

Meeting Date: 9/13/2011

Agenda Item 3

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE Approval to execute a confidentiality agreement with Florida Power and Light (FPL)

Summary of Purpose and Why:

In order for Internal Audit to perform a franchise fee and utility tax audit of FPL, FPL requires that the City sign a Confidentiality Agreement before releasing records. Authorization is requested to allow the City Manager to execute the FPL Confidentiality Agreement.

- (1) Origin of request for this action: Barbara DeLeon, Internal Auditor
- (2) Primary staff contact: Barbara DeLeon Ext 4690
- (3) Expiration of contract, if applicable: Not Applicable
- (4) Fiscal impact and source of funding: Not Applicable

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Internal Audit	9/2/11	Approval	<i>B DeLeon</i> 9/2/11

City Manager *Ann W Beal*

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
2 nd Reading			




City Attorney's Communication #2011-1692
September 7, 2011

TO: Barbara DeLeon, Internal Auditor
FROM: Gordon B. Linn, City Attorney
RE: Resolution – Confidentiality Agreement

In response to your request of today, I have prepared and attached the following form of Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONFIDENTIALITY AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND FLORIDA POWER & LIGHT COMPANY, INC. PROVIDING AN EFFECTIVE DATE.

Please ensure that the appropriate city signature page is attached to the agreement prior to submitting the resolution to the City Commission.



GORDON B. LINN

/jrm
l:cor/engr/2011-1692

Attachment

RESOLUTION NO. 2011-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A CONFIDENTIALITY AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND FLORIDA POWER & LIGHT COMPANY, INC. PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and Florida Power & Light Company, Inc., a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Florida Power & Light Company, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2011.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
9/7/11
l:reso/2011-440

Meeting Date: 9/13/2011

Agenda Item _____

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE Approval to execute a confidentiality agreement with Florida Power and Light (FPL).

Summary of Purpose and Why:

FPL requires a signed confidentiality agreement in order for Internal Audit to perform a franchise fee audit. Based on the City's franchise agreement with FPL, the City is allowed a one year look back of FPL records which is reflected in the confidentiality agreement. The 2011 budget for franchise fee revenue is \$8.4 million and utility taxes is \$7.5 million. Per FPL, the confidentiality agreement was required so FPL records remain confidential during the audit, but allows for the City's compliance with the Public Records Act. A similar FPL confidentiality agreement was signed by the City Manager in fiscal year 2005 for a prior audit by Internal Audit staff. A future agenda item for a second confidentiality agreement will be prepared for the three year look-back period for utility taxes after receipt of the agreement from FPL.

- (1) Origin of request for this action: Barbara DeLeon, Internal Auditor
 - (2) Primary staff contact: Barbara DeLeon Ext 4690
 - (3) Expiration of contract, if applicable: Not Applicable
 - (4) Fiscal impact and source of funding: Not Applicable
- _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
<u>Internal Audit</u> <i>[Signature]</i>	<u>9/2/11</u> <u>9/13/11</u>	<u>Approval</u> —	<i>[Signature]</i> <u>9/7/11</u>
_____	_____	_____	_____
_____	_____	_____	_____

City Manager

ACTION TAKEN BY COMMISSION:


<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
<u>1st Reading</u>	<u>1st Reading</u>	<u>Results:</u>	<u>Results:</u>
_____	_____	_____	_____
<u>2nd Reading</u>	_____	_____	_____
_____	_____	_____	_____


INTERNAL AUDIT DEPARTMENT
Memorandum 11-10



Date: September 7, 2011

To: Dennis Beach, City Manager

By: Johnny Guimaraes, CIA, CGFM, CISA, CFE, Deputy Internal Auditor 

Through: Barbara DeLeon, CIA, CISA, CMA, CFM, CGFO, Internal Auditor 

Re: FPL Confidentiality Agreements

1. Franchise Fees, Fiscal 2011 budget revenue of \$8.4 million
2. Utility Tax, Fiscal 2011 budget revenue of \$7.5 million

Internal Audit staff is proceeding with a franchise fee and utility tax audit of FPL for fiscal year 2011 respectively: budgeted franchise fees of \$8.4 million and budgeted utility taxes of \$7.5 million.

