

MEMORANDUM

Agenda Item No. 7(F)(1)(A)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 22, 2003

FROM: George M. Burgess
County Manager



SUBJECT: Release Agreement

RECOMMENDATION

It is recommend that the Board approve the attached Release Agreement with Florida Energy Partners, LP (FEPLP), allowing the County to accept payment of \$237,500, as well as title to the electrical generating and ancillary equipment (the "Equipment") in Miami-Dade County's Central Support Facility, in exchange for a limited release of removal and restoration obligations of Space Lease assignee FEPLP.

BACKGROUND

On November 15, 1983, the County entered into a space lease and other related agreements with South Florida Cogeneration Associates (SFCA). Under the terms of these Agreements, SFCA had the right to develop and operate a cogeneration facility in a portion of the County's Central Support Facility (CSF). The lease provided an initial term of 16 years, which commenced upon the facility becoming operational.

SFCA operated the facility, supplying the County's Downtown Government Center buildings with electricity and chilled water until 1994. At that time, SFCA exercised its right to cease operations due to economic factors. In December 2002, the initial term of the lease expired. Although SFCA had the right to extend the term of its lease, it chose not to exercise its option. As a result, the County now has control over the portion of the CSF previously occupied by SFCA.

The prior leasehold currently contains numerous pieces of the Equipment that were installed in the CSF by SFCA. Since SFCA ceased operating the cogeneration facility, this Equipment has been professionally maintained.

Much of the Equipment remaining in the CSF is owned by FEPLP, who provided financing for the original cogeneration project and leased the Equipment to SFCA. With the County's consent, SFCA assigned its rights and obligations under the Space Lease to FEPLP and FEPLP, as assignee, accepted such rights and obligations. As Space Lease assignee, FEPLP is responsible for removing the personal property installed in the CSF by the tenant (SFCA) and for restoring the CSF. FEPLP has offered to pay the County \$237,500 in consideration for a release of its obligation to remove the Equipment from the leasehold and to restore the premises. In addition, FEPLP has offered to transfer title of the used Equipment to the County, free of liens or other encumbrances. The County has retained a consultant to inspect and evaluate the condition of the Equipment. Preliminary inspections demonstrate that most of the Equipment appears to be in extremely good condition.



MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 22, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(F)(1)(A)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(F)(1)(A)
7-22-03

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF RELEASE AGREEMENT WITH FLORIDA ENERGY PARTNERS, LP (FEPLP) ALLOWING THE COUNTY TO ACCEPT PAYMENT OF \$237,500, AS WELL AS TITLE TO THE EQUIPMENT IN MIAMI-DADE COUNTY'S CENTRAL SUPPORT FACILITY, UPON PROPER EXECUTION BY WINTHROP ENERGY MANAGER, INC., FEPLP'S GENERAL PARTNER; AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Release Agreement between Miami-Dade County and Florida Energy Partners, LP (FEPLP), allowing the County to accept payment of \$237,500, as well as title to the equipment in Miami-Dade County's Central Support Facility, in substantially the form attached hereto and made a part hereof, upon proper execution; and authorizes the County Manager to exercise any and all other rights conferred therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro
Betty T. Ferguson
Joe A. Martinez
Dennis C. Moss
Natacha Seijas
Sen. Javier D. Souto

Jose "Pepe" Diaz
Sally A. Heyman
Jimmy L. Morales
Dorrin D. Rolle
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of July, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. 
Richard B. Rosenthal

By: _____
Deputy Clerk

RELEASE AGREEMENT

THIS RELEASE AGREEMENT, dated as of ____, 2003, is made BY AND BETWEEN:

(1) METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida (the "County"); and

(2) FLORIDA ENERGY PARTNERS LIMITED PARTNERSHIP ("FEPLP"), assignee of all rights held by SOUTH FLORIDA COGENERATION ASSOCIATES, a partnership established under the Uniform Partnership Act of Florida ("the Joint Venture"), in that certain Agreement and Lease of Space and Ancillary Systems, dated as of November 15, 1983 and as amended and in effect on the date hereof (the "Agreement").

RECITALS:

- A. The County and the Joint Venture are parties to the Agreement.
- B. On or about February 10, 1984, the Joint Venture assigned its rights and obligations under the Agreement to FEPLP, and FEPLP accepted and assumed such rights and obligations. A copy of said assignment is attached hereto as Exhibit A. Recently, FEPLP executed a written indemnity agreement in favor of the Joint Venture in which FEPLP agreed to indemnify the Joint Venture for any liability it may incur arising out of the Agreement, except for liability arising from the breach of environmental laws or rules.
- C. During the term of the Agreement, the Joint Venture installed numerous pieces of personal property in the Premises (as defined in the Agreement). Under Florida law, FEPLP, as assignee of the Agreement, is responsible for the removal of such personal property from the Premises (including the equipment within the definition of Facility, as defined in the Agreement) and for the restoration of the Premises following such removal.
- D. The County and FEPLP wish to enter into the following Release Agreement, under which FEPLP shall pay the County (in immediately available funds) the sum of \$237,500 and the County shall release FEPLP from its duty to remove its personal property from the Premises and also from its duty to restore the Premises following said removal, as set forth with greater particularity below.

E. Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the Agreement.

NOW THEREFORE, the parties hereto, intending to be legally bound and in consideration of the mutual covenants hereinafter contained, the sufficiency of which is hereby acknowledged, DO HEREBY AGREE as follows:

1. Payment to County and Limited Release. Contemporaneously with the execution of this Release Agreement, FEPLP shall pay to the County in immediately available funds the sum of two hundred thirty-seven thousand five hundred dollars (\$237,500) via wire transfer, cashier's check or other form acceptable to the County (the "Release Payment") and shall further furnish the County with an executed bill of sale for the personal property referenced in recital clause C above, which bill of sale shall be in the form as attached in Exhibit B hereto. Upon the County's receipt of full and proper payment of the Release Payment and the aforementioned executed bill of sale, and upon FEPLP otherwise complying with the requirements of Sections 2 and 3 below, the County shall: (i) release FEPLP (and its predecessors, including the Joint Venture) of any and all obligations under the Agreement or common law to remove FEPLP's personal property from the Premises or to restore such Premises to the condition it was in prior to the installation of such personal property, and (ii) provide FEPLP with a copy of a letter from a County consultant generally stating that such consultant has visually inspected the principal electrical generating and absorption chiller equipment in the Building and determined, based on such visual inspection, that such equipment appears to have been properly maintained.

2. Duty of FEPLP to Transfer Clear Title to Equipment to County. FEPLP hereby represents and warrants to the County that FEPLP is the sole owner of the equipment, property, and materials within the definition of Facility and that it holds good title to all components of the Facility, free of any liens or encumbrances of any kind whatsoever. Contemporaneously with the execution of this Release Agreement, FEPLP shall: (a) transfer good, clear, and marketable title to all equipment and materials within the definition of Facility, