



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council

Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

August 21, 2007

Village Manager

Jacqueline R. Menendez

MEMORANDUM

TO: Honorable Mayor and Members of the Village Council

FROM: Jud Kurlancheek, *Interim Village Manager*

RE: FPL Franchise Fee Agreement

RECOMMENDATION

It is recommended that the Village Council approve the Interlocal Agreement between Miami-Dade County and the Village for payment of Franchise Fees remitted by FPL to the County.

BACKGROUND

In 1989, Miami-Dade County adopted Ordinance 89-81 which granted a non-exclusive electric franchise to Florida Power & Light (FPL) to utilize public rights of way throughout the unincorporated and incorporated areas of Miami-Dade County; in return for FPL paying the County certain franchise fees. The Agreement became effective May 25, 1990 and has a thirty year term. The Agreement requires FPL to pay the County six percent of the gross revenues billed to residential and commercial customers within the Unincorporated Municipal Service Area (UMSA) based on the previous calendar year's billing minus a credit for real and tangible personal property taxes paid by FPL.

The methodology used by the County to calculate the corresponding payments to the municipalities prior to FY 2001-02 was based on the six (6) percent of gross revenues generated in the particular municipality, minus the FPL property taxes paid to the particular municipality, and minus Countywide, Fire, Library, Florida

Inland Navigation District (FIND), South Florida Water Management District (SFWMD), and Everglades property taxes paid by FPL for property within that particular municipality. Realizing that the franchise fee distribution methodology used prior to FY 2001-02 produced an undue burden to UMSA, County staff re-evaluated the distribution methodology to include a pro-ration of the countywide payments made in municipalities existing prior to 1990 that have their own agreements.

In early 2006, the municipalities met with the County to discuss the revised franchise fee distribution methodology. After several meetings with the municipalities, the methodology was adjusted to prorate the impact of the taxes paid associated with the power plants located in some municipalities among all of the new municipalities and UMSA.

The new methodology pro-rates all of the countywide payments made in municipalities between UMSA and the municipalities. Under this methodology the impact of all the countywide taxes are applied proportionately between the new cities and UMSA. The 2007 Franchise Fee payment from the county to the Village was \$1,113,194. The new amount to be paid by the County to the Village is \$773,640.09.

RESOLUTION NO. 2007-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND MIAMI-DADE COUNTY, CONCERNING COUNTY ELECTRIC FRANCHISE WITH FLORIDA POWER AND LIGHT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 1989, Miami-Dade County (the “County”) enacted Ordinance 89-81 (the “Franchise Ordinance”), which granted a non-exclusive electric franchise to Florida Power & Light (“FP&L”) to utilize public rights of way in return for FP&L paying the County certain franchise fees (the “Franchise Fees”); and

WHEREAS, the Village was created in 1991, as authorized by Miami-Dade County Ordinance 90-142; and

WHEREAS, the County and the Village wish to enter into the attached Interlocal Agreement (the “Agreement”) so as to continue to provide for payment to the Village of that portion of the Franchise Fees remitted by FP&L to the County for rights to utilize public right-of-way located within the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Agreement Approved. The Agreement, in substantially the form attached hereto, is hereby approved, and the Village Manager and Village Clerk are authorized, in their respective capacities, to execute the Agreement on behalf of the Village, once approved by the Village Attorney as to form and legal sufficiency.

Section 3. Implementation. That the Village Manager and Village Attorney are hereby authorized to take any necessary action to implement the Agreement and this Resolution.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 28th day of August, 2007.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

F:\100\103001\Resolutions\Interlocal Agreement Electric Franchise Agreement Miami Dade.doc

INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is made and entered into this _____ day of _____, 2007, by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and the Village of Key Biscayne, a Florida municipality (the "Village").

