MEMORANDUM

Agenda Item No. 8(H)(2)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	October 5, 2016
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Resolution approving a Master Solar License Agreement between Miami-Dade County and Florida Power & Light Company for installation of renewable energy generating equipment within Tropical Park, located at 7900 SW 40 Street and other County properties upon the mutual agreement of the parties; authorizing the County Mayor to execute Master Solar License Agreement and to exercise all rights contained therein

The accompanying resolution was prepared by Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto.

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

MIAMI-DADE COUNTY

Date: October 5, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Master Solar License Agreement Between Miami-Dade County and Florida Power & Light Company for Placement of Solar Trees in County Properties

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution approving the Master Solar License Agreement (License Agreement) with Florida Power & Light Company (FPL) for placement of solar trees in Miami-Dade County (County) parks and other County facilities upon the parties' mutual agreement, and authorize the County Mayor or County Mayor's designee to execute the License Agreement on behalf of the County.

Scope

The initial installation will occur at Tropical Park, located at 7900 SW 40 Street, in County Commission District 10, which is represented by Commissioner Javier D. Souto. The License Agreement allows the parties to agree on other locations for the installation of additional solar trees.

Fiscal Impact/Funding Source

There is a net positive fiscal impact to the County. FPL will install and maintain the solar power generating equipment, and the County will receive use of the solar power generated by the equipment without the County incurring any cost, charge, payment, or expense.

Track Record/Monitor

Jessica Tyrell, Contract Manager for the Parks, Recreation and Open Spaces Department, will monitor the License Agreement.

Background

FPL will install three (3) solar powered renewable energy-generating equipment units at Tropical Park. These individual units are sometimes referred to as "solar trees." The equipment will have plug-in stations for park patrons to charge cellular phones and other portable electronic devices.

The main deal points are:

- The construction term commences on the effective date of the License Agreement and continues for six (6) months thereafter. After the construction term, there is a ten-year operating term with an option to renew the License Agreement for four (4) additional consecutive terms of five (5) years each upon the same terms, covenants, and conditions of the License Agreement upon the County's concurrence.
- FPL will install, maintain and operate the equipment in good working order and in a safe, clean manner at its sole expense.

- Installation of the equipment at additional County sites during the term of the agreement will be with the mutual agreement of the County and FPL.
- The County will receive the use of the solar power generated by the equipment at the site. Any generated electricity will be applied or credited to the County under FPL's net metering program.
- Signage will be installed acknowledging the partnership between the County and FPL with respect to the installation of the solar trees as well as information regarding renewable energy.

My administration has been implementing policies and initiatives to address resiliency and sustainability, including energy efficiency, and projects such as this make Miami-Dade County a more resilient community. GreenPrint, the County's first community-wide sustainability plan, establishes the framework, goals, and actions needed to inform, inspire, and enable our government and community to achieve a more resilient future by improving economic prosperity, quality of life, and environmental stewardship throughout the community.

We have made commitments to prepare the County for a sustainable future. By committing to the U.S. Cool Counties Program, the County has agreed to pursue the regional goal of reducing greenhouse gas (GHG) emissions to 80 percent of 2008 levels by 2050, and we support the state's goal of achieving 20 percent of Florida's energy from renewable sources by 2020.

Attachment

Michael Spring
Senior Advisor

ATTACHMENT A

MASTER SOLAR LICENSE AGREEMENT

This Master Solar License Agreement ("**Agreement**") is made this 24th day of August, 2016 ("**Effective Date**"), by and between Miami-Dade County, Florida, a political subdivision of the State of Florida ("**Licensor**") and Florida Power & Light Company, a Florida corporation ("**Licensee**"). Licensor and Licensee are sometimes individually referred to herein as a "**Party**" or collectively as the "**Parties.**"

Recitals

WHEREAS, Licensor is the fee simple owner of those certain real properties located in Miami-Dade County, Florida, as more fully described on **Exhibit A** attached hereto and incorporated herein by this reference ("**Properties**"); and

WHEREAS, in the future, upon their mutual agreement, the Parties may desire to amend Exhibit A to include additional Properties within the scope of this Agreement; and

WHEREAS, within each of the Properties, on the terms and conditions set forth in this Agreement, the Licensor desires to permit the Licensee to utilize the areas depicted in the attached **Exhibit B** for the purposes described in this Agreement (each licensed site singularly and collectively referred to as "**Licensed Premises**"); and

WHEREAS, to the extent the Parties agree to add additional Properties to the scope of this Agreement, the Parties also desire to amend Exhibit B to specify what shall constitute the Licensed Premises in any Properties subsequently added to the scope of this Agreement; and

WHEREAS, upon the terms and conditions set forth in this Agreement, Licensee desires to use the Licensed Premises from Licensor and Licensor desires to license Licensee to use each of the Licensed Premises to Licensee solely for the installation of certain renewable energy generating equipment, as depicted in **Exhibit C**, which shall be amended to reflect which type of renewable energy generating equipment will be installed in any Properties and Licensed Premises that may be subsequently added to the scope of this Agreement, and only that ancillary equipment that is necessary for the operation of the aforementioned renewable energy generating equipment and the distribution of any electricity generated by that equipment exclusively within the Licensed Premises (individually and collectively, the "**Equipment**").

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Terms and Conditions

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by this reference.

2. **Licensed Premises**. Licensor hereby grants to Licensee and Licensee hereby accepts from Licensor, an exclusive license to occupy and use the Licensed Premises for the installation and maintenance of the Equipment, together with any other rights expressly granted to the Licensee under this Agreement, but not for any other purpose whatsoever, upon the terms and conditions set forth in this License. Licensee shall obtain at its sole cost and expense, all applicable federal, state, and local permits required in connection with Licensee's allowed use of the Licensed Premises and provide copies of each such permit to Licensor upon Licensor's written request.

3. **Addition of Properties and Licensed Premises**. Upon the mutual agreement of each of the Parties, including as to the type of Equipment that will be installed, Exhibits A and B may be amended to include additional Properties and Licensed Premises. In such case, all terms and conditions set forth in this Agreement shall apply to those additional Properties and Licensed Premises, provided that the Construction Term and Operating Term, as hereunder defined, shall be calculated from the date the Parties agree in writing to the addition of specific Properties and Licensed Premises and, in the case of the Operating Term, six (6) months thereafter. In accordance with the foregoing, Exhibit C shall similarly be amended to reflect the Parties' agreement regarding the type of renewable energy generating equipment that will be installed in the additional Properties and Licensed Premises.

4. **Use**. Each of the Licensed Premises may be used by Licensee for the purposes of constructing, installing, operating, inspecting, maintaining, repairing, removing, modifying, testing and replacing the Equipment and any additional equipment required to generate, measure, and transmit solar power for use within the Properties, together with the following rights:

(a) **Access**. At all times during the Term during the regular operating hours of the Properties, Licensee, Licensee Parties and/or any persons specifically designated by Licensee shall have access to the Licensed Premises, including the right of ingress and egress to and from the Licensed Premises over the Properties, as necessary to access the Licensed Premises; provided however, in the event of an emergency requiring immediate access to repair or mitigate damage to the Equipment, Licensee and/or Licensee Parties shall have twenty-four (24) hours-a-day, seven (7) days-a-week access to the Licensed Premises. Licensee Parties shall not unreasonably interfere with Licensor's use and operations on the Properties.

(b) **Signage**. The right, at Licensee's sole cost and expense, to install signage on and immediately around the Equipment (to the extent allowed by applicable law) similar to the form depicted in **Exhibit D** (or in another form approved by Licensor, which approval shall not be unreasonably withheld, conditioned or delayed) for any, and/or all of the following purposes: (i) identifying Licensee's ownership of the Equipment and prominently displaying Licensee's corporate name, trade name(s), trademark(s), and logo(s) on the Equipment and all structures supporting the Equipment; (ii) acknowledging the Parties' cooperation regarding the installation of the Equipment, acknowledging the County and including the County's logo; (iii) describing the Equipment and its purpose and operation to interested parties accessing the Licensed Premises (i.e., telling the distributed solar generation story); (iv) instructing parties to use caution so as not to damage the Equipment; and (v) provide all necessary safety and hazard warnings. The location of such signage shall be subject to the prior approval of Licensor, which

approval shall not be unreasonably withheld, conditioned or delayed. As necessary and appropriate, safety signage shall be installed, which signage shall be for the limited purpose of advising the public of any hazards that may exist in or around the Equipment. All signage shall be removed by Licensee upon the final removal of the Equipment from the Licensed Premises in accordance with the terms of this Agreement.

(c) **Power Monitoring**. The right to incidental access and use of Licensor's electrical systems for purposes of powering Licensee's computer equipment used in monitoring the power generated from the Equipment at the Licensed Premises. Additionally, if, and so long as, Licensor provides an internet access system for use by guests and other visitors to the Properties, Licensor will permit Licensee to use, at no cost to Licensee, such internet access system in connection with Licensee's power monitoring system described in the preceding sentence, and Licensor shall provide Licensee with the necessary access codes and other necessary information to use such internet access system; provided, however, Licensor does not warrant the stability, security or continuous operation of any such internet access system.

5. **Licensor's Rights**. Licensee agrees to never claim any interest or estate of any kind or extent whatsoever to or in the Licensed Premises by virtue of this License or the occupancy or use hereunder. Licensee's use of the Licensed Premises shall always be subordinate to Licensor's rights to and in the Licensed Premises. Licensor hereby reserves the right to enter upon the Licensed Premises at any time and for any purposes and Licensee shall notify its employees, agents, contractors, subcontractors, licensees, and invitees accordingly. Licensor, its employees and contractors are not and shall not be responsible or liable for any injury, damage or loss to Licensee resulting from Licensee's use of the Licensed Premises, unless caused by Licensor's negligence or misconduct, in which Licensor's liability shall be limited in accordance with the limits set forth in Fla. Stat. § 768.28.

6. **Term**.

(a) **Construction Term**. The construction term of this Agreement shall commence on the Effective Date and continue for six (6) months (**"Construction Term"**). The Construction Term shall end six (6) months after the Effective Date unless before that date Licensee notifies Licensor that Licensee elects to terminate this Agreement or that the Operations Date has occurred. For purposes of this Agreement, **"Operations Date"** shall mean the date on which the Equipment becomes operational as determined by Licensee. For the purposes of this section, "operational" means the date on which Licensee has (i) received any and all approvals, licenses, and permits necessary to operate the Equipment, (ii) the Equipment is installed on each of the Licensed Premises and is connected to the electric transformer, and (iii) the Equipment is generating usable solar power. Licensor shall have the right, but not the obligation, to terminate this License Agreement with respect any of the Licensed Premises if Licensee fails to complete Licensee's construction of the Equipment on the Licensed Premises and such equipment is not operational within the Construction Term.

(b) **Operating Term**. The **"Operating Term"** of this Agreement shall commence on the day immediately following the last day of the Construction Term, and continue for a term ending on the tenth (10th) anniversary of the Operations Date. The Operating Term and

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the Construction Term are collectively referred to herein as the "**Term**." Provided Licensee is not in uncured default of this Agreement, beyond any applicable notice and cure period, Licensee shall have the option to renew this Agreement for four (4) additional consecutive terms of five (5) years each upon the same terms, covenants and conditions of the Agreement, upon delivering written notice to Licensor no later than six (6) months before the expiration of the then applicable Term, and Licensor approving such renewal in writing.

(c) **License Fee**. In consideration for entering into this Agreement, Licensor shall receive use of the solar power generated by the Equipment on the Licensed Premises without any cost, charge, payment or expense of Licensor (the "**License Fee**").

7. **Installation and Location of Equipment**. From and after the Effective Date, Licensee, as well as any permitting, licensing, regulating or approving entity, agency or authority, and the agents, employees, contractors, subcontractors, consultants and representatives of each (collectively, the "**Licensee Parties**"), shall have ingress, egress and access to the Licensed Premises during regular operating times of the Properties, unless otherwise agreed in writing by the Licensor, and except in the case of emergency repairs as set forth in Section 4(a), during the Term, for and including to inspect, construct, install, maintain, repair, modify, remove, replace, test and operate the Equipment. Licensor shall cooperate as necessary with Licensee (at no cost to Licensor) in Licensee's efforts to obtain all permits, licenses and approvals necessary for the installation and operation of the Equipment. Except as otherwise expressly set forth herein, Licensee shall have no right to access or utilize any other portion of Licensor's Properties other than the Licensed Premises. Licensee may locate and install the Equipment on the Licensed Premises as is reasonably necessary in order to achieve optimal solar power generation, provided that the Licensee's installation of the Equipment does not have a material adverse impact on the Licensor's facilities, as reasonably determined by the Licensor. Installation of the Equipment shall be in compliance with all applicable laws and ordinances and shall not result in the imposition of any fine, penalty, notice of violation, or the creation of a lien against any portion of the Licensed Premises.

8. **Interference**. During the Term, Licensor shall not Interfere, or cause or permit to be caused any Interference, with the Equipment. For purposes of this Agreement "**Interfere**" and "**Interference**" shall mean interference with Licensee's use, operation, access, maintenance or repair of the Equipment on a sustained basis as a result of Licensor's actions, including without limitation the following:

(a) Placement of any equipment, sign, logo, structure, or improvements on, across, under or over any portion of the Equipment without the prior written consent of Licensee, which Licensee may approve or withhold in its absolute and sole discretion;

(b) Placement of any equipment, sign, structure or improvement in a location that interferes with any portion of the Equipment's exposure to sunlight, as determined by Licensee in its reasonable judgment;

(c) Interference in any way with any portion of the Equipment's ability to generate solar power, as determined by Licensee in its reasonable judgment;

(d) Causing any portion of the Equipment to become subject to any lien, mortgage, deed of trust, security agreement, mechanics lien or other such encumbrance not caused by Licensee;

(e) Causing any portion of the Licensed Premises to be maintained, altered, modified, repaired, replaced or compromised in such a way that the Licensed Premises can no longer support the Equipment or any portion of the Equipment, or the use of any portion the Equipment is impaired, as determined by Licensee in its reasonable judgment;

(f) Causing disruption with Licensee's access to any portion of the Licensed Premises, except as otherwise expressly permitted by this Agreement; and/or

(g) Sale, transfer, assignment, lease or sublease any portion of the Licensed Premises, other than subject to Licensor's obligations under this Agreement.

In the event of that Licensor Interferes or causes Interference, Licensee will provide Licensor with a written summary documenting such Interference (**"Interference Notice"**). In the event Licensor is in violation of any of the above-listed items in this section, and such violation continues for thirty (30) days or more following Licensee's delivery of an Interference Notice, then in addition to the rights granted Licensee in Section 19 below, Licensee may elect to terminate this Agreement immediately upon delivering written notice to Licensor.

9. **Mechanics' Liens**.

(a) **Licensee's Actions**. Installation of the Equipment at each of the Licensed Premises shall not result in the imposition or creation of a lien against any portion of the Properties. If any mechanics', contractors' or material suppliers' lien is asserted against all or any part of the Properties in connection with Licensee's installation, construction or operation of the Equipment or any related activities, Licensee shall indemnify Licensor against any loss, claim, damage or expense, including reasonable attorneys' fees, that Licensor may incur in connection with such assertion of such lien, and, if any notice or statement of lien is filed or recorded in any public office in connection with Licensee's installation, construction or operation of the Equipment or any related activities, Licensee shall cause such notice or statement of lien to be released or bonded off within thirty (30) days from the date Licensor gives written notice of such lien. Licensee's obligations under this section shall survive the expiration or earlier termination of this Agreement.

(b) **Licensor's Actions**. Under Florida law, it is unlawful to place a lien on County-owned Properties, or for a County to allow or permit a lien on County Properties. Nonetheless, if any mechanics', contractors' or material suppliers' lien is asserted against all or any part of any of the Licensed Premises by anyone having provided labor, services, material or equipment at the request of Licensor, and if Licensee is made a party to any action or proceeding to foreclose any such asserted lien, Licensor shall indemnify Licensee and hold it harmless against any loss, claim, damage or expense, including reasonable attorneys' fees, that Licensee may incur in connection with such action or proceeding, including paying any judgment that may be entered therein, provided that none of the foregoing shall be construed a waiver of the limitations of liability contained in Fla. Stat. § 768.28.

10. **Maintenance; Repair; Replacement; Reinstallation.**

(a) During the Term, Licensee shall, at Licensee's sole cost and expense, operate and maintain the Equipment in good working order and in a safe, clean manner.

(b) In the event the Equipment or any portion thereof is damaged or destroyed at any time during the Term, Licensee shall have the right, but not the obligation, to repair, replace or reinstall the Equipment or any portion thereof within each of the Licensed Premises. If Licensee elects not to repair or replace such Equipment, Licensee shall remove the Equipment and all debris associated with the Equipment, and restore the Licensed Premises to substantially the same condition as practical as it was in on the Effective Date at Licensee's sole cost and expense; provided however, if the Equipment was destroyed as a result of the gross negligence or misconduct of the Licensor, then the Licensee shall not be required to remove the Equipment and all debris and restore the Licensed Premises at Licensee's sole cost in accordance with the preceding sentence, the Parties agreeing that the actions of third-parties (e.g., park patrons) shall not be attributed to the Licensor, unless such actions were done with the deliberate indifference or consent of Licensor.

(c) If Licensor has to replace or engage in widespread repair of the paving or other improvements located on or near the Licensed Premises during the Term, then Licensor shall provide Licensee with at least ninety (90) days prior written notice and Licensee will coordinate protection of the Equipment with Licensor as appropriate in order to accommodate Licensor's construction schedule.

(d) If the Licensed Premises are substantially destroyed by fire or other casualty, Licensee may terminate this Agreement by written notice, given not later than thirty (30) days after the date of such destruction. If the Licensed Premises are not substantially destroyed but Licensee cannot reasonably operate the Equipment during repairs, the License Fee shall abate until such time as Licensee may recommence operating the Equipment.

(e) Licensee shall have the right, at Licensee's sole cost and expense, to repair, replace or reinstall any affected Equipment on the Licensed Premises following complete or partial destruction of Licensor's improvements to the Licensed Premises and/or Licensee's Equipment thereon. Following complete destruction of Licensor's improvements to the Licensed Premises, Licensor may at its sole and exclusive discretion provide Licensee with a mutually acceptable alternative location on or off the Properties approved by Licensee on which Licensee may install the Equipment. If, however, Licensor is unable to provide an alternative location for the Equipment that meets such standard, and Licensee does not approve such alternate site, Licensee shall have the right, upon written notice to Licensor, to terminate this Agreement with respect to the affected Licensed Premises. If such new location is acceptable to Licensee, **Exhibit B** (and, if necessary, other exhibits) to this Agreement will be amended to reflect the new location of the Licensed Premises.

11. **Taxes.** Licensor is exempt from payment of property taxes for any of the Properties. If, in the future, Licensor's exemption is no longer valid, Licensor shall pay when due

all real property taxes for the Properties and Licensee shall reimburse Licensor for the incremental increase in any real property taxes for the Leased Premises attributable to the Equipment. Notwithstanding the foregoing, in addition to the License Fee, during the Term hereof, Licensee shall pay any personal property tax which is attributable to the Equipment or the Equipment's installation or placement on or within each of the Licensed Premises. Licensor hereby grants to Licensee the right to challenge, whether in a court, administrative proceeding, or other venue, on behalf of Licensor and/or Licensee, any personal property or other tax assessments that may affect the Licensed Premises as a result of the Equipment. If Licensor receives notice of any personal property or other property tax assessment against the Licensor which may affect Licensee or the Equipment and is attributable, in whole or in part, to the Equipment, Licensor shall provide timely notice of such assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment if a right to challenge the assessment is then available under applicable law. Further, Licensor will provide to Licensee any and all documentation in the possession of Licensor that is associated with such assessment and will execute any and all documents reasonably necessary to effectuate the intent of this section, provided that Licensor shall not be required to incur any expense or any risk of material liability.

12. **Insurance**. Licensee will maintain at all times during the Term, the insurance designated in this section in accordance with the terms and conditions required by this section. Licensee shall provide the following certificates of insurance to the County evidencing the issuance of same:

(a) Commercial General Liability Insurance with limits of Three Million Dollars ($3,000,000) per occurrence combined single limit for bodily injury and property damage at any of the Licensed Premises. The policy shall name Miami-Dade County as an additional insured.

(b) Business Automobile Liability Insurance with limits of Two Million Dollars ($2,000,000) per occurrence combined single limit for bodily injury and property damage. The policy shall name Miami-Dade County as an additional insured.

(c) Workers' Compensation Insurance in compliance with Florida Statutes, Chapter 440. Coverage shall include Employer's Liability Coverage with limits of One Million Dollars ($1,000,000) per accident.

Licensee has the right to meet the insurance designated in this section through any combination of self-insurance, primary or excess coverage. Should Licensee self-insure, then prior to accessing the Licensed Premises, Licensee will provide Licensor with a letter of such self-insurance which will include a reference to publicly available financial statements and annual reports.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications: The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

Licensor and Licensee, for themselves and their respective insurers, waive any right to assert any claim against the other Party, to the extent such claim is covered by the waiving party's insurance. Each Party shall waive all rights of subrogation of their respective insurers.

Licensor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Licensor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officer, employees, agents and instrumentalities as provided in this Agreement.

13. **Indemnification**. Licensee shall indemnify Licensor from and against all losses, claims, damages or expenses, including reasonable attorneys' fees and costs, incurred by Licensor in connection with any third-party claims for personal injury or death to persons and damage to Licensor's personal property arising during the Term, to the extent arising from the negligence or willful misconduct of Licensee, its agents, employees, representatives, contractors, or sub-contractors. Subject to the limitations of Section 768.28, Florida Statutes, which provides that the County may only be liable for bodily injury or property damage in the amount of $200,000 per person and $300,000 per occurrence, Licensor shall indemnify Licensee from and against all losses, claims, damages or expenses, including reasonable attorneys' fees and costs, incurred by Licensee in connection with any third-party claims for personal injury or death to persons and damage to Licensee's personal property arising during the Term, to the extent arising from the negligence or willful misconduct of Licensor, its agents, employees, representatives, contractors, or sub-contractors. In no event shall Licensor or Licensee be liable to the other for consequential, special, exemplary, punitive, indirect or incidental losses or damages, nor shall any parent, subsidiary, affiliate or employee of Licensor or Licensee have any liability under this Agreement. Neither Licensor nor Licensee, nor their respective insurer, shall, without the prior written consent of the other Party, which consent will not be unreasonably withheld, enter into the settlement or compromise of any claim brought against the indemnified Party which is the subject of indemnification under this Agreement. This section shall survive the expiration or earlier termination of this Agreement.

14. **Construction of Improvements on Licensor's Properties**. Licensee agrees that it shall comply with any requirements imposed by federal, state, or local (including, Miami-Dade County) statutes, ordinances and regulations, which are in effect as of the date of construction and operation of the Equipment on the Licensed Premises.

15. **Equipment to Remain Personal Property of Licensee**. The Equipment is and will remain the property of Licensee, its successors or assigns, regardless of its use or manner of attachment to the Licensed Premises. Licensor agrees to execute such further documentation as is reasonably necessary to ensure that the Equipment does not constitute, and is not deemed to be, a fixture attached to the Licensed Premises. Except as expressly set forth in this Agreement, Licensor will have no right, title, or interest in the Equipment, and no right to purchase or otherwise acquire title to or ownership of the Equipment, and Licensor hereby expressly disclaims any right, title or interest in or to the Equipment, whether arising by lien, by operation of law, or otherwise.

16. **Subordination**. Licensor is prohibited from mortgaging or having any lien placed on Licensor's real property, including the Licensed Premises.

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17. **Quiet Enjoyment.** Licensor represents and warrants to and covenants with Licensee that: (a) Licensor has good title to the Licensed Premises; (b) to the best of Licensor's knowledge, Licensor's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Licensor; (c) to the best of Licensor's knowledge, there are no agreements with any third parties that may adversely affect the Equipment or the Equipment's exposure to sunlight; and (d) all times during the Term, Licensee's quiet enjoyment of the Licensed Premises or any part thereof shall not be disturbed.

18. **Notice of Default; Opportunity to Cure.** The failure of any Party to fully perform any term, condition or covenant of this Agreement within sixty (60) calendar days after receipt of written notice of such default from the other Party, unless a shorter time period is expressly stated herein, shall be an event of default under this Agreement; provided, however, if such non-monetary default cannot reasonably be cured within such sixty (60) day time period, the curing Party shall not be deemed in default hereunder if the curing Party has commenced to cure such default within said sixty (60) day time period and thereafter continues with diligence to complete the cure of such default.

19. **Remedies Upon Uncured Default.** Remedies for events of uncured default, beyond any applicable notice and cure period, shall be limited to the following:

(a) The non-defaulting Party's right, but not obligation, to perform, or cause to be performed, on behalf and at the expense of the defaulting Party, any or all of the undertakings or obligations as to which the defaulting Party remains in default, in which event the defaulting Party will reimburse the non-defaulting Party for such actual reasonable costs and expenses, within forty-five (45) days following the defaulting Party's receipt of the non-defaulting Party's invoice and supporting documentation. Notwithstanding the preceding sentence, Licensor may not perform any obligation of Licensee under Section 10 (a) or take any other action that relocates or physically alters any of the Equipment that at the time is in operable condition.

(b) Termination of this Agreement; or

(c) Any other remedy available at law or in equity.

20. **Termination.** Except for an uncured default as set forth above in Section 19, neither Party may terminate this Agreement during the first ten (10) year period of the Operating Term. Thereafter, either Party may terminate this Agreement at any time and for any reason, upon delivery of at least thirty (30) days' prior written notice to the other Party.

21. **Removal.** No later than sixty (60) calendar days following the date upon which this Agreement expires or terminates, Licensee shall remove all Equipment placed upon the Licensed Premises by Licensee and shall repair and restore the affected portions of the Licensed Premises to substantially the same condition as practical as existed immediately prior to Licensee's installation of the Equipment; whereupon Licensee shall continue to have the right of reasonable access to the Licensed Premises in order to remove the Equipment, and repair and

restore the affected portions of the Licensed Premises to substantially the same condition as practical as existed immediately prior to Licensee's installation of the Equipment, at Licensee's sole cost and expense; except as in the event of a Licensor default or as expressly set forth in Sections 8 and 19 above, where the removal and disposal or relocation costs of the Equipment, and repair and restoration of the Licensed Premises, shall be at Licensor's sole cost and expense. If any or all such personal property and improvements placed upon the Licensed Premises by Licensee is not so removed by Licensee within the above prescribed sixty (60) day time period, then Licensor shall have the right, but not the obligation, to effect removal of the Equipment at Licensee's sole cost and expense, the reasonable amount of which Licensee agrees to reimburse to Licensor promptly upon Licensor's demand.

22. **Holding Over**. If Licensee continues to occupy and/or use the Licensed Premises, or any part thereof, after the expiration or earlier termination of this License, then no tenancy, ownership or other legal interest in the Licensed Premises to the benefit of Licensee shall result therefrom, but such holding over shall be an unlawful detainer.

23. **Environmental**.

(a) 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 upon, under, transported across, or stored upon the Licensed Premises, which restricts, impairs, interferes with, or hinders the use of the Licensed Premises by Licensor or the exercise by Licensor of any of its rights thereto.

(b) After the Effective Date, Licensee may perform a Phase I and/or Phase II environmental site assessment as per ASTM criteria to investigate the existing environmental condition of the Licensed Premises that is the subject of this License. The performance or the failure to perform an environmental site assessment does not relieve the Licensee from compliance with any other provision of this section of this License. Licensee shall maintain copies of any local, state or federal permits, licenses or other authorizations required for any and all of its activities on the Licensed Premises and present copies of such permits, licenses or other authorizations to Licensor and to any local, state and federal governmental agency official that requests to see the same.

(c) Licensee shall not create or contribute to any Environmental Contamination, Unauthorized or Unpermitted Wetland Impacts, Unpermitted Groundwater Wells, Illegal Use of Ground or Surface Waters or any Other Environmental Impacts (individually and collectively referred to as "**Environmental Conditions**") as a result of its use of the Licensed Premises.

(1) Environmental Contamination is defined as any spilling or discharge of any chemical constituent by the Licensee to the environment that results in any pollution, sheen or contamination of the groundwater, surface water, soil, or any other environmental media, on or from the Licensed Premises, above the federal, state or local regulatory levels; including: (i) for groundwater: Chapters 62-777, Table I, 62-520, or 62-550 of

the Florida Administrative Code ("**FAC**"); (ii) for surface waters: Chapters 62-777, Table I, or 62-302 of the FAC; and (iii) for soils: Chapters 62-777, FAC, Table II; or above natural background levels.

(2) Wetland Impacts are defined as activities impacting areas defined as "**wetland**" under the following: (i) federal law (for example, Section 404 of the Clean Water Act); (ii) federal rules (for example, current approved Army Corps of Engineers ("**ACOE**") Delineation Manual); (iii) federal guidance; (iv) state law (for example, Section 373.019(22), Florida Statutes); (v) state rules (for example, Chapter 62-340, FAC); (vi) state guidance; (vii) case law as formulated that further explains wetland jurisdictional criteria; (viii) local law (for example, county ordinances; (ix) local guidance; or (x) local policy. Unauthorized or Unpermitted Wetland Impacts shall mean the failure to obtain all required federal, state and local permits to impact the wetland or undertaking any action or activity in violation of any such permits. Some examples of permits potentially needed to impact the wetland are the county environmental resources management permits, the State of Florida Department of Environmental Protection or Water Management district permits, and the Federal ACOE permits.

(3) Unpermitted Groundwater Wells means the installation or the use of an existing groundwater well without obtaining the appropriate state and local permits for the well installation and/or well pumping for use of groundwater or surface water in the area.

(4) Illegal Use of Ground or Surface Waters means the withdrawal or use of either ground water or surface water without obtaining any required consumptive use or water use permits from the South Florida Water Management District ("**SFWMD**") or in violation of any consumptive use or water use permit issued by the SFWMD.

(5) Other Environmental Impacts, include, but are not limited to: failure to apply pesticides consistent with labeling instructions; failure to dispose of pesticide containers as per label instructions; failure to have licensed and trained personnel applying pesticides; failure to properly manage pesticide mix/load sites to avoid pesticide release to soils or surface waters in quantities or concentrations other than that specified on the label application instructions; or any violations of Federal Insecticide, Fungicide, and Rodenticide Act, or its state law equivalent; or any violations of the Florida Department of Agriculture and Consumer Services rules or Best Management Practices for the activities contemplated by this License.

(d) If the Licensee causes any Environmental Conditions to occur because of the performance of activities contemplated by this License, Licensee shall notify Licensor immediately upon discovery. Licensee acknowledges that the failure to deliver such notification may cause Licensor to file a damage claim against Licensee and confers to Licensor the right to terminate this License. Any release notifications required to be submitted to federal, state or local regulatory agencies, because of the actions of Licensee pursuant to this License or any other notifications based on Environmental Conditions, shall be coordinated with Licensor. Licensee, at its sole cost and expense, shall be responsible to remediate any Environmental Condition that it creates in compliance with all applicable federal, state and local regulations.

(e) If Licensee, or its employees, contractors, subcontractors or anyone else working at the direction of Licensee causes Environmental Conditions on the Licensed Premises, or causes contamination that originates on the Licensed Premises, Licensee, on its own behalf and on behalf of its shareholders, officers, directors, employees, servants, agents, and affiliates, shall and hereby does forever hold harmless, indemnify, and release Licensor, and its shareholders, officers, directors, employees, servants, agents and affiliates (collectively, **"Licensor Entities"**) of and from all claims, demands, costs, loss of services, compensation, actions or investigations on account of or in any way growing out of the Environmental Conditions, and from any and all known and unknown, foreseen and unforeseen damages, and the consequences thereof, resulting from the Environmental Conditions.

24. **Tax Credits, Financial Incentives, Sale of Energy**. Installation and operation of the Equipment on the Licensed Premises may result in the availability of federal and/or state tax credits, and other financial incentives (collectively hereinafter **"Incentives"**). Licensee is and shall be the sole recipient and beneficiary of any and all such Incentives, which shall be distributed, disbursed and/or assigned in Licensee's sole discretion. Licensor shall have no right to any Incentives, except as otherwise agreed to in writing by Licensee. Any solar power electricity produced by or relating to the equipment (**"Energy"**) on the Properties not used on such Properties shall be credited to the Licensor's account per the methodologies established by the FPL net metering program.

25. **No Transfer**. Licensee shall not transfer, assign, lease, sublease, license, sublicense or in any other manner, convey this Agreement, except to an affiliate, subsidiary or other entity under common control with Licensee, without the prior written consent of Licensor, which such consent shall not be unreasonably withheld, conditioned or delayed. Following any permitted assignment, the terms "Licensor" and "Licensee" shall be deemed to refer to the relevant transferee or successor, unless the context clearly indicates that the term refers only to the original Party so identified.

26. **Condemnation**. In the event of condemnation of some or all of the Licensed Premises, Licensor and Licensee shall each be entitled to pursue their own separate awards with respect to such taking, as their respective interests appear. Sale of all or part of any of the Properties to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation for purposes of this Agreement.

27. **Notices**. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying Party, or officer, agent or attorney of the notifying Party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or on the third (3rd) business day after posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Licensor: Miami-Dade County Parks, Recreation and
Open Spaces Department
275 Northwest 2nd Street

Miami, Florida 33128
Attn: PROS Department Director

With copy to: County Attorney
111 N.W. First Street, Suite 2800
Miami, Florida 33128
Attn: Miguel A. Gonzalez, Assistant County Attorney

To Licensee: Florida Power & Light Company
700 Universe Boulevard, CEA/JB
Juno Beach, Florida 33408
Attn: Vice President of Corporate Real Estate

With copy to: Florida Power & Light Company
700 Universe Boulevard, LAW/JB
Juno Beach, Florida 33408
Attn: General Counsel

The address to which any notice, demand, or other writing may be delivered to any Party as above provided may be changed by written notice given by such Party.

28. **Miscellaneous.**

(a) **Entire Agreement; Modification; Waiver.** All of the representations and obligations of the Parties are contained herein and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing, signed by that Party or a duly authorized agent of that Party empowered by a written authority signed by that Party. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same Party, or of any other provision or condition of this Agreement. No waiver shall be implied by delay or any other act or omission of either Party.

(b) **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Florida, without regard to its conflict of laws principles. The Parties agree that any action or proceeding arising out of or related in any way to this Agreement shall be brought solely in a court of competent jurisdiction in Miami-Dade County, Florida. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(c) **Severability.** Should any provision of this Agreement be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling.

(d) **Authority**. Each Party represents to the other that it has complete authority to enter into this transaction.

(e) **Counterparts**. This Agreement may be executed in any number of counterparts, each of which, upon execution of a substantively identical counterpart by each Party, shall be deemed an original, but all of which together shall constitute a single instrument.

(f) **Binding Effect**. This Agreement shall bind and benefit the Parties and their respective successors and assigns.

(g) **Recording**. Neither this License, nor any memorandum or document related hereto may be recorded in any official public record.

(h) **Publicity; Tours**. The Parties acknowledge that each of them has a legitimate business interest in receiving public recognition of their participation in the transaction contemplated by this Agreement. In order to coordinate the timing, tone and content of any publicity, however, each Party agrees that neither of them shall issue any press release or otherwise publicize the existence or the terms of this Agreement without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, provided that general advertising that refers to a "partnering" (or other terminology of similar import) of either Party with the other Party for the purposes of any of the transactions contemplated hereby, but does not expressly reference this Agreement or disclose any of the terms hereof, shall not be subject to the provisions of this subsection. No filing that Licensee is required by applicable law to make with any regulatory authority shall, by itself, be deemed to violate the preceding sentence. Licensee shall have the right to give site tours of the Equipment on the Licensed Premises for visitors and other interested parties.

(i) **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 Licensor and Licensee have contributed substantially and materially in the negotiation and preparation of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits, schedules, addendums or amendments hereto.

(j) **Headings**. All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

(k) **Force Majeure**. Licensor and Licensee (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

Witness:

_____

Print Name:_____

_____

Print Name:_____

LICENSOR:

Miami-Dade County, Florida, a political subdivision of the State of Florida

By:_____

Print Name:_____

Title:_____

By:_____

Assistant County Attorney

(As to Form and Legal Sufficiency)

Witness:

Michelle M. Kahmann

Print Name: Michelle M. Kahmann

Amy Wilkes

Print Name: Amy Wilkes

LICENSEE:

