MEMORANDUM

Agenda Item No. 11(A)(24)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	December 1, 2015
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Resolution approving Governmental License Agreement between Miami-Dade County and Florida Power & Light Company for a pilot project to artistically wrap five non-thermal utility boxes in District 11 and allocating $11,075.00 from FY 2015-16 District 11 Office Budget funds to the Miami-Dade County Department of Cultural Affairs for the purpose of implementing the pilot project

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Juan C. Zapata.

Abigail Price-Williams
County Attorney

APW/smm

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: December 1, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(24)

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 ____, 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. 11(A)(24)
12-1-15

RESOLUTION NO. _____

RESOLUTION APPROVING GOVERNMENTAL LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT COMPANY FOR A PILOT PROJECT TO ARTISTICALLY WRAP FIVE NON-THERMAL UTILITY BOXES IN DISTRICT 11 AND ALLOCATING $11,075.00 FROM FY 2015-16 DISTRICT 11 OFFICE BUDGET FUNDS TO THE MIAMI-DADE COUNTY DEPARTMENT OF CULTURAL AFFAIRS FOR THE PURPOSE OF IMPLEMENTING THE PILOT PROJECT

WHEREAS, Miami-Dade County Art in Public Places, which is a program of the Department of Cultural Affairs, serves the community through the implementation of art installations dedicated to enriching the public environment and enhancing artistic and civic pride; and

WHEREAS, Florida Power & Light Company has expressed a willingness to enter into a license agreement with Miami-Dade County to facilitate a pilot project to artistically wrap five non-thermal utility boxes in District 11 ("ArtWrap project"); and

WHEREAS, the ArtWrap project is a collaborative and creative art project that would improve the visual quality of public spaces; and

WHEREAS, the costs associated with the ArtWrap project would be paid for from FY 2015-16 District 11 Office Budget funds; and

WHEREAS, the costs associated with the project are the artist's fixed fee, implementation cost, maintenance cost, removal cost, and Art in Public Places administrative costs; and

WHEREAS, Florida Power & Light Company is willing to grant licenses to utilize its non-thermal utility boxes according to the terms of the attached agreement; and

WHEREAS, the Commission believes that the ArtWrap project is in the best interest of the citizens of Miami-Dade County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Governmental License Agreement between Miami-Dade County and Florida Power & Light, in substantially the form attached hereto, for a pilot project to artistically wrap five non-thermal utility boxes in District 11, and allocates $11,075.00 from FY 2015-16 District Office Budget funds to the Miami-Dade County Department of Cultural Affairs for the purpose of implementing the ArtWrap project.

The Prime Sponsor of the foregoing resolution is Commissioner Juan C. Zapata. It 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:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of December, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

GOVERNMENTAL LICENSE AGREEMENT FOR WRAP SIGNAGE (PILOT PROGRAM)

THIS GOVERNMENTAL LICENSE AGREEMENT FOR WRAP SIGNAGE (PILOT PROGRAM) (this "**Agreement**") is made as of this _____ day of _____, 2015 ("**Effective Date**"), by and between Florida Power & Light Company, a Florida corporation ("**Licensor**") and Miami-Dade County, Florida, a political subdivision of the State of Florida ("**Licensee**"), a governmental agency.

RECITALS

A. Licensor is the owner of those certain non-thermal utility facilities ("**Facilities**") more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. The Facilities are situated in Miami-Dade County, Florida at the specific locations more particularly described on Exhibit A ("**Designated Locations**").

C. Licensor desires enter into a pilot program to have the right to install and maintain wrap signage ("**Signage**") on a portion of the Facilities at the Designated Locations on the specific areas ("**Permitted Area**") illustrated on Exhibit B attached hereto and incorporated herein by this reference.

D. Licensor desires to grant Licensee, and Licensee desires to obtain, the right to use the Permitted Area on the Facilities at the Designated Locations as part of the pilot program to install and maintain the Signage pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee, intending legally to be bound, hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated herein and made a part hereof by this reference.

2. Grant of License. Subject to the terms and conditions set forth herein, Licensor hereby grants Licensee the privilege and revocable license to install and maintain the Signage within the Permitted Area on the Facilities at the Designated Locations.

3. Term. The term ("**Term**") of this Agreement shall commence on the Effective Date and shall expire on the second (2nd) anniversary of the Effective Date, unless sooner terminated as provided for herein. Upon the expiration or earlier termination of this Agreement, the right to use the Permitted Area shall automatically revert back to Licensor and Licensee shall no longer be entitled the use such Permitted Area.

