

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20061129

1. ACTION REQUESTED/PURPOSE:

Request Board authorize the Chairwoman to sign the attached agreements to (1.) authorize payment of \$567,125.57 to Florida Power & Light (FPL) for their costs of the design and relocation of facilities within their easement due to the proposed widening of Summerlin Rd. from Cypress Lake Dr. to Boy Scout Rd. and (2.) for the subordination of utility interests to allow Lee Co. to construct improvements associated with the roadway within the FPL easement.

2. WHAT ACTION ACCOMPLISHES:

Eliminates conflicts with FPL transmission line guys and allows for improvements within the FPL easement for the six lane improvement of Summerlin Rd.

3. MANAGEMENT RECOMMENDATION: Approve

4. Departmental Category: 09 Transportation C9A		5. Meeting Date: NOV 28 2006
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	<input type="checkbox"/> Statute	8. Request Initiated:
	<input type="checkbox"/> Ordinance	Commissioner _____
	<input type="checkbox"/> Admin. Code	Department Transportation
	<input type="checkbox"/> Other	Division _____
		By: Scott Gilbertson

9. BACKGROUND:

The road improvements to Summerlin Rd. from Cypress Lake Dr. to Boy Scout Rd. (6007) require FPL to replace existing guyed H frame structures within the existing FPL easement with unguyed poles to eliminate the conflict with the proposed widening and provide Lee Co. with the right to place improvements within the FPL easement.

Funds are available in the following account: 20600718804.506510

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services	County Manager/P.W. Director								
<i>[Signature]</i>				<i>[Signature]</i> 11/9/06	<table border="1" style="font-size: 0.8em;"> <tr><td>Analyst</td><td>Risk</td><td>Grants</td><td>Legal</td></tr> <tr><td><i>[Signature]</i> 11-9-06</td><td><i>[Signature]</i> 11-9-06</td><td><i>[Signature]</i> 11/9/06</td><td><i>[Signature]</i> 11/9/06</td></tr> </table>	Analyst	Risk	Grants	Legal	<i>[Signature]</i> 11-9-06	<i>[Signature]</i> 11-9-06	<i>[Signature]</i> 11/9/06	<i>[Signature]</i> 11/9/06	<i>[Signature]</i> 11/9/06
Analyst	Risk	Grants	Legal											
<i>[Signature]</i> 11-9-06	<i>[Signature]</i> 11-9-06	<i>[Signature]</i> 11/9/06	<i>[Signature]</i> 11/9/06											

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: EW
11-9-06
[Signature]
COUNTY ADMIN FORWARDED TO: PL
11-13-06
11AM

Rec. by CoAtty
Date: 11/25/06
Time: 11:30AM
Forwarded To: *[Signature]*
11/9/06
10:45AM

**FACILITIES RELOCATION AGREEMENT
(Government Entity)**

THIS AGREEMENT made and entered into this ____ day of _____ 2006 by and between
THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS
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 Summerlin Road Widening in Fort Myers, Lee 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.

N/A Underground Distribution Facilities Conversion Agreement is attached hereto and incorporated herein.

N/A 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:
 - N/A (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.
 - N/A (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: _____ This cost estimate is set out in detail in Exhibit C attached hereto; or
 - b. Relocation Conversion:

Relocation:	\$567,125.57	(Exhibit C)
Distribution Conversion: +	\$ _____	(Addendum)
= Total Project Cost Estimate:		
\$567,125.57		

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 180 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 180 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 180 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. FPL shall bill the Applicant for cost incurred not more frequently than once monthly. The Applicant shall have twenty (20) days from the date of an invoice to approve the invoice and any accompanying information supplied by FPL. Failure to provide FPL with written notice to the contrary within the twenty (20) day period shall constitute approval by the Applicant of the invoice against which payment must be remitted in full to FPL within forty-five (45) days of the date of the invoice. If payment by the Applicant is not postmarked within forty-five (45) days of the date of the invoice, then a late payment charge shall be assessed in the amount of one percent (1%) of the amount of the billing per month, or the highest amount then permitted by 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. Donald DeBerry
Design Program Manager
Lee County Department of Transportation,
1500 Monroe Street
Ft. Myers, FL 33901

With Copies to: _____

For FPL: Neelesh P. Shah
FLORIDA POWER & LIGHT COMPANY
700 Universe Blvd., TLE-JB
Juno Beach, Florida 33408

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:

