

MEMORANDUM

Agenda Item No. 11(A)(1)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

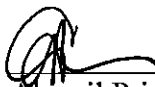
DATE: March 3, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving agreement
between Miami-Dade County
and Xavier Cortada for the
licensing of Art Work created
and controlled by Mr. Cortada
for the County to use at no cost
to promote recycling efforts in
Miami-Dade County and
authorizing the County Mayor to
execute the License Agreement
and to exercise all rights
contained therein

Resolution No. R-255-20

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor
Commissioner Daniella Levine Cava.


Abigail Price-Williams
County Attorney 

APW/uw



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: March 3, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 11(A)(1)

Veto _____

3-3-20

Override _____

RESOLUTION NO. R-255-20

RESOLUTION APPROVING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND XAVIER CORTADA FOR THE LICENSING OF ART WORK CREATED AND CONTROLLED BY MR. CORTADA FOR THE COUNTY TO USE AT NO COST TO PROMOTE RECYCLING EFFORTS IN MIAMI-DADE COUNTY AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LICENSE AGREEMENT AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

WHEREAS, Xavier Cortada (the "Licensor") is the creator of, has exclusive possession of, and controls all access to art work (the "Art Work") that Miami-Dade County wishes to use to promote recycling efforts in Miami-Dade County; and

WHEREAS, County staff and Licensor have negotiated the attached Art Work License Agreement (the "Agreement") to memorialize that arrangement; and

WHEREAS, under the Agreement, Licensor grants the County a no-cost perpetual exclusive license for five years to photograph the Art Work; create images (digitized or otherwise) ("Images") of such photograph; create Images of those photographs; incorporate the Images into products; and distribute products with the Images; and

WHEREAS, although the Licensor is granting the County with a no-cost license, the Agreement requires that the County include Licensor's name in the Images; and

WHEREAS, although the Agreement expires in five years, the license for the Art Work and Licensor's obligation to indemnify the County from any infringement or violation of intellectual property claims asserted by any third party survive in perpetuity; and

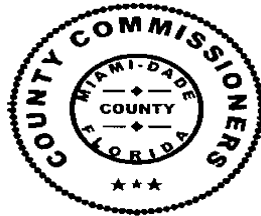
WHEREAS, this Board desires that the County enter into the Agreement and utilize the Art Work in promoting recycling efforts in Miami-Dade County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Art Work License Agreement and authorizes the County Mayor or County Mayor's designee to execute the Art Work License Agreement in substantially the form attached hereto and made a part hereof, and to exercise all provisions contained therein including any termination provision.

The Prime Sponsor of the foregoing resolution is Commissioner Daniella Levine Cava. It was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Joe A. Martinez** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	absent
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	absent
Xavier L. Suarez	absent		

The Chairperson thereupon declared this resolution duly passed and adopted this 3rd day of March, 2020. 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

Linda L. Cave

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature, appearing to be "AB", is written over a horizontal line.

Angela F. Benjamin

ARTWORK LICENSE AGREEMENT

This AGREEMENT made by and between Xavier Cortada, with a principal place of business at Cortada Studio at Pinecrest Gardens, 11000 SW 57th Avenue, Pinecrest, FL 33156, (the "Licensor") and Miami-Dade County, a political subdivision of the State of Florida, (the "Licensee").

WHEREAS, Licensor is the creator of, has exclusive possession of, and controls all access to art work described fully in Schedule A attached hereto (the "Art Work"); and

WHEREAS, Licensee wishes to incorporate images (whether digitized or otherwise) of the Art Work (the "Images"), in whole or in part, in combination with or as a composite of other matter, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video or audio segments of any nature, and embody such combination or composites in any and all media and embodiments, now known or hereafter to become known, including, but not limited to, all formats of computer readable electronic, magnetic, digital, laser or optical-based media (the "Product"); and

WHEREAS, Licensee wishes to use the Product to promote recycling efforts in Miami-Dade County.

NOW, THEREFORE, in consideration of the promises and covenants recited below, it is hereby agreed by and between Licensee and Licensor as follows:

1. Grant of License

Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee a no-cost, perpetual, exclusive license for the term of this Agreement to:

- (i) photograph the Art Work;
- (ii) create Images of such photographs;
- (iii) incorporate the Images in any Product; and

(iv) distribute the Product, embodying the Images in any and all media and embodiments, now known or hereafter to become known, including, but not limited to, all formats of computer readable electronic, magnetic, digital, laser or optical-based media.