RECITALS

Whereas, in 1989, County enacted Ordinance 89-81 (the "Franchise Ordinance"), which granted a non-exclusive electric franchise to Florida Power & Light ("FP&L") to utilize public rights of way throughout the unincorporated and incorporated areas of Miami-Dade County, Florida, in return for FP&L paying County certain franchise fees (the "Franchise Fees"); and

WHEREAS, the Village was created on June 18, 1991, as authorized by Miami-Dade County Ordinance 90-142; and

WHEREAS, County and Village wish to enter into this agreement for payment of that portion of the Franchise Fees remitted by FP&L to County for rights to utilize public right-of-way located within Village "(Village Fees").

NOW, THEREFORE, in consideration of the mutual benefits derived therefrom, the parties covenant and agree as follows:

I. **OBLIGATIONS OF THE COUNTY**

1.1 The County shall:

1.1.1 For so long as the Franchise Ordinance is in effect and enforceable, pay to the Village all Village fees received by County from FP&L on July 1, 2007 and on each July 1 thereafter. Such payment shall be made within forty-five (45) days of County's receipt of Village Fees from FP&L.

1.1.2 Execute any and all documents which FP&L may reasonably require in order to identify Village Fees:

1.1.3 Beginning with the remittance of the Village Fees for the Fiscal Year 2006-07 and for so long as the Franchise Ordinance is in effect and enforceable, the County shall determine that amount of the Village Fees to be remitted by the County to the Village utilizing the methodology as outlined in this agreement. Regarding the determination of the Franchise Fees to be submitted to the municipalities of Aventura, Key Biscayne, Pinecrest, Sunny Isles Beach, Palmetto Bay, Doral, Miami Gardens, Cutler Bay and Miami Lakes (collectively, the "Cities") by the County, the following methodology shall be utilized, which is also illustrated in Table 1 for the determination of Franchise Fees to be remitted by the County to each City for the Fiscal Year 2004-05, as follows:

a. Determine from FP&L's records the total amount due to the Cities, the Unincorporated Municipal Service Area (UMSA), and any new municipality which is created after the effective date of this addendum but before the expiration

of the Franchise Ordinance (collectively, the “Recipients”) based on six percent of the FP&L gross revenues attributable to service being provided within the corporate limits and service area of the Recipients for the respective calendar year (“Gross Revenues”). See Table 1 Column A.

b. Subtract from Gross Revenues the amount of municipal real and personal property taxes paid by FP&L on its real and personal property within the respective corporate limits and service areas of the Recipients during the respective calendar year (“Municipal Taxes”). See Table 1 Column B.

c. Subtract from the Gross Revenues the total Countywide operating and debt service, Fire, Library, Florida Inland Navigation, and Everglades Project, South Florida Water Management District property taxes and other applicable taxes (“Regional Taxes”) paid by the FP&L on its real and personal property within the respective corporate limits and service areas of the Recipients excluding any Regional Taxes paid on real and property associated with the Turkey Point and Cutler Power Generating Facilities properties. See Table 1 Column C.

d. Determine the difference of the Gross Revenue less the Municipal Taxes and the Regional Taxes as defined above in items b and c (“Adjusted Franchise Fees”). See Table 1 Column D.

e. Subtract from the Adjusted Franchise Fees for each City the equivalent Regional Taxes paid by FP&L for property in cities which have a separately executed franchise agreement with FP&L which was in effect as of the date of the Franchise Ordinance and the Regional Taxes paid by FP&L on Turkey Point and Cutler Power Generating Facilities that is recognized as a deduction by FP&L for the remittance of Franchise Fees to the County apportioned among the Recipients and based on the percent of each recipient’s Adjusted Recipient Revenue to the total Adjusted Recipient for all recipients, (Prorated Amount). See Table 1 Column E.

f. The amount of the Franchise Fees to be paid by the County to the Cities shall be determined by subtracting from the Adjusted Recipient Revenue the apportioned Regional Taxes paid by FP&L on property in cities which have a

separately executed franchise agreement as referenced in item e above (the Net Franchise Fees). See Table 1 Column F.