4. Termination Rights. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other, or at the option of Licensor, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained in this Agreement. Additionally, Licensor may terminate this Agreement immediately if the Signage is causing damage to the Facilities, unreasonably interfering Licensor's use of the Facilities, or causing the violation of any condition or provision of any law, regulation or ordinance promulgated by any governmental or quasi-governmental authority now or hereafter permitted to continue any similar use or operation.

5. Approval by Licensor. Licensee may not install or place any Signage on the Permitted Area, or any other part of the Facilities whatsoever, unless such Signage is first approved in writing by the Licensor. Prior to the installation of the Signage within the Permitted Area, Licensee shall submit the plans and specifications and design for such proposed Signage to Licensor for its approval. Licensor may withhold approval if the installation or removal of the Signage may: (a) damage the Facilities; (b) unreasonably interfere with Licensor's use of the Facilities; or (c) contain and objectionable or obscene content, in Licensor's sole and absolute discretion. Licensee shall not be entitled to rely on this Agreement serving as such approval or being a representation by Licensor that such installation is permitted by any governmental or quasi-governmental entity, authority or regulation.

6. Installation. Once approved, Licensee, at Licensee's sole cost and expense, shall be solely responsible for the installation and maintenance of the Signage; and such installation and maintenance shall be performed only by Licensee, Licensee's agent or its contractor, as first approved by Licensor, in Licensor's sole discretion. Licensee shall give Licensor written notice when such installation is to occur so that Licensor may monitor the installation to see that such is performed in accordance with the plans and specifications.

7. Covenants of Licensee: Licensee hereby covenants and agrees with Licensor as follows: (i) Licensee shall comply with, and Licensee shall cause its agents, contractors to comply with, all applicable laws, codes, ordinances, orders, rules and regulations (state, federal, municipal, Licensor, and other agencies or bodies having any jurisdiction thereof) (including, without limitation, obtaining any and all necessary permits and/or approvals) relating to the use of the Permitted Area and the Signage thereon; (ii) Licensor shall not be called upon and shall have no obligation to maintain or make any repairs, improvements or alterations whatsoever to the Permitted Area; (iii) Licensee agrees to use and access the Permitted Area in such a manner so as not to create any nuisance; (iv) Licensee may not make any alterations, modifications or improvements to the Permitted Area or the Facilities; (v) Licensor's interest in the Facilities shall not be subjected to liens of any nature by reason of Licensee's use of the Permitted Area or the exercise of the rights granted herein (if any such lien, order, charge or other encumbrance shall be imposed, claimed or filed, Licensee shall, at its sole cost and expense, immediately cause the same to be fully paid and satisfied of record; and (vi) Licensee shall, within forty-eight (48) hours, notify Licensor in writing of, and provide any reasonably requested documents upon the happening of, any violation of applicable law with respect to or any order of any court affecting the Facilities, the Permitted Area, or Licensee's use of same.

8. Reservation of Rights by Licensor: Licensee understands and agrees that the use of the Permitted Area is subordinate to the rights and interest of Licensor in and to the Facilities and agrees to notify its employees, agents, and contractors accordingly. Licensor specifically reserves the right to maintain its Facilities; to make improvements; and add additional facilities. Licensor shall have unfettered access to the Permitted Area and the Facilities at all times to exercise such rights and may do so without notice and without: (i) any liability to Licensee for damage or injury to person, Signage, or Facilities, including the Permitted Area; (ii) being deemed a disturbance of Licensee's use of the Permitted Area; and (iii) relieving Licensee from its obligations under this License. Licensee understands that in the exercise of such rights and interest, Licensor from time-to-time may require Licensee, to relocate, alter, or remove its Signage which interferes with or prevents Licensor, in its opinion, from properly and safely constructing, improving, operating and/or maintaining its Facilities. Licensee agrees to relocate, alter, or remove said Signage within fifteen (15) days of receiving notice from Licensor to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Licensor; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Licensor retains the right to make said relocation, alteration, or removal of Licensee's Signage, and Licensee hereby agrees to reimburse Licensor for all of its costs and expense incurred in connection therewith upon demand.

9. Warning. Licensee agrees to warn its employees, agents and contractors of the fact that the Facilities are of high voltage electricity and agrees to use all safety and precautionary measures when working near the Facilities.