2. Use of Name

Licensee shall include Licensor's name in the Image in the following form: "Copyright 2019 Xavier Cortada | www.cortadaprojects.org/check." Except as set forth in this Section, this Agreement shall not be construed as granting any permission for Licensee to use Licensor's name, logos, trademarks or other identification in connection with any Product.

3. Licensor's Warranties

Licensor hereby represents and warrants to Licensee that it is the lawful possessor of the Art Work.

LICENSOR MAKES NO OTHER WARRANTY REGARDING THE ART WORK, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT, OR ANY REPRESENTATION THAT THE ART WORK DOES NOT VIOLATE A THIRD PARTY'S PRIVACY OR PUBLICITY RIGHTS, OR THAT THE USE OF THE ART WORK AS CONTEMPLATED HEREIN, WITHOUT ANY CREDIT OR ATTRIBUTION, DOES NOT VIOLATE A THIRD PARTY'S RIGHTS OF ATTRIBUTION OR INTEGRITY.

4. Proprietary Rights

The parties hereby acknowledge and agree that the Licensor shall retain all right, title and interest to the Art Work, Photographs and Images, including without limitation any copyright or other proprietary rights in and to the same and that, with the exception of the Images, the Licensee shall retain all proprietary rights in the Product, including all applicable rights to patents, copyrights, trademarks, and trade secrets inherent therein, and appurtenant thereto.

Notwithstanding the foregoing, Licensee may not grant additional licenses to, or otherwise permit the use of the Images or Art Work by, third parties without the express written consent of the Licensor.

5. Indemnification

Licensor shall indemnify, defend and hold Licensee harmless from any claims, demands, liabilities, losses, damages, judgments or settlements, including all reasonable costs and expenses related thereto including attorneys' fees, directly or indirectly resulting from any claim asserted by a third party with respect to the Images as incorporated into the Products, including without limitation a claimed infringement or violation of any intellectual property right or right of publicity or privacy or a claim of libel or defamation.

6. Term and Termination

The term of this Agreement shall be for five (5) years from the date that this Agreement is executed by both parties. Notwithstanding the termination of this Agreement, the perpetual license granted in Section 1 and the Indemnification provided in Section 5 shall survive in perpetuity and bind the parties to those terms and conditions.

7. No Compensation for License

Licensor agrees to provide the license and all other rights granted hereunder at no cost provided the provisions of Section 2 are included in the Image.

8. Miscellaneous Provisions

8.1. Binding Agreement

This Agreement executed by the Parties sets forth the entire agreement between the Parties in connection with the subject matter hereof and it incorporates, replaces, and supersedes all prior agreements, promises, proposals, representations, understandings and negotiations, written or not, between the Parties. The making, execution, and delivery of this Agreement have been induced by

no representations, statements, warranties or agreements other than those expressed herein. This Agreement shall be binding upon the heirs, legal representatives, successors and assigns of Licensor.

8.2. Notice

All notices will be in writing and will be delivered personally or sent by confirmed facsimile transmission, overnight letter or United States certified mail, proper postage prepaid at the addresses specified above.

8.3. Choice of Law

This Agreement has been entered into in the State of Florida and will be governed by those laws of the State of Florida which are applicable to contracts entered into and performed entirely within the State of Florida without regard to conflict of laws principles. Any disputes which arise under this Agreement, even after the termination of this Agreement, that cannot be resolved through good faith discussions, will be heard only in the State or Federal courts located in Miami-Dade County.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereof.

Licensor

Licensee - Miami-Dade County

By:

Name: Xavier Cortada

Title: Artist

Date: 1/7/2020

Attest: Julie Ann Durstine

Corporate Secretary/Notary Public

ID: FL CPL Xavier Cortada
C633-949-64-333-0
Exp. 9/13/27

Corporate Seal/Notary Seal

By:

Name: Carlos A. Gimenez

Title: Mayor

Date:

Attest:

Clerk of the Board

Approved as to form
and legal sufficiency

Assistant County Attorney