FLORIDA POWER & LIGHT COMPANY:

By: _____

By: Barbara Jaindl

Title: _____

Title: Director, Transmission Projects Department

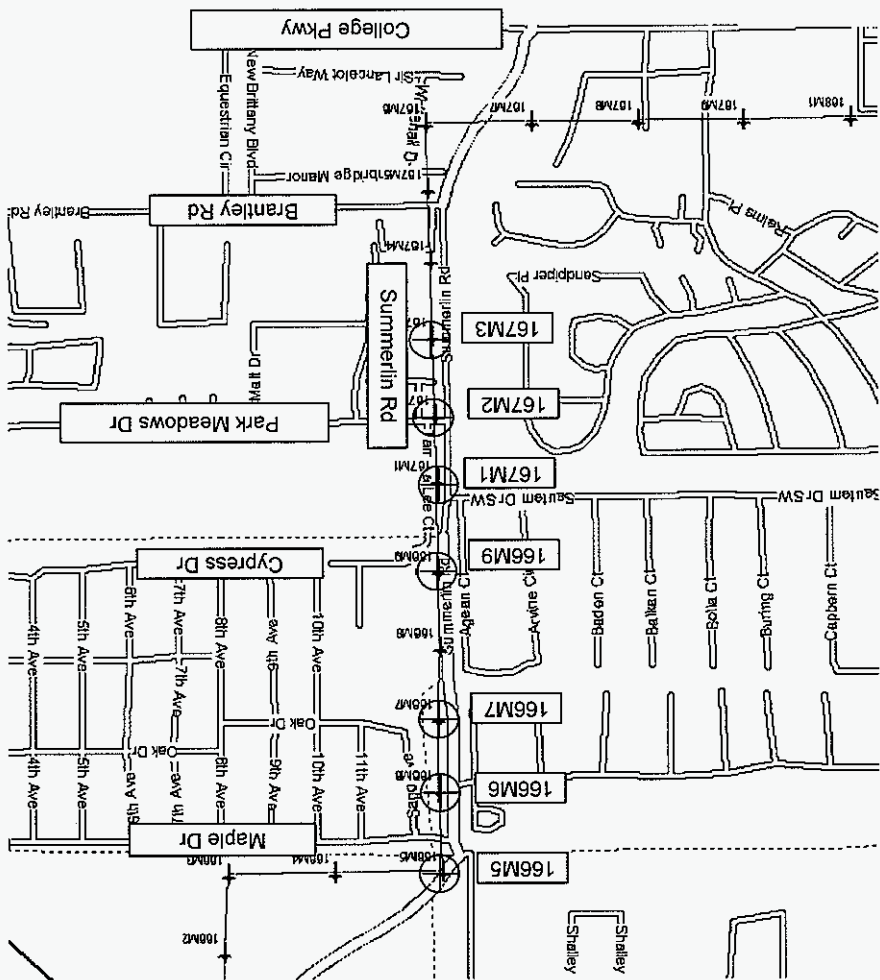
Date: _____

Date: _____

Attest:

_____(Seal) Title

Transmission Pole Relocations Along Summerlin Road, Ft. Myers, Lee County, Florida Lee County Project #6007 FPL Work Order #0615-09-594



Scope of Work along Summerlin Rd:

- 166M5 Repl three-pole concrete dead-end with single pole concrete dead-end (replace down guys & anchors)
- 166M6 Repl two-pole wood tangent structure with single-pole concrete tangent (unguyed)
- 166M7 Repl single pole concrete tangent structure with single-pole concrete tangent (unguyed)
- 166M9 Repl two-pole wood tangent structure with single-pole concrete tangent (unguyed)
- 167M1 Repl two-pole wood tangent structure with single-pole concrete tangent (unguyed)
- 167M2 Repl two-pole wood tangent structure with single-pole concrete tangent (unguyed)
- 167M3 Repl two-pole wood tangent structure with single-pole concrete tangent (unguyed)

EXHIBIT B

REQUESTER: LEE COUNTY
PROJECT: SIX-LANING PROJECT ON SUMMERLIN ROAD,
FT. MYERS, LEE COUNTY, FLORIDA
SCOPE OF WORK UNDER FPL'S WORK ORDER #0615-09-594

Remove (1) three-pole concrete dead-end structure #166M5, (1) single-pole concrete tangent structure #166M7 & (5) wood H-frame tangent structures #166M6, 166M9, 167M1, 167M2 & 167M3 along with associated stub-pole, guy wires/anchors on FPL's Ft. Myers Plant-Alico #1 138KV transmission line in FPL's corridor, and install new concrete structures at matching locations as shown on enclosed job-sketch, in order to clear a conflict with the proposed road widening project.