Florida Power & Light Company,

a Florida corporation

_____

Alex Rubio,

Vice President of Corporate Real Estate

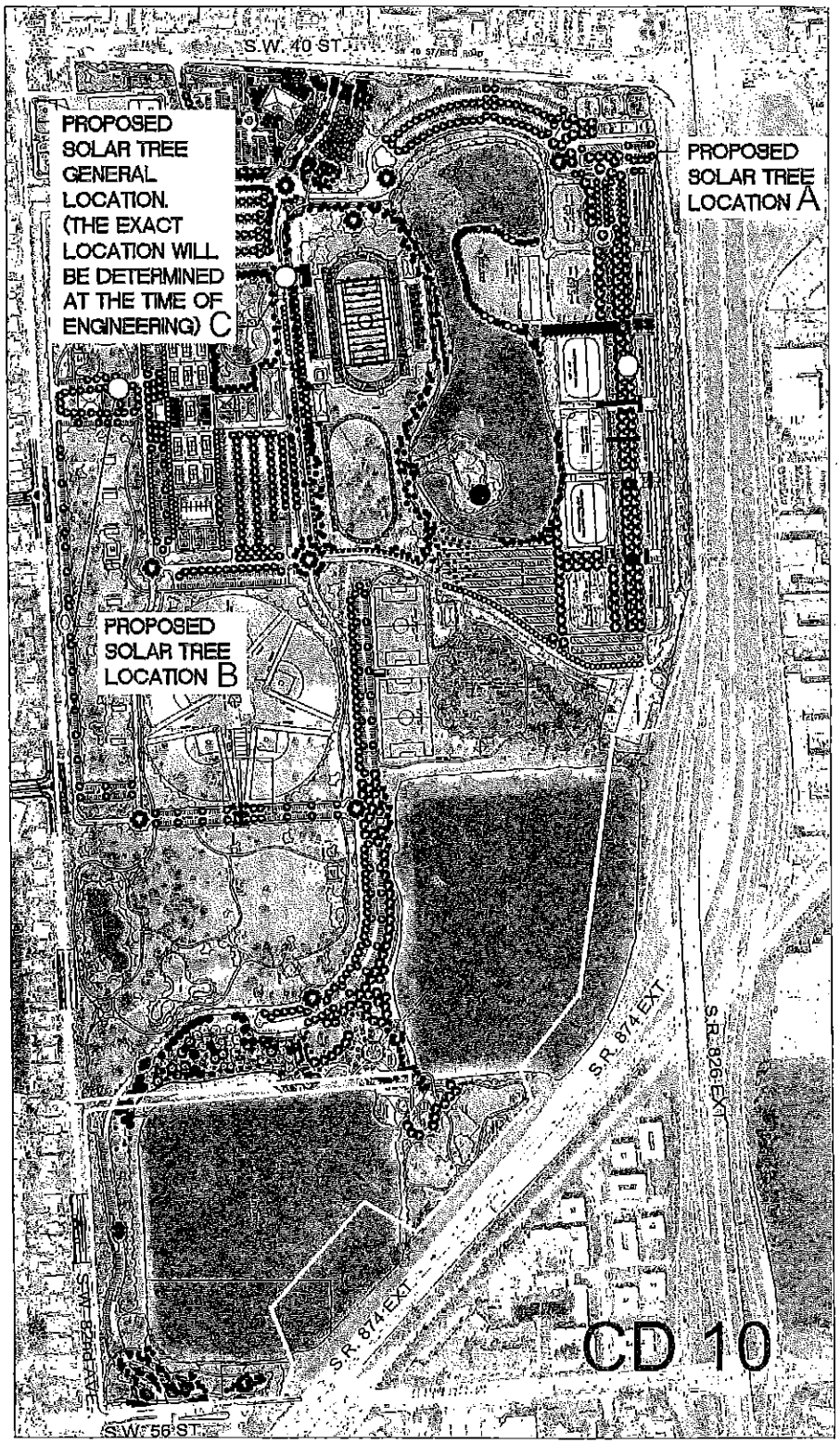
EXHIBIT A

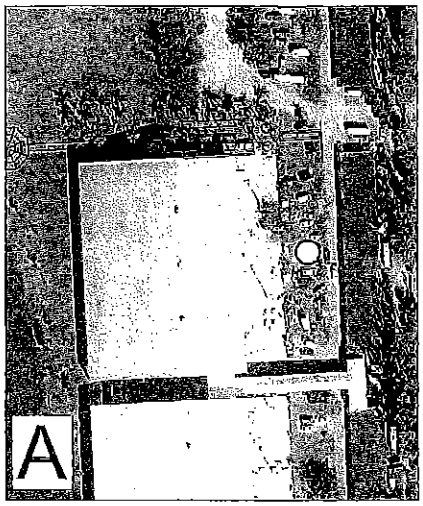
Description of the Properties

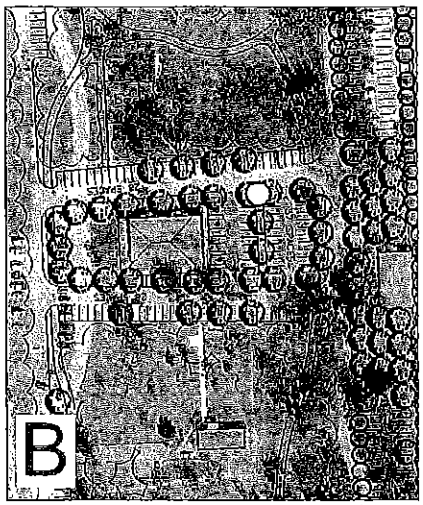
1. Tropical Park, 7900 Northwest 40th Street, Miami, Florida 33155.

