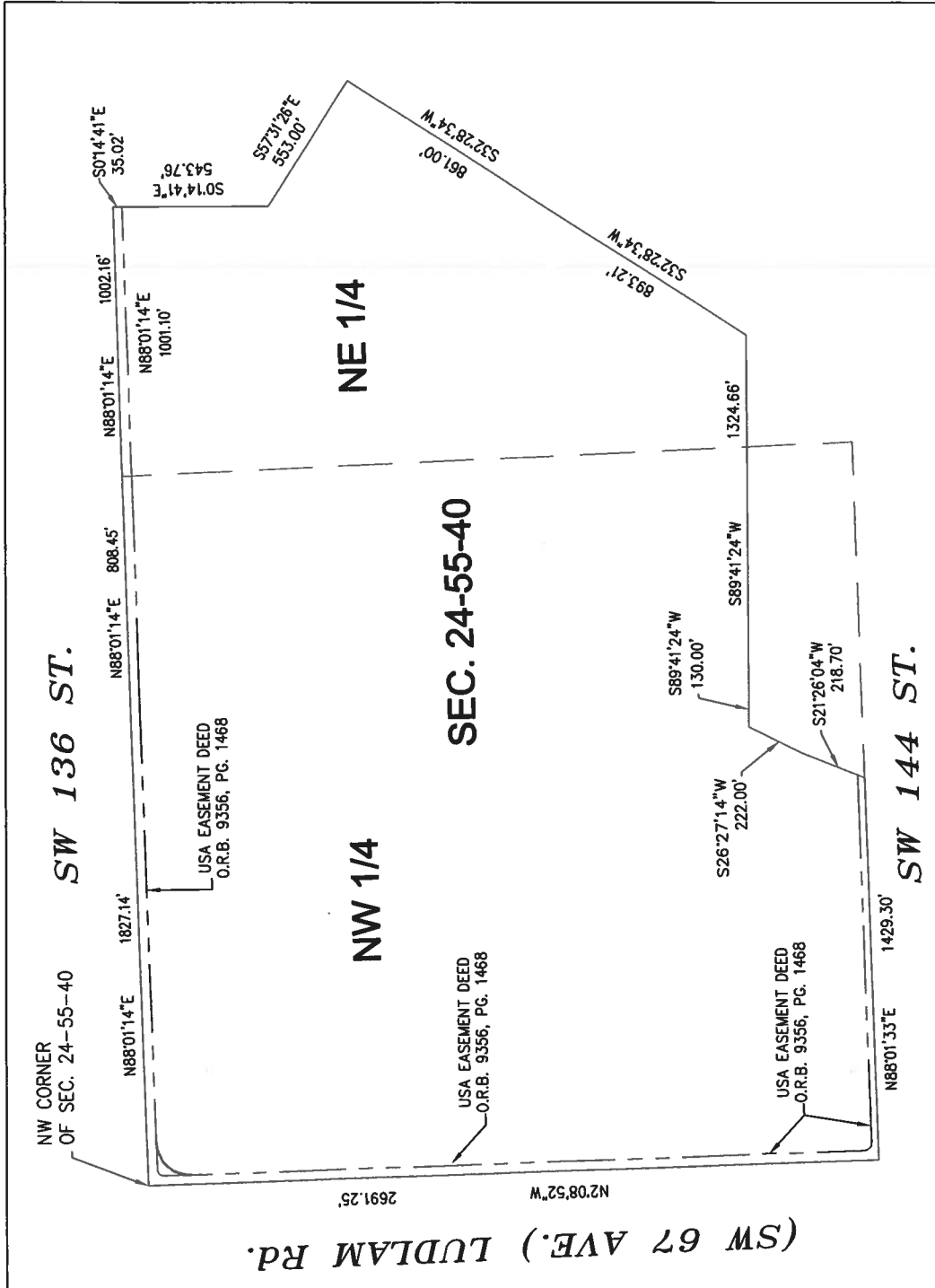
PARCEL SKETCH

Old Cutler Road, SW 67 Ave. &
 SW 136 Street Roundabouts

PARCEL NO. 2

SCALE: 1"=30' DATE: 06-24-20
 CHECKED BY: C. Socarras
 DRAWN BY: C. Socarras & L. ESPINOSA
 PROJECT: 20200118 SHEET: 1 OF 2

MDC010



LEGEND

---	PROPERTY LINE
---	SECTION LINE
---	RIGHT-OF-WAY LINE
---	PARCEL LINE
□	PARCEL AREA
⊕	CENTER LINE
SEC.	SECTION
P.B.	PLAT BOOK
⊕	SECTION LINE
R/W	RIGHT OF WAY
(L)	ARC LENGTH
(Δ)	DELTA
⊕	PROPERTY LINE
ORB	OFFICIAL RECORD BOOK
PG.	PAGE
⊕	BASE LINE
FPL	FLORIDA POWER & LIGHT
(R)	RADIUS

Easement Area to grant = 3,241 square-feet = 0.074 acres
Area of Parent Tract = 8,976,047 square-feet = 206.061 acres

PARCEL SKETCH



MIAMI-DADE COUNTY DEPARTMENT
OF TRANSPORTATION AND PUBLIC WORKS
STORMWATER ENGINEERING & ROW DIVISION
RIGHT-OF-WAY ENGINEERING SECTION

Old Cutler Road, SW 67 Ave.
SW 136 Street Roundabouts.
PARCEL NO. 2

Folio: 33-5024-000-0010-33-5024-001-0010
Section: 24-55-40

THIS IS NOT A SURVEY

SCALE: 1"=400'	DATE: 06-24-20
CHECKED BY: C. SOCARRAS	
DRAWN BY: C. SOCARRAS & L. ESPINOSA	
PROJECT: 20200118	SHEET: 2 OF 2

Exhibit "2"

LEGAL DESCRIPTION
(EASEMENT)

That portion of the East 1/2 of Section 24, Township 55 South, Range 40 East, in Miami-Dade County, Florida, also subdivided as part of the **THE AVOCADO LAND CO'S**, according to the plat thereof recorded in Plat Book 2 at page 44 of the Public Records of Miami-Dade County, which lies within the external area formed by a 125 foot radius arc, concave to the Southeast, tangent to the East line of the West 35.00 feet thereof, and tangent to the South line of the North 35.00 feet thereof.

EXHIBIT "A"

PARCEL 2
Project No. 20200118
1 of 1

MDC012