

RESOLUTION No. 2007-96-603

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MIAMI GARDENS, FLORIDA, FOR PAYMENT OF CERTAIN FLORIDA POWER AND LIGHT FRANCHISE FEES, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1989, Miami-Dade 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 Miami-Dade County certain franchise fees (the "Franchise Fees"), and

WHEREAS, the City of Miami Gardens was created on May 13, 2003, and

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Interlocal Agreement between

Miami-Dade County and Miami Gardens, Florida, for payment of certain Florida Power and Light franchise fees, a copy of which is attached hereto as **Exhibit A**.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Miami-Dade County, with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JUNE 27, 2007.

ATTEST:

  
SHIRLEY GIBSON, MAYOR

  
RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Braynon  
SECONDED BY: Councilwoman Watson

**VOTE: 6-0**

Mayor Shirley Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Vice Mayor Oscar Braynon, II	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilman Melvin L. Bratton	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	Out of town
Councilman Aaron Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilman André Williams	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	
Councilwoman Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)	

# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Oscar Braynon II  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson  
Councilman André Williams

## Agenda Cover Page

Date: 06/23/07

Fiscal Impact: No  Yes

(If yes, explain in Staff Summary)

Funding Source: n/a

Contract/P.O. Requirement: Yes  No

Sponsor Name/Department:

**Dr. Danny Crew, City Manager**

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # \_\_\_\_\_

Quasi-Judicial

Resolution

2nd Reading

Yes  No

### Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MIAMI GARDENS, FLORIDA, FOR PAYMENT OF CERTAIN FLORIDA POWER AND LIGHT FRANCHISE FEES, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

For the past several years, the County has been paying to the City, applicable franchise fees it collects from Miami Gardens' residents and businesses. The County just realized that we had never entered into a formal agreement for these payments, though they are mentioned in the City primary interlocal agreement.

This interlocal agreement will formally establish our rights as well as those of the County. There is no change from current practice.

**RECOMMENDATION:** That City Council approve the interlocal establishing the County's payment to the City of the FPL franchise fees.

**J-4) CONSENT AGENDA  
RESOLUTION  
MIAMI-DADE COUNTY**

INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is made and entered into this 15<sup>th</sup> day of November, 2007, by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and the City of Miami Gardens, a Florida municipality (the "City").

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 City was created on May 13, 2003, as authorized by Miami-Dade County Ordinance 03-59; and

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

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

1.1.3 Beginning with the remittance of the City 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 City Fees to be remitted by the County to the City 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.

<b>TABLE 1</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>NEW METHOD</b>	Gross Revenue	Municipal Taxes	Regional Taxes (w/o PP)	Subtotal (w/o PP)	Prorate Old Cities and PP	<b>NEW METHOD</b>
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
<b>TOTAL</b>	<b>70,412,144.34</b>	<b>(4,492,244.38)</b>	<b>(9,890,721.26)</b>	<b>56,029,178.70</b>	<b>(10,741,203.77)</b>	<b>45,287,974.92</b>

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

1.1.4 Maintain accurate and complete books, records and documents, sufficient to reflect properly all receipt of City Fees for a period of three years following receipt and payment to the City 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 City 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 CITY 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 City:

City Manager  
City of Miami Gardens  
1515 N.W. 167<sup>th</sup> Street  
Miami Gardens, FL 33169

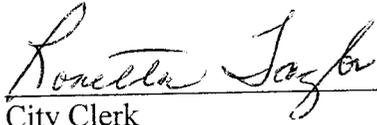
with a required copy to:

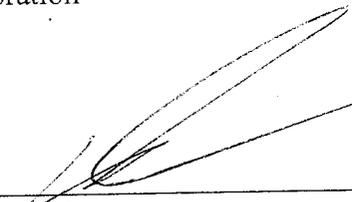
or such other respective address as the parties may designate to each other in writing from time-to-time.

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

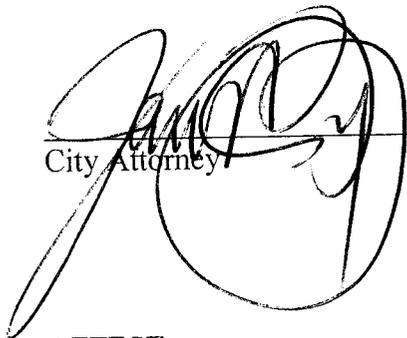
CITY OF MIAMI GARDNES, a municipal corporation

ATTEST:

  
\_\_\_\_\_  
City Clerk

By:   
\_\_\_\_\_  
City Manager

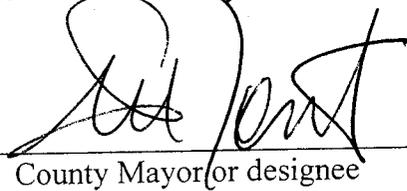
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
City Attorney

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

By its Board of County Commissioners

ATTEST:  
HARVEY RUVIN, Clerk

By:   
\_\_\_\_\_  
County Mayor or designee

   
\_\_\_\_\_  
County Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
County Attorney