Location: Summerlin Road from Boy Scout Drive to Cypress Lake Drive, Ft. Myers, Lee County, Florida. Location sketch is as follows:

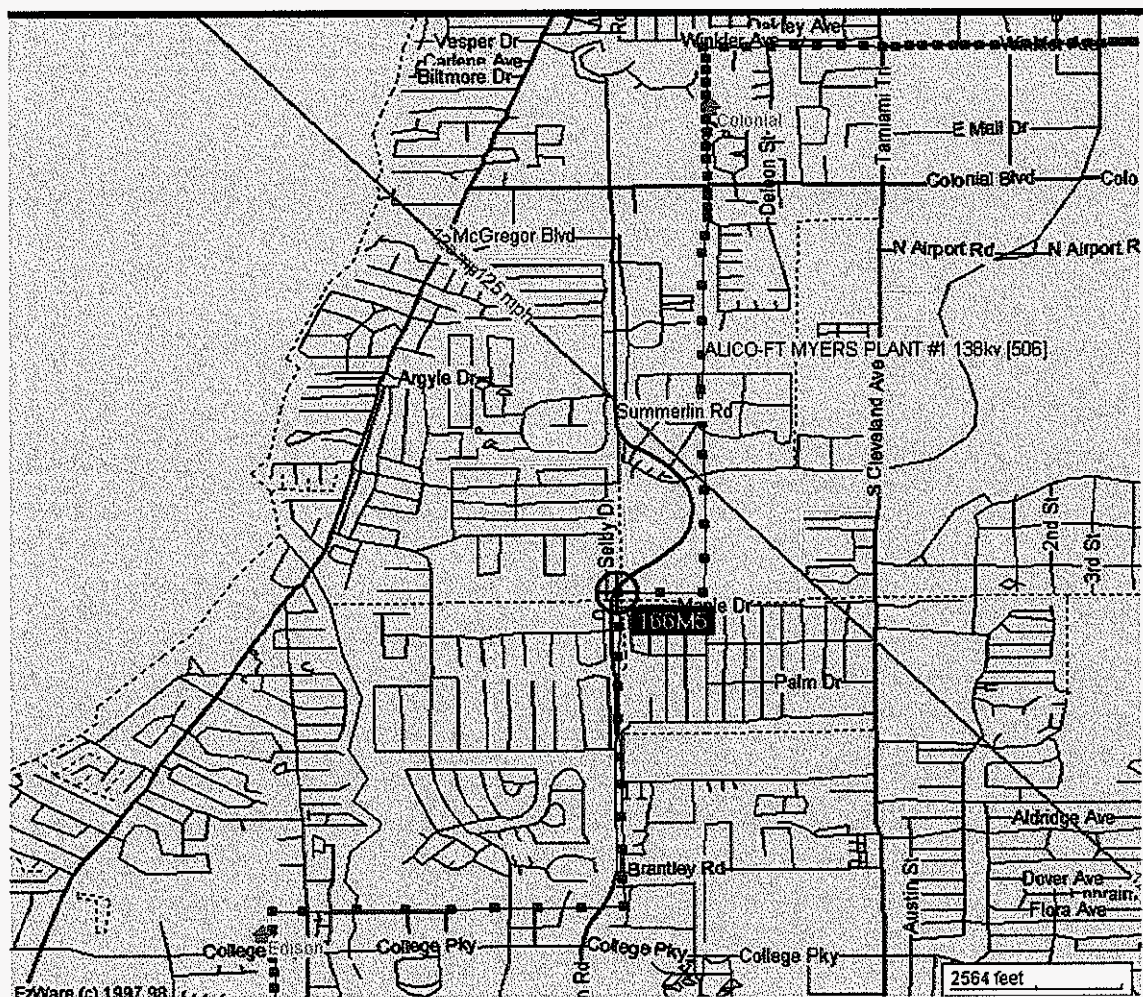


Exhibit 'C'

Estimate Valid Through: February 08, 2007

Florida Power & Light Company

Project Description
Lee County Requested Reimbursable Relocation
of Transmission Facilities

Summary Estimate of Cost

Project Level
Work Order: 0615-09-594

Project Name: Lee County
Summerlin Road Six-Lane
Project from Boy Scout Drive
to Cypress Lake Drive, Ft. Myers

Line No	Salvage	Removal	Item	Item Cost	Total
6			(A) ENGINEERING		
7			Labor		
8			* Additives of Labor		
9			Transportation		
10			Applied Engineering	\$37,000.00	
11			Contractor & Misc. Expenses		
12			* Additives of Contractor/Misc. Expenses		
13			Sub-total	\$37,000.00	\$37,000.00
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		\$3,569.58	Labor	\$18,850.57	
26			* Additives of Labor		
27		\$1,770.42	Transportation Expenses	\$9,349.43	
28			Material	\$48,339.80	
29			* Stores Loading	\$3,041.80	
30		\$48,060.00	Contractor & Misc Expenses	\$253,800.00	
31			* Additives of Contractor & Misc. Expenses		
32		\$53,400.00	Sub-total	\$333,381.60	\$386,781.60
33					
34			(D) OTHER - MAINTENANCE		
35			Labor	\$1,604.30	
36			* Additives of Labor		
37			Transportation Expenses	\$795.70	
38			Material		
39			* Stores Handling		
40			Contractor & Misc. Expenses	\$21,600.00	
41			* Additives of Contractor & Misc. Expenses		
42			Sub-total	\$24,000.00	\$24,000.00
43					
44			(E) ADMINISTRATIVE & GENERAL COSTS		
45		\$16,025.82	Administrative & General Costs	\$103,318.15	
46		\$16,025.82	Sub-total	\$103,318.15	\$119,343.97
47					
48	\$0.00	\$69,425.82	GRAND TOTAL	\$497,699.75	\$567,125.57
49			TOTAL INSTALLATION AND MAINTENANCE COST		\$497,699.75
50			TOTAL REMOVAL COST		\$69,425.82
51			SALVAGE () LESS SALVAGE ADJUSTMENT (FACILITIES NOT REPLACED)		\$0.00
52			SUB-TOTAL		\$567,125.57
53			CREDIT ## ##% (FROM AGREEMENT)		\$0.00
54			NET REPLACEMENT COST (Sum lines 52 and 53)		\$567,125.57

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

Engineer: _____
NEELES P. SHAH

Submitted By: _____

This instrument prepared by:
MARK L BYRLES
 Florida Power & Light Company
 P. O. Box 1119
 Sarasota, FL 34230-1119

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

THIS AGREEMENT, entered into this ____ day of _____, 2006, by and between the COUNTY OF LEE, 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, the Utility presently has an interest in certain lands that have been determined necessary for highway purposes; and

WHEREAS, the proposed use of these lands for highway purposes will require subordination of the interest claimed in such lands by Utility to the County; and

WHEREAS, the County is willing to pay for the initial relocation of the Utility's facilities within the public right-of-way to prevent conflict between the County's use and the Utility's use, and for the benefit of each, and

WHEREAS the County, in addition, in recognition of the Utility's interest in the certain lands, 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 shown on 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 its easement lands described on "EXHIBIT A" attached hereto and made a part hereof, to the interest of the County, or its successors, for the purpose of constructing, improving, maintaining and operating a road over, through, upon, and/or across such Lands, based on the following:

Nature of Encumbrance	Date	From	In Favor of	Recorded Book-Page
Easement	11/21/66	Lena, Nancy, & George Hauk	Florida Power & Light Company	OR Book 385 Page 499
Easement	01/31/67	Lena, Nancy, & George Hauk	Florida Power & Light Company	OR Book 394 Page 281
Easement	11/21/66	George & Nancy Hauk	Florida Power & Light Company	OR Book 385 Page 501
EASEMENT	12/1/66	JOHN PAKE & ZORNHORN, JR.	FL	OR BOOK 385 PAGE 511

The County and the Utility further agree that:

1. "Public right-of-way", as used herein, shall mean that area which is described in Exhibit "A" and which includes the Utility's easements identified above and additional lands for public right-of-way, as described in Exhibit "A", attached hereto and made a part hereof.
2. The 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 will be subject to prior approval by the County.
3. The County shall pay for the relocation of existing facilities. In addition, the 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 Lee County or its assigns, including, but not limited to, the cost of acquiring replacement easements.
4. The Utility shall have the right to enter upon the lands described in Exhibit "A" for the purposes outlined in Paragraph 2 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities. County shall provide and insure access to said lands by the Utility.

- 5. The Utility agrees to repair any damage to County facilities and to indemnify the County against any loss or damage resulting from the Utility exercising its rights to construct, operate, maintain, improve, add to, upgrade or remove its facilities on the said public right-of-way.
- 6. This Agreement shall not be assigned by County except to the State of Florida.

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

Signed, sealed and delivered
in the presence of:

LEE COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF FLORIDA

By: _____
Print Name: _____

By: _____
Title: _____

By: _____
Print Name: _____

Attested: _____
Print Name: _____

STATE OF FLORIDA, COUNTY OF

I hereby certify that on this day, before me, an officer duly authorized to take acknowledgements, personally appeared _____ and _____ to me known and personally known to me to be the persons described in, or has/have produced _____, as identification and did (did not) take an oath and who executed the foregoing instrument as its _____ and _____ respectively, of the County of _____ and severally acknowledged before me that they executed the same as such officials in the name and on behalf of said County of _____.

WITNESS my hand and official seal in the County and State aforesaid this ___ day of _____, 2006.

My Commission Expires:

Notary Signature: _____
Notary Public State of Florida

Printed Name: _____

(Execution and Acknowledgement continued on next page)

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

Signed, sealed and delivered
in the presence of:

By: Michelle Kahmann

Print Name: Michelle Kahmann

By: Jamie A. Patterson
Jamie A. Patterson

Print Name: _____

FLORIDA POWER & LIGHT COMPANY

By: J. T. Corson
Title: CORP. REAL ESTATE PROJECT MGR.

Print Name: J. T. Corson

(Corp. Seal)

STATE OF FLORIDA, COUNTY OF PALM BEACH

I hereby certify that on this day, before me, an officer duly authorized to take acknowledgements, personally appeared J. T. Corson to me known and personally known to me to be the person described in, and did not take an oath and who executed the foregoing instrument as its Corp. Real Estate Project Mgr. of the Florida Power & Light Company and acknowledged before me that he executed the same as such official in the name and on behalf of said Corporation.

WITNESS my hand and official seal in the County and State aforesaid this 24th day of May, 2006.

My Commission Expires:

Notary Signature: Michelle M. Kahmann
Notary Public State of Florida

Printed Name: _____



Michelle M. Kahmann
My Commission DD242003
Expires September 18, 2007

Clarke, Sarah

From: Mark_L_Byers@fpl.com
Sent: Monday, July 31, 2006 12:22 PM
To: Clarke, Sarah
Subject: Summerlin Rd. from Cypress Lake Dr. to Boy Scout Rd.

Sarah,

Pursuant to your letter of July 25th, please accept this email as approval to add the easement at OR 385, Page 511 to the Subordination Agreement that is in the process of being executed. If you require any additional assistance, please let me know.

Thanks,

Mark Byers

FPL Corporate Real Estate

Phone: (941) 316-6288

Fax: (941) 316-6226

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LEE COUNTY
SOUTH WEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 479-8718

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Tammy Hall
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

David M. Owen
County Attorney

Diana M. Parker
County Hearing
Examiner

July 25, 2006

Mr. Mark Byers
Florida Power & Light Company
Corporate Real Estate Division
P.O. Box 1119
Sarasota, FL 34230

**Re: Summerlin Rd. from Cypress Lake Dr. to Boy Scout Rd.
County CIP #6007
Subordination Agreement**

Dear Mr. Byers:

Thank-you for providing the subordination agreement to facilitate the relocation of transmission lines so that Lee County DOT can move forward with the widening of Summerlin Rd.

Our Board of County Commissioners has been on summer break so the agreements have not yet gone to the board for execution. I've researched the easements and have found that the easement recorded in OR Book 385, pg. 511 is within the proposed right-of-way of Summerlin Rd. and we do propose roadway improvements in this area. In order to protect both of our interests, this easement should also be listed on the subordination agreement.

I've enclosed the right-of-way map and corresponding roadway plan sheet showing the easement and the recorded document from our microfiche files. Please review and if you're in agreement, add this easement to the subordination agreement. If acceptable, this easement could be listed and a revised page 1 of the agreement sent via mail or email (sclarke@leegov.com).

If you have any questions, please contact me.

Sincerely,

DEPARTMENT OF TRANSPORTATION

Sarah T. Clarke
Project Manager

attachments