TABLE 1	A	B	C	D	E	F
NEW METHOD	Gross Revenue	Municipal Taxes	Regional Taxes (w/o PP)	Subtotal (w/o PP)	Prorate Old Cities and PP	NEW METHOD
Key Biscayne	1,052,948.54	(30,067.17)	(65,751.72)	957,129.65	(183,488.76)	773,640.89
Aventura	2,935,149.30	(52,721.24)	(249,678.96)	2,632,749.10	(504,717.28)	2,128,031.82
Pinecrest	1,410,244.51	(26,993.61)	(115,092.80)	1,268,158.10	(243,115.19)	1,025,042.91
Sunny Isles	1,154,787.41	(44,890.94)	(141,328.73)	968,567.74	(185,681.53)	782,886.21
Palmetto Bay	1,318,971.46	(113,681.82)	(271,532.87)	933,756.77	(179,008.01)	754,748.76
Doral	2,183,185.46	(28,207.91)	(115,562.24)	2,039,415.31	(390,970.85)	1,648,444.46
Miami Gardens	3,559,496.12	(57,675.45)	(166,726.69)	3,335,093.98	(639,361.93)	2,695,732.05
Miami Lakes	1,884,173.36	(44,918.20)	(162,685.02)	1,676,570.14	(321,410.77)	1,355,159.37
UMSA	54,913,188.18	(4,093,088.04)	(8,602,362.23)	42,217,737.91	(8,093,449.45)	34,124,288.46
TOTAL	70,412,144.34	(4,492,244.38)	(9,890,721.26)	56,029,178.70	(10,741,203.77)	45,287,974.92

1.1.4 Following request of the Village , Coincident with the annual calculation of the Net Franchise Fees to be remitted to the Village by the County, the County simultaneous with each payment of Village Fees to the Village , shall provide copies of all supporting documentation that is received from FP&L;

1.1.5 Maintain accurate and complete books, records and documents, sufficient to reflect properly all receipt of Village Fees for a period of three years following receipt and payment to the Village under this Agreement, and

2. **TERM**

The provisions of this Agreement relating to Franchise Fees shall be in full force and effect for a period commencing on the day of execution and terminating upon expiration of the full term of the Franchise Ordinance.

3. **GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation between the parties for any controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

4. **ENTIRETY OF AGREEMENT**

This Agreement incorporated and includes all prior negotiation, correspondence, conversations, agreements and understanding applicable to the Village Fees and contains the entire agreement between the parties. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written, and that this Agreement may be modified, altered or amended only by written agreement duly executed by all parties hereto to their authorized representatives.

5. **HEADINGS**

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

6. **RIGHTS OF OTHERS**

Nothing in this Agreement, expressed or implied is intended to confer upon any person, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

7. **REPRESENTATION BY VILLAGE AND COUNTY**

Each party represents that this Agreement has been duly approved and executed by its governing body and that it has the required power and authority to enter into and perform the obligations under this Agreement.

8. **INVALIDATION OF PROVISIONS, SEVERABILITY**

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provision of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

9. **NOTICE**

Notices to the parties as provided for herein shall be sufficient if sent by hand-delivery, federal express or certified mail, return receipt requested, addressed as follows:

if to the County:

Miami-Dade County Manager
Suite 2900
Stephen P. Clark Center
111 NW First Street
Miami, Florida 33128-1993

with a required copy to:

Miami-Dade County Attorney
Suite 2800
Stephen P. Clark Center
111 NW First Street
Miami, Florida 33128-1993

if to the Village:

Village Manager
Village of Key Biscayne
88 W. McIntyre Street
Key Biscayne, FL 33149

with a required copy to:

Village Attorney
2665 Ponce De Leon Blvd., #700
Coral Gables, FL 33134,

or such other respective address as the parties may designate to each other in writing from time-to-time.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on their behalf as of the date first above written.

VILLAGE OF KEY BISCAYNE, a municipal corporation

ATTEST:

Village Clerk

By: _____
Village Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney

MIAMI-DADE COUNTY, a Political subdivision of the State of Florida

ATTEST:
HARVEY RUVIN, Clerk

By its Board of County Commissioners

Deputy Clerk

By: _____
County Mayor or designee

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

County Attorney