

SUMMARY OF CHANGES

Section 1. Grant of Franchise; Duration; Scope; Purpose

The New Franchise Agreement:

- Adds language that FPL shall not have access or rights to any *exclusive* public easements.

Section 2. Installation or location of facilities; interference with public rights-of-way.

The New Franchise Agreement:

- Continues to provide that FPL’s facilities shall be installed, located, and relocated so as to not unreasonably interfere with the Village’s public rights-of-way, but was modified to comport with language contained in Section 337.403, Florida Statutes, specifying that the unreasonable interference relates to the “convenient, safe, or continuous use, or the maintenance, improvement, extension or expansion of the public rights of way.”
- Includes a definition of “public rights of way” that was not contained in the prior version, and that is broader than the definition contained in Florida Statutes. Under the New Franchise Agreement, “public rights of way” include drainage facilities, water facilities, sewer facilities and/or other facilities.
- Includes a definition for “drainage facilities,” that was not contained in the prior version, which includes ponds, canals, lakes, streams, or swales, along with any above ground, underground, or at grade structure, used for the purposes of providing stormwater attenuation or conveyance.
- Imposes a new requirement that FPL’s location or relocation work shall be subject the requirements of Wellington Engineering Standards Manual for work near any Village owned drainage facilities and the Wellington Utility Standards Manual for any work near any Village owned water or sewer facilities.

Section 3. Liability of Village

The New Franchise Agreement:

- Eliminates the word “electric” in the term FPL’s “electric facilities” thereby providing that FPL is liable and responsible for any damages that may occur in the construction, operation, or maintenance by FPL of all of its facilities, not just its electric facilities.

Section 4. Rates; Rules and Regulations of FPL

No substantive revisions.

Section 5. Payment of Rights and Privileges by FPL

The New Franchise Agreement:

- Increases the Franchise Fee from 5% to 6% of FPL’s revenues from the sale of electrical energy within the Village.
- Provides that FPL shall pay to the Village the aforementioned new Franchise Fee commencing 90 days after the effective date of the New Franchise Agreement.
- Provides that until such time as FPL is required to pay the Village the 6% Franchise Fee, it will continue to remit payment to the Village of the 5% Franchise Fee as provided in the Current Franchise Agreement.
- Clarifies that for purposes of the Franchise Fee, FPL revenues do not include:
 - (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas);
 - (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities);
 - (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles);
 - (d) revenues from Sales for Resale (service to other utilities for resale purposes);
 - (e) franchise fees;
 - (f) Late Payment Charges;
 - (g) Field Collection Visit Charges; and
 - (h) other service charges.

Section 6. Change in Percentage Rate of Franchise Fee

The New Franchise Agreement:

- Creates a new Section 6 related to amending the Franchise Fee.
- Provides the Village the right to lower the Franchise Fee to any rate between 0.5% and 6% not more than once in any calendar year, and provides for written notice to FPL for same.
- Includes a “favored nations” type provision providing that if during the term of the New Franchise Agreement, FPL enters into a franchise agreement with any other municipality located in Palm Beach County, with a franchise fee greater than 6%, provided that the number of FPL’s active electrical customers in said municipality is equal to or less than the number of the Village’s, then the Village has the right to make a written request of FPL to negotiate and enter into a new franchise agreement for the same rate.

Section 7. Consideration¹

The New Franchise Agreement:

- Continues to provide that the Village agrees to not compete with FPL, or otherwise not distribute electricity to an ultimate consumer, however, language was added to clarify that the Village’s self-generation of electric energy for the Village’s own use shall not be considered a distribution and/or sale of electric energy in competition with FPL.

¹ Formerly Section 6 in the Current Franchise Agreement

- Further clarifies that the aforementioned limitations on the Village to compete with FPL or otherwise distribute electricity, does not limit the Villages ability to purchase electricity from any other person to service Village facilities, provided that FPL is provided notice of same, along with the details of the rates, terms and conditions being offered to the Village by the other provider, as well as a list of the facilities being serviced. Under the new language, FPL has 90 days to evaluate the offer being provided to the Village, and if FPL offers rates, terms and conditions which are equal to or better than those offered by the other person, the Village would then be obligated to continue to purchase electricity from FPL to serve the previously-identified facilities.

Section 8. Termination of Franchise by FPL upon other Grantees Receiving More Favorable Conditions; Notice.²

The New Franchise Agreement:

- Continues to provide that if the Village grants a right, privilege or franchise to any other electric provider within the Village’s jurisdiction on more favorable terms than what is provided to FPL in the parties’ franchise agreement, then FPL may terminate the franchise agreement with the Village.
- However, a notice provision was included in the New Franchise Agreement providing that FPL give the Village at least 60 days advance written notice of its intent to terminate and providing the Village an opportunity to cure.

Section 9. Same upon Competitive Disadvantage; Notice.³

The New Franchise Agreement:

- Continues to provide that if any regulatory action (whether it be state or federal, or any subdivision or agency thereof) allows for other persons to provide electric service within the Village which places FPL at a competitive disadvantage, that FPL may terminate the franchise agreement with the Village.
- However, a notice provision was included in the New Franchise Agreement providing that FPL give the Village at least 90 days advance written notice of its intent to terminate and providing the Village an opportunity to cure.

Section 10. Failure of FPL to Comply with Ordinance; Forfeiture; Appeal; Time for Compliance.

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No substantive revisions.

Section 11. Failure of Village to Comply; Remedy of Breach; Withholding of Payments.⁵

² Formerly Section 7 in the Current Franchise Agreement

³ Formerly Section 8 in the Current Franchise Agreement

⁴ Formerly Section 9 in the Current Franchise Agreement

⁵ Formerly Section 10 in the Current Franchise Agreement

- As with Section 2, supra, the language concerning FPL’s facilities being installed, located, and relocated so as to not unreasonably interfere with the Village’s public rights-of-way was modified to comport with language contained in Section 337.403, Florida Statutes.

Section 12. Examination of FPL’s records by Village; Audit Requirements.⁶

The New Franchise Agreement:

- Continues to provide for the Village’s right to audit and examine FPL’s records under the New Franchise Agreement; however, the Village’s ability to perform a final audit of the franchise payments received under the Current Franchise Agreement is limited to a 90-day time frame from the effective date of the New Franchise Agreement.

⁶ Formerly Section 11 in the Current Franchise Agreement