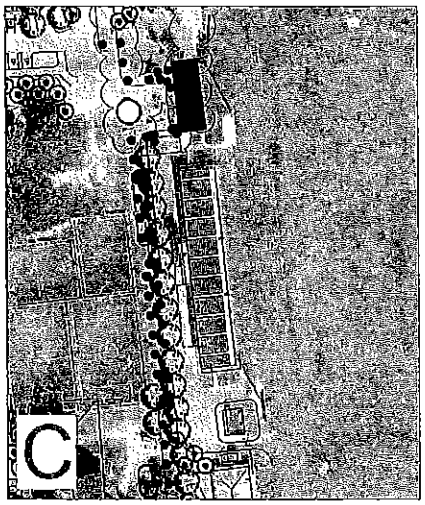
EXHIBIT B

Depiction of the Licensed Premises









TROPICAL PARK

7900 SW 40TH ST
CLASS: DISTRICT PARK
TYPE:AREA-WIDE
ACRES: 275.0
MIAMI-DADE COUNTY PARK AND RECREATION DEPARTMENT

Legend

- County Parks
- Property Lines
- MajorRoads
- Highway

N
W E
S

MIAMI-DADE COUNTY

0 130 260 520
Feet
1 Inch = 200.3 feet

March, 2010

EXHIBIT C

Description of Renewable Energy Generating Equipment

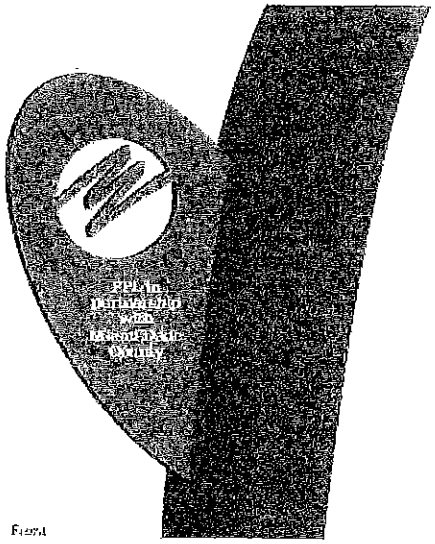
Tropical Park

a. Location A (Model: Curve; Features: Table Attachment)
b. Location B (Model: Curve; Features: Table Attachment)
c. Location C (Model: Curve; Features: Bench Attachment)

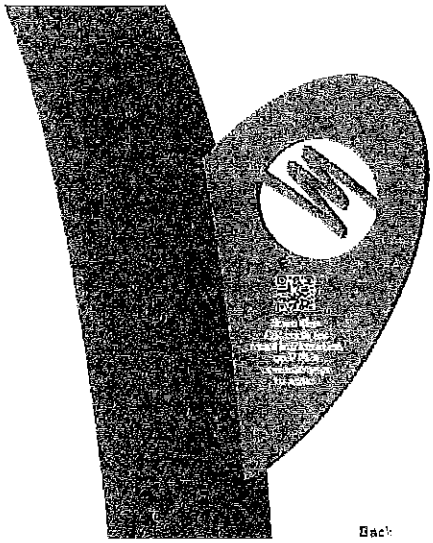
EXHIBIT D

Depiction of Signage

Solar Trees.



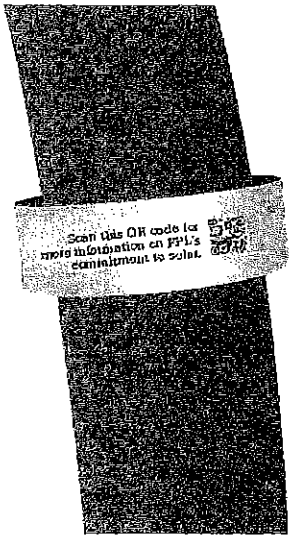
Front



Back

Heavy gauge metal leaf painted to match pole and welded to post.
FPL logo icon laser cut out of metal with content painted on both sides.

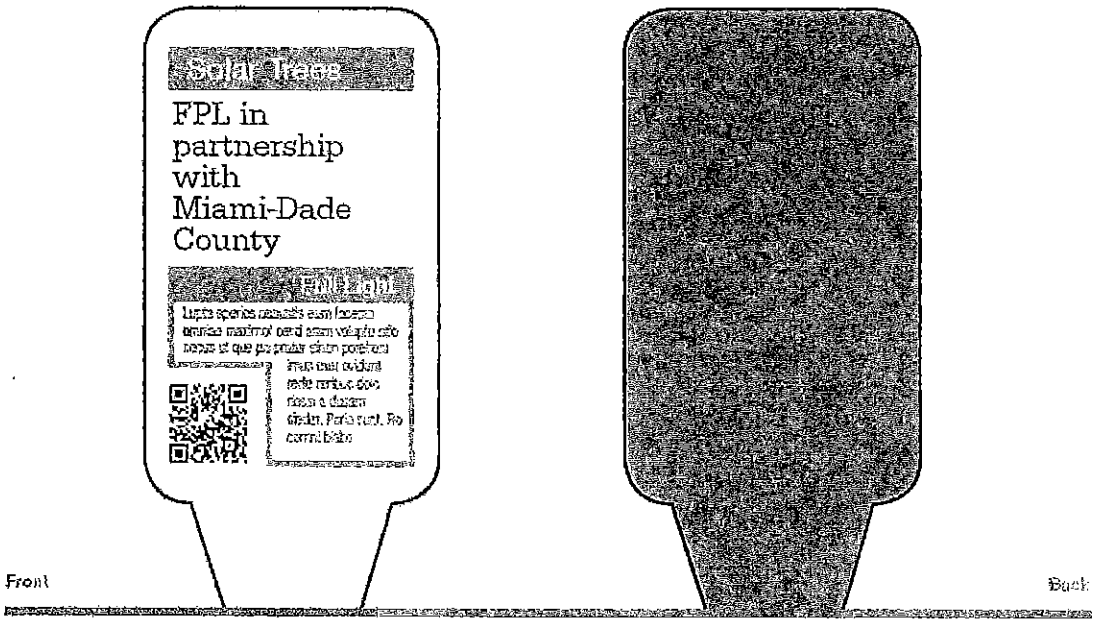
Front



Back

Heavy gauge metal ring around post with content painted on it.

Potted Plants.



Heavy gauge metal sign with content painted on it. Concrete footer to secure it.

MEMORANDUM

(Revised)

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

DATE: October 5, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(H)(2)

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. 8(H)(2)
10-5-16

RESOLUTION NO. _____

RESOLUTION APPROVING A MASTER SOLAR LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT COMPANY FOR INSTALLATION OF RENEWABLE ENERGY GENERATING EQUIPMENT WITHIN TROPICAL PARK, LOCATED AT 7900 SW 40 STREET AND OTHER COUNTY PROPERTIES UPON THE MUTUAL AGREEMENT OF THE PARTIES; AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE MASTER SOLAR LICENSE AGREEMENT AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Master Solar License Agreement (License Agreement) between Miami-Dade County and the Florida Power & Light Company (FPL), in substantially the form attached to the Mayor's Memorandum as Attachment A, for a construction term of six (6) months, commencing on the effective date, and an operating term of ten (10) years, with up to four (4) additional consecutive terms of five (5) years, for FPL to install, operate, and maintain renewable energy generating equipment at its sole expense, and authorizes the County Mayor or County Mayor's designee to execute the License Agreement and to exercise all 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:

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 5th day of October, 2016. 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. MAG

Miguel A. Gonzalez