

Memorandum



Date: March 1, 2011

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

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: License Agreement with Florida Power & Light Company for the Miami-Dade Fire Rescue Department for Vacant Land adjacent to Pinecrest Station No. 49 Located at 10850 S.W. 57 Avenue, Pinecrest - Property # 5012-01-00

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing execution of a License Agreement with Florida Power & Light Company, a Florida Corporation, for the Miami-Dade Fire Rescue Department for vacant land adjacent to Pinecrest Station No. 49 located at 10850 S.W. 57 Avenue, Pinecrest, to accommodate an emergency response unit. The attached License Agreement has been prepared by Florida Power & Light Company (FPL) and reviewed by General Services Administration at the request of the Miami-Dade Fire Rescue Department.

PROPERTY:

A portion of land at 10850 S.W. 57 Avenue, Miami described as: The East 143 feet of the South 21 feet of the South Half of Tract 2 of Avocado Land Company, according to the Plat thereof as recorded on Page 2, Book 44 of the Official Public Records of Miami-Dade County, Florida; less the East 50 feet thereof dedicated for public road right-of-way.

COMMISSION DISTRICT:

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COMMISSION DISTRICT IMPACTED:

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OWNER:

Florida Power & Light Company, a Florida corporation

COMPANY PRINCIPALS:

Lewis Hay III	Director / Chairman
Armando J. Olivera	Director / C.E.O.
Manoochehr K. Nazar	Executive Vice President

OWNER'S TRACK RECORDS:

The County has no record of negative performance issues with Florida Power & Light Company.

USE:

Approximately 2,250 square feet of vacant land.

JUSTIFICATION:

As a result of the historic classification of the Pinecrest fire station structure Miami Dade Fire Rescue (MDFR) is unable to expand the fire station. In an effort to enhance emergency response service to the Pinecrest community, MDFR agreed to place a second emergency response unit at Pinecrest Station No. 49 located at 10850 S.W. 57th Avenue. With limited grounds on Station No. 49 to accommodate the

additional unit, this proposed License Agreement has been negotiated with FPL to use approximately 2,250 square feet of vacant land from an existing electrical substation lying north of Station No. 49.

The tenant improvements will consist of the construction of a concrete pad (approximately 25' x 90') with a canopy to shelter the fire suppression unit. The pumper will come from the spare fleet and MDFR will develop a Memorandum of Understanding with the International Association of Fire Fighters Local 1403 to allow this unit to be tended, thereby significantly reducing any potential operating costs.

LEASE TERM: Ten years

EFFECTIVE DATES: Commencing upon the later of (1) the passage of the resolution of the Miami-Dade County Board of County Commissioners approving this License Agreement, or (2) March 1, 2011 and terminating February 28, 2021.

RENTAL RATE: The annual rent for the first year shall become due and payable upon the earlier of (1) September 1, 2011 or (2) upon the date that County's construction improvements to the land shall be completed. The annual rent for the entire term of this License Agreement remains at \$2,000.00, payable in advance March 1st of each subsequent year while the License Agreement remains in effect.

FINANCIAL IMPACT: The total financial impact for the first year is estimated to be \$32,560.00, which is calculated as follows:

The First Lease Year of the Initial term :

	<u>Total Dollars</u>	<u>PSF</u>
<u>Annual Base Rent:</u>		
Annual Base Rent (Actual)	\$ 2,000.00	\$ 0.89
<u>Direct Expense:</u>		
Electricity	\$ 480.00	\$ 0.21
Total Base Rent:	\$ 2,480.00	\$ 1.10
<u>First year only expense:</u>		
Estimated Build-out Costs	\$30,000.00	
<u>Indirect Expense:</u>		
Lease Management Fee (4%)	\$ 80.00	
Total Cost to County, First Year:	<u>\$32,560.00</u>	

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The funding source is the Fire District. This item has been budgeted in the Fire District operating budget. Index code is FREADMPLANN, Sub-object Code is 25190.

The total fiscal impact to the County for Miami-Dade Fire rescue, for the land lease and the improvements, for the ten-year term of the License Agreement is estimated to be \$55,796.38.

LEASE CONDITIONS:

The County accepts the vacant land in "as is" condition and shall be solely responsible for completing all tenant improvements, installing and/or providing all equipment and devices, including, but not limited to lighting, security, signage and other facilities to ensure the safety of employees, agents, contractors, vendors, invitees and facilities.

CANCELLATION PROVISION:

Either party may cancel at any time by giving 90 days prior written notice.

**OTHER PROPERTIES
EVALUATED:**

The current market condition has made it difficult for staff to locate other sites within the Town of Pinecrest city limits and in close proximity to Station No. 49.

LEASE MONITOR:

Linda Weber, Real Estate Officer

DELEGATED AUTHORITY:

Authorizes the County Mayor or the County Mayor's designee to execute the License Agreement and exercise the cancellation provision.



Wendi J. Norris, Director
General Services Administration



MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: March 1, 2011

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

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

Please note any items checked.

- _____ **“3-Day Rule” for committees applicable if raised**
- _____ **6 weeks required between first reading and public hearing**
- _____ **4 weeks notification to municipal officials required prior to public hearing**
- _____ **Decreases revenues or increases expenditures without balancing budget**
- _____ **Budget required**
- _____ **Statement of fiscal impact required**
- _____ **Ordinance creating a new board requires detailed County Manager’s report for public hearing**
- _____ **No committee review**
- _____ **Applicable legislation requires more than a majority vote (i.e., 2/3’s ____, 3/5’s ____, unanimous ____) to approve**
- _____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(A)
3-1-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A LICENSE AGREEMENT AT 10850 S.W. 57 AVENUE, PINECREST, WITH FLORIDA POWER & LIGHT COMPANY, A FLORIDA CORPORATION, FOR PREMISES TO BE UTILIZED BY THE MIAMI-DADE FIRE RESCUE DEPARTMENT AS AN EMERGENCY RESPONSE UNIT AT PINECREST STATION NO. 49, WITH A TOTAL FISCAL IMPACT TO MIAMI-DADE COUNTY, FOR THE LAND LEASE AND THE IMPROVEMENTS, NOT TO EXCEED \$55,796.38 FOR THE TEN YEAR TERM OF THE LICENSE AGREEMENT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED 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 hereby approves the License Agreement between Miami-Dade County and Florida Power & Light Company, a Florida Corporation, for premises to be utilized by the Miami-Dade County Fire Rescue Department as an emergency response unit at Pinecrest Station No. 49, with a total fiscal impact to Miami-Dade County, for the land lease and the improvements, not to exceed \$55,796.38 for the ten-year term of the License Agreement, in substantially the form attached hereto and made a part hereof; authorizing the County Mayor or County Mayor's designee to exercise any and all other rights conferred therein.

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:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
1st day of March, 2011. This resolution shall become effective ten (10) days after the
date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective
only upon an override by this Board.

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

HARVEY RUVIN, CLERK

Approved by the County Attorney as
to form and legal sufficiency



By: _____
Deputy Clerk

Juliette R. Antoine

LICENSE AGREEMENT
(FPL License # 329-SD-2010)

THIS LICENSE AGREEMENT, hereinafter also referred to as "License" and/or "Agreement", is made upon this 1st day of March, 2011 between FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is PO Box 14000, Juno Beach, Florida 33408, Attn. Corporate Real Estate Department, hereinafter referred to as "Company" and Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as "Licensee" and whose mailing address is 111 NW 1st Street, Suite 2460, Miami, Florida 33128, Attn. Real Estate Section, Real Estate Development Division, General Services Administration.

WITNESSETH

WHEREAS, Company is the owner of title in fee simple to real property in Miami-Dade County, Florida, hereinafter referred to as "Land" and described as follows:

The East 143 feet of the South 21 feet of the South Half of Tract 2 of Avocado Land Company, according to the Plat thereof as recorded on Page 2, Book 44 of the Official Public Records of Miami-Dade County, Florida; less the East 50 feet thereof dedicated for public road right-of-way; more particularly shown upon **Exhibit A** attached hereto and incorporated herein by this reference.

AND, WHEREAS, Licensee desires to occupy and use the Land as stated herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Company hereby grants to Licensee and Licensee hereby accepts from Company, this License to use and occupy the Land upon the following terms, conditions and provisions:

TERMS, CONDITIONS AND PROVISIONS

1. **Use:** The Land shall be used by Licensee for the sole purpose of installing and maintaining a paved parking space and the parking and storage of an emergency services vehicle thereon as described and shown upon "**Exhibit A**" and "**Exhibit B**", both attached hereto and incorporated herein by this reference. Licensee shall obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Land and shall provide to Company, copies of all permits that Licensee obtains for the use of the Land. Licensee shall pay for all utility and other services furnished to or for Licensee upon the Land or in connection with its use, except that the cost of electrical service associated directly with the use of the Land described herein shall be furnished by Company to Licensee as part of the cost of the annual fee set forth in this Agreement.

2. **Term:** This License is for a term of Ten (10) years, unless earlier terminated as provided herein, beginning upon the 1st day of March, 2011, and ending upon the 28th day of February, 2021.

3. **Rental:** Licensee hereby covenants and agrees with Company, that during and for the entire term of this License, Licensee shall pay to the Company the amount of Two Thousand Dollars and Zero Cents (\$2,000.00) plus sales tax if applicable, payable in advance and upon the 1st day of March each year while this License remains in effect. Rent for the first year of the term of this License shall become due and payable upon the 1st day of September, 2011 or upon such date that construction of improvements to the Land shall become completed such that the Land becomes functional for the purpose for which this License is granted, whichever occurs first, and shall be calculated pro-rata using a daily factor based upon 365 days per year. All payments shall be made to Company at the following address upon receipt of invoice:

FPL
General Mail Facility
Miami, Florida 33188-0001

4. **Company's Rights:** Licensee hereby acknowledges that Company is the owner of fee simple title to the Land described herein and Licensee agrees to never claim any interest or estate of any kind or extent whatsoever in the Land by virtue of this License or the occupancy or use hereunder. Licensee's use of the Land shall always be subordinate to Company's rights in the Land. Company reserves the right to enter upon the Land at any time for its purposes and Licensee shall notify its employees, agents, contractors, vendors, invitees, and licensees accordingly. Company and its employees, agents, contractors, vendors, lessees, licensees and invitees will not be responsible or liable for damage or loss to Licensee resulting from Company's use of the Land. Company may at its sole discretion and at any and all times, install or permit others to install upon the Land, other and additional overhead or underground facilities.

5. **Condition of Land:** Company makes no warranty, guarantee, promise or indication of any type whatsoever to Licensee or to any other entity, party or individual regarding the condition, suitability, fitness, safety or usefulness of the Land for any type of use, operation, installation or maintenance. The Land is used, operated and maintained by Company solely for the installation and operation of an office building, warehouse and electric utility services and is not used, operated or maintained by Company for installation, operation or maintenance of security systems or any other use. Licensee hereby accepts permission to use the Land in an "As Is" condition for installation, operation, use and maintenance of a security camera and radar system. Licensee is solely responsible to determine if the Land is suitable for the use for which this License is granted, including, but not limited to, the right and responsibility of Licensee to inspect the Land prior to and during the Term(s) granted herein, and determine if Licensee's use of the Land can be carried out in a safe and effective manner. Licensee is solely responsible for installing and/or providing all equipment and devices, including, but not limited to, lighting, security, signage and other facilities to ensure the safety of Licensee's employees, agents, contractors, vendors, invitees and facilities.

6. **Restrictions on Use:** Licensee shall not use the Land in any manner which, in the sole opinion of Company, may tend to interfere with Company's use of the Land or may tend to cause a hazardous condition to exist. Licensee shall not cause or permit any waste of the Land, including the removal of soil, addition of fill or altering of existing grade, without the written permission of Company. Licensee shall not erect, build, construct or install any type of fixture, fence, shelter, attachment, or other improvement, whether the same be permanent or temporary, without prior written permission from Company. Any and all work to be performed by Licensee while upon the Land shall be in accordance with detailed plans and specifications to be prepared by Licensee and submitted to Company for written approval thereof. It is expressly agreed that Licensee shall not commence any such work until said plans and specifications have been so approved by Company. Licensee understands and acknowledges that electrical equipment and appurtenances, including overhead and underground wires installed or to be installed on the Land by Company are conductors of high-voltage electricity and that disturbance of any of these facilities may cause a hazardous condition. Licensee shall exercise extraordinary precautions so as to prevent damage or injury to property or persons in the vicinity of such facilities. Licensee shall notify its employees, agents, contractors, vendors, invitees and licensees of the existence of said high-voltage facilities and other installations. At no time or for any reason, including an emergency, shall Licensee bring upon the Land, any type of equipment, machinery or vehicle that is capable of extending greater than fourteen feet (14') above grade, unless and until Licensee has obtain from Company, express written permission to do so, prior to bringing such equipment upon the Land. Licensee understands and acknowledges that the Land and facilities thereon are highly secure with access restricted to Company's employees, agents and contractors as designated by Company's Corporate Security Department and that access by Licensee's employees, agents, contractors, and vendors shall be strictly controlled by Company and permitted to enter upon the Land at only those times which Company, in its sole discretion, shall deem appropriate. Licensee shall contact Company's Corporate Real Estate Department via postal service, email or telephone in advance to schedule access to enter upon the Land.

7. **Company's Right to Cure:** During the term of this License, Company, at its sole discretion, has the right to remove or cause to be removed by it or its agents, contractors, or vendors, all objects, materials, debris, or structures that create or that could create a hazardous condition to Company's facilities or interfere with Company's use of its facilities. All costs expended by Company pursuant to this paragraph are and shall be the sole obligation of Licensee and will be reimbursed to Company by Licensee immediately upon Company's demand. If Licensee's use, installation, operations, maintenance, or activity upon the Land results in electrical outage(s), all costs incurred by Company to restore power and repair facilities are and shall be the sole responsibility of Licensee and will be reimbursed to Company by Licensee immediately upon Company's demand.

8. **Environmental:** Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across, or stored on the Land, which restricts, impairs, interferes with, or hinders the use of the Land by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Land and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

9. **Compliance with Laws:** Licensee shall, at its sole cost and expense, comply with all laws, rules, and regulations of any and all governmental authority(ies) having jurisdiction over the Land, or use of the Land, and to employ practices standard in the County in which the Land is located for the purpose for which this License is granted and for the protection of the Land.

10. **Termination:** Either party may terminate this License at any time without cause by giving the other party at least Ninety (90) days written notice of such termination. In the event of such termination without cause, Company shall refund any unexpired prorated portion of Licensee's advanced rental payment. Company may, at its election, terminate this License forthwith at any time if Licensee fails to comply with or abide by each and all of the terms, conditions and provisions hereof or keep all and singular Licensee's promises and agreements herein, and any advance payments which may have been paid by Licensee to Company hereunder shall be retained by Company as and for liquidated damages, it being understood and agreed that the damages to be incurred by Company in the event of Licensee's failure to perform hereunder are not capable of being ascertained with mathematical precision as of the date of execution and delivery hereof.

11. **Surrender:** Licensee shall vacate, surrender and deliver the Land to Company in as good a condition as existed prior to the date of commencement hereof and within Five (5) business days of such expiration, revocation or termination of this License. Licensee shall remove all personal property placed by it upon the Land and shall repair and restore and save Company harmless from all damage caused by such removal. If such property is not so removed by Licensee, Company shall have the right to take possession of and appropriate to itself, without any payment or offset thereof, any property of Licensee or anyone claiming under Licensee then remaining on the Land. Company shall have the right to make such removal at Licensee's sole cost and expense, the amount of which Licensee agrees to pay to Company upon demand.

12. **Holding Over:** If Licensee remains in possession of the Land, or any part thereof, after termination, revocation or expiration of this License, then no tenancy or interest in the Land shall result therefrom, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Licensee shall upon demand by Company, pay to Company, as liquidated damages, a sum equal to double the rental as set forth in Section 3 for and during any period which Licensee shall hold and fail to vacate the Land after the Term has been terminated, revoked, or expired.

13. **Taxes & Assessments:** Licensee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its leasehold interest, trade fixtures, furnishings, equipment, leasehold improvements made by Licensee, alterations, changes and additions made by Licensee, merchandise and personal property of any kind owned, installed or used by Licensee in, on or upon the Land.

14. **No Encumbrances:** Licensee expressly covenants and agrees that the Land shall not be subject to any encumbrance by any mortgage or lien nor shall the Land be liable to satisfy any indebtedness that may result from Licensee's occupation, use and/or operation.

15. **No Transfer:** Licensee shall not, without the prior written consent of Company, transfer, assign, sublet, enter into any license or concession agreement, or mortgage or hypothecate this License.

16. **Indemnity:** Notwithstanding any other provision in this Lease to the contrary, Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (hereinafter referred to as "FPL Entities") shall not be liable for any injury to person(s) or damage to property arising out of or in connection with Licensee's occupancy and use of the Land unless caused by the intentional actions of FPL Entities; nor shall FPL Entities be liable in any way for operations carried on by Licensee or any public, quasi-public or private companies, or governmental agencies or affiliated entities, or for loss of property by theft. Licensee shall assume all risk of loss of or damage to its own property and that of its patrons, agents, contractors or independent contractors, however occurring, except as may otherwise be specially provided under the terms of this License. Licensee further agrees to indemnify and hold harmless FPL Entities from and against all claims, damages, losses and expenses, including attorney's fees at both the trial and appellate level, arising out of, resulting from or in any way related to, the occupancy and/or use by Licensee of the Land or Licensee's performance of the terms, conditions and provisions set forth in this License, subject to the provisions of, and limitations set forth in, Section 768.28, Florida Statutes. This paragraph shall survive the expiration or earlier termination of this Lease, or any renewal term thereof.

17. **Insurance:** Licensee shall at all times during the entire term of this License, maintain a self-insurance program in compliance with all applicable laws, including, but not limited to Section 768.28 Florida Statutes and such coverage shall extend to and provide protection for any and all claims arising out of or in connection with Licensee's occupancy and use of Company's Land. In addition to the aforementioned coverage, Company also maintains at its own expense, general liability insurance coverage for personal injury and property damage arising out of or in connection with Licensee's occupancy and use of Company's Land; however, such additional coverage shall not be deemed to relinquish Licensee from its duty and obligation to comply with any and all terms, conditions or provisions as set forth in Section 14, and all other parts of this License.

18. **Notices:** All notices under this License shall be deemed served when deposited in the United States mail, registered or certified mail or prepaid overnight courier and addressed to the parties at the addresses first written above. Either party may, at any time, designate in writing a substitute address for the address first written above, and thereafter notices shall be directed to such substituted address.

19. **Time & Entire Agreement:** Time is of the essence, and no extension of time shall be deemed granted unless made in writing and executed by both Company and Licensee. This instrument constitutes the entire agreement between the parties relative to the License hereby granted, and any agreement or representation which is not expressly set forth herein and covered hereby is null and void. Any amendment, modification, or supplement of or to this License must be in writing and executed by both Company and Licensee. Waiver by Company of any breach of any term or provision hereof shall not be deemed or construed as a waiver of subsequent breach of the same or any other term or provision hereof.

20. **Conflict of Law:** If any provision of this License is determined by a court of competent jurisdiction as illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. If any litigation arises out of enforcement of this License, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

21. **Waiver of Jury Trial:** Licensee knowingly, voluntarily and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this License, or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written) or action of Licensee.

22. **Headings:** The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. All terms used herein shall be construed as embracing such number and gender as the character of the party or parties require(s).

23. **Radon:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in the State the Land is located. Additional information regarding radon and radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties hereto have caused this License to be signed the day and year first above written.

Witnesses for Company:

Signature: _____
Print Name: Jeff Long

Signature: W. M. Munet
Print Name: WILLIAM MUNET

COMPANY:
FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: Dean J. Girard
Name: Dean J. Girard
Its: Asset Manager

Witnesses for Licensee:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

LICENSEE:
Miami-Dade County,
a political subdivision of the State of Florida,
by resolution of its Board of County Commissioners

By: _____
Name: Carlos Alvarez
Its: County Mayor

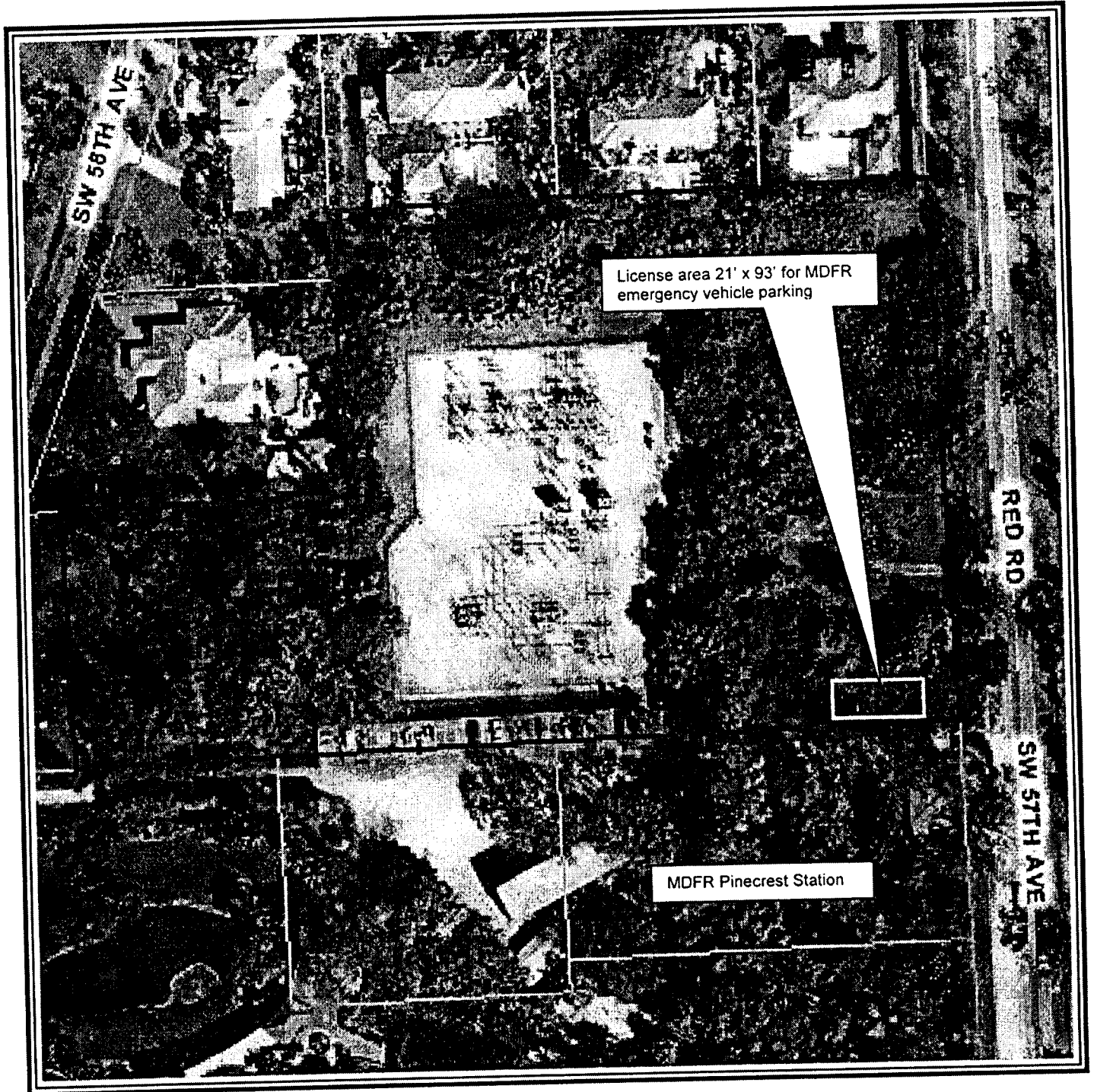
Attest:
By: _____
Name: _____
Its: Deputy Clerk

Approved by County Attorney as to form and legal sufficiency:

By: _____
Name: _____
Its: County Attorney

Exhibit A to License Agreement dated 1st day of March, 2011 between Florida Power & Light Company and Miami Dade County

MDFR parking area at FPL Snapper Creek Substation in Village of Pinecrest



**Exhibit B to License Agreement dated 01 March 2011
 between Florida Power & Light Company and Miami Dade County
 MDRR parking area at FPL Snapper Creek Substation
 in Village of Pinecrest**