FPL requires that the City execute a confidentiality agreement to obtain records for the audit period. A similar confidentiality agreement was executed by the City Manager for a prior FPL audit by Internal Audit staff in fiscal year 2005.

Per FPL, audit access to confidential records requested by Internal Audit staff is limited by statute respectively: one year look back period for franchise fees based on anniversary date of franchise agreements and three year look back period for utility tax based on due date. Consequently, a future agenda item will be prepared for the three year look back period for the utility tax, when the confidentiality agreement is received from FPL.

cc: Gordon Linn, City Attorney

Attachments (1)

FPL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made and entered into by, between and among Florida Power & Light Company, Inc. ("FPL") and the City of Pompano Beach.

WHEREAS, the City wishes to audit franchise fees and utility taxes ("Audit") paid by FPL for period October 1, 2010 through September 30, 2011 and,

WHEREAS, the City has requested certain information and access to certain business records of FPL; and

WHEREAS, FPL is willing to provide access to such information and records under these terms and conditions;

NOW, THEREFORE, considering these premises, FPL and the City hereto agree as follows:

1. That the parties agree that the Audit to be conducted will be limited to the information specified in Sections 166.231, 166.233 and 166.234 of the Florida Statutes.

2. To the extent that Sections 366.093, 812.081 and 367.156, Florida Statutes, are applicable to a municipality, such information may be held as confidential. However, FPL hereby acknowledges and agrees that the City must comply with Chapter 119, Florida Statutes ("The Public Records Act"). In the event that the City receives a public record request relating to any and all documentation provided by FPL for the above described audits, City will notify FPL, with the understanding that the City must comply with such request pursuant to Chapter 119, Florida Statutes.

3. All requests of FPL by the City for information shall be in writing, and FPL shall have a reasonable time to provide its records or object in whole or part to providing the information requested. Final determination of whether information supports the billing or record under review shall be at the reasonable discretion of FPL.

4. FPL records will be reviewed by the City only during normal FPL business hours at FPL locations as determined by FPL. Security measures at FPL locations will be observed by the City's representatives. An FPL representative will be assigned to the City's representatives to coordinate access to FPL records and facilities. The City's representatives will initiate all contacts for records and facility access with, and direct all communications associated with the review to, FPL's assigned representative. FPL's representative shall be entitled to inspect the City's representatives' work papers and other documents of any kind when the City's representatives leave FPL's location, for the purpose of insuring that no proprietary records are removed.

5. The City's review or verification of FPL's records shall be impartial and compensation shall in no way be contingent upon the results of the audit. The City will report all errors and adjustments required to correctly and completely reflect the charges to customers for electric service

FPL CONFIDENTIALITY AGREEMENT

rendered in the corporate limits of the City, whether such errors or adjustments increase or decrease payments of public utility taxes. The City shall provide to FPL, copies of the audit findings for discussion prior to issuance of the final reports, plus sufficient information to support all audit findings.

6. The City's review will be completed within one year of the date of this Agreement. If after one year the City has not provided a final audit report, FPL shall provide notice to the City stating the audit must be completed within 30 days of receipt of said notice or the audit will be deemed complete and closed. This section shall not apply where unreasonable delays are attributable to FPL.

7. This Agreement is the complete and exclusive statement of the terms of the Agreement between the Parties concerning review of FPL records by the City. The Parties agree that parol or extrinsic evidence shall not be used to vary or contradict the terms of this Agreement and that recourse shall not be had to prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the expressed terms of this Agreement. This Agreement can not be amended, except by written amendment between FPL and the City. No waiver of any provision by acts, inactions, or expressions and no failure to enforce any provision of this Agreement by any Party shall be deemed a waiver of any future rights of a Party to insist upon strict performance or enforce any rights or remedies under this Agreement or in law.

FPL CONFIDENTIALITY AGREEMENT

Executed on the respective dates set forth below:

City of Pompano Beach

By: _____

Print Name: Dennis Beach

Title: City Manager

Date: _____

"FPL"

Florida Power & Light Company

By: *Kim Ousdahl*

Print Name: Kim Ousdahl

Title: VP Controller & Chief Acct. Officer, FPL

Date: 8/23/2011