10. Indemnification. Licensee agrees it will exercise its privileges hereunder at its own sole risk and agrees to indemnify and save harmless Licensor, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (collectively "**FPL Entities**"), from all liability, loss, cost, and expense, including attorneys' fees and court costs at all levels, subject to the limits set forth in Florida Statutes Section 768.28, which may be sustained by FPL Entities to any person, natural or artificial, by reason of the death of or injury to any person or damage to any property arising out of or in connection with the herein described purposes by Licensee, its contractors, agents, or employees; and Licensee agrees to defend at its sole cost and expense and at no cost and expense to FPL Entities any and all suits or action instituted against FPL Entities, for the imposition of such liability, loss, cost and expense. Notwithstanding the foregoing, Licensee shall not be responsible for the indemnification or defense of any FPL Entities for any liability, loss, cost, and expense, including attorneys' fees and court costs at all levels arising solely from FPL's gross negligence or willful misconduct. This section shall survive the expiration or earlier termination of this Agreement.

11. Insurance. Licensee shall, during the period of this Agreement, maintain self-insurance sufficient to cover claims up to $1,000,000 for bodily injury or death of person(s) and $1,000,000 for property damage arising out of a single occurrence. Licensee shall provide a letter of self-insurance for the amounts set forth herein and shall process all claims and provide all coverages that would otherwise be provided by a third-party insurer.

Additionally, Licensee shall, during the period of this Agreement, require each of its third-party agents and contractors, as approved by Licensor pursuant to Section 6 above, to maintain at such third-party's sole expense, a liability policy with minimum limits of $3,000,000 for bodily injury or death of person(s) and $3,000,000 for property damage arising out of a single occurrence. Said policy shall be endorsed to insure against obligations assumed by Licensee in the indemnity in Section 10 above without any reference to the limits set forth in Florida Statutes Section 768.28. A certificate of insurance shall be furnished to Licensor evidencing that said policy of insurance is in force and will not be cancelled or non-renewed so as to affect the interests of FPL Entities until thirty (30) days written notice has been furnished to Licensor. Copies of policies will be furnished to Licensor. Licensee shall not allow any of its third-party agents or contractors to commence any work hereunder until all insurance requirements required under this Agreement have been satisfied.

12. Condition of Permitted Area; Risk of Loss. Licensee accepts the Permitted Area in its "as is, where is" condition, with all faults, and without any representations and warranties of any kind, express or implied, or arising by operation of law, having fully examined the same. The use of the Permitted Area by Licensee shall be at the sole risk and expense of Licensee, and Licensor is specifically relieved of any responsibility for damage or loss to Licensee or other persons resulting from Licensor's use of the Facilities for its purposes. Licensee assumes all risk of damage, theft or loss to the Signage and further assumes all risk of damage or loss caused by the Signage to the Facilities.

13. Obligation to Reimburse. Notwithstanding any provision contained herein, Licensee agrees to pay Licensor for all cost and expense for any damage to Licensor's Facilities resulting from Licensee's use of the Permitted Area. Licensee shall promptly pay Licensor for any damage, injury, expense or liability caused to Licensor or the Facilities by Licensee's use of the Permitted Area. Licensee's obligation to pay all amounts provided for in this Agreement shall survive the expiration or termination of this Agreement.

14. Surrender; Removal of the Signage. At the expiration or earlier termination of this Agreement, Licensee shall remove the Signage and repair or restore the Facilities to the same condition as it was on the Effective Date at Licensee's sole cost and expense. Licensee hereby authorizes Licensor to remove and dispose of the Signage and charge Licensee for all costs and expenses incurred. Licensee agrees that Licensor shall not be liable for any property disposed of or removed by Licensor. Licensee's obligation to perform and observe this covenant shall survive the expiration or earlier termination of this Agreement.

15. Entire Agreement. This Agreement contains the entire agreement of the parties hereto and neither Licensor nor any agent or representative of Licensor has made or is making, and Licensee, in executing and delivering this Agreement, is not relying upon any warranties, representations, promises or statements whatsoever.

16. No Possessory Rights. Notwithstanding anything contained herein to the contrary, the parties acknowledge and agree that no provision of this Agreement shall in any way be construed as creating: (i) any property rights of any kind for Licensee in the Facilities; or (ii) any landlord-tenant relationship or leasehold interest of any kind or any possessory rights for Licensee with respect to the Facilities. This Agreement grants to Licensee only a license to use the Permitted Area for the Signage during the Term and Licensee waives any and all claims to a possessory interest in the Permitted Area and Facilities.

17. Notices. All notices hereunder shall be given by hand delivery, electronic delivery or by certified mail, return receipt requested, and shall be deemed delivered upon receipt or refusal to accept delivery, if addressed as follows:

Licensor: Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: General Counsel

Licensee: Miami-Dade County Department of Cultural Affairs
111 NW 1 Street Suite 625
Miami, FL 33128
Attention: Michael Spring, Director

18. Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Facsimile and/or electronic signatures on this Agreement shall be deemed to be originals for all purposes.

19. Severability. In the event any provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or reconstrued as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

20. Attorneys' Fees. In the event of any litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' and paralegals' fees and court costs at trial and all appellate levels. This Section shall survive the expiration or earlier termination of this Agreement.

21. Headings. The headings and paragraph titles utilized throughout this Agreement have been placed herein as a matter of convenience only, and the same shall not be construed in derogation of the language of the remaining provisions of this Agreement.

22. Binding Agreement, Governing Law; Venue. The obligations of this Agreement, when duly executed by all parties, shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, executors, successors and permitted assigns. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida and in the event of any litigation hereunder, the venue for any such litigation, shall be in any federal or state court having jurisdiction in Miami-Dade County, Florida. This Agreement contains the sole and only agreement between the parties with respect to the subject matter hereof, and all prior discussions, writings, proposals, letters of intent, oral representations and the like are merged herein.

23. No Assignment. Licensee may not assign, transfer, mortgage or encumber this Agreement or assign or transfer any of Licensee's duties, obligations or rights hereunder, or sublicense or grant any license or concession to any third party to install Signage or otherwise use the Permitted Area, Facilities or any part thereof, nor shall any of the foregoing be effectuated by operation of law or otherwise, without the prior written consent of Licensor, which consent may be withheld in Licensor's sole and absolute discretion.

24. Effective Date. This Agreement shall become effective when it has been signed by the last party to sign same and when it has thereupon been mutually delivered.

25. Holding Over. If Licensee holds over after the expiration or earlier termination of this Agreement, Licensee shall be deemed a trespasser and Licensor shall be entitled to all remedies available at law or in equity.

26. Amendment. No amendment to this Agreement, and no waiver of any of its terms and conditions, shall be effective unless made in writing and duly executed by both Licensee and Licensor.

27. No Partnership. Nothing in this Agreement shall be deemed in any way to create between the parties any relationship of partnership, joint venture or association, and the parties disclaim the existence thereof.

28. Construction. This Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Licensee and Licensor have contributed substantially and materially to the preparation of this Agreement.

[Signatures Begin On Next Page]

IN WITNESS WHEREOF, Licensor and Licensee have duly executed this Agreement as of the day and year first above written.

Signed, sealed and delivered in the presence of:

_____
Print Name: _____

_____
Print Name: _____

_____
Print Name: _____

_____
Print Name: _____

LICENSOR:

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____
Name: _____
Title: _____

LICENSEE:

MIAMI-DADE COUNTY, FLORIDA,
a political subdivision of the State of Florida

By: _____
Name: Carlos A. Gimenez
Title: Mayor, Miami-Dade County

Exhibit A

Description of Facilities and Designated Locations

Description of Facilities	Designated Locations
Switch Cabinet	Northwest corner of Coral Way/SW 26 Street and SW 152 Avenue, Miami, Florida (located adjacent to Zelda Glazer Middle School)
Switch Cabinet	SW 152 Avenue, Miami, Florida located between Doolin Middle School and Bowman Foster Ashe Elementary School
Switch Cabinet	Killian/SW 104 Street and Hammocks Boulevard, Miami, Florida (located adjacent to the McDonalds)
Switch Cabinet	Kendall Drive by SW 157 Avenue intersection, Miami, Florida (located between the Chevron Gas Station and US Century Bank building)
Switch Cabinet	Southeast corner of SW 56 Street and SW 147 Avenue, Miami, Florida

Exhibit B

Permitted Area

Switch Cabinets - With the exception of any and all Licensor identifying numbers, safety decals, and operational doors and hinges, which must remain uncovered, visible and operational at all times, the remaining aboveground external surface of Licensor's switch cabinet Facilities at the Designated Locations may be covered with approved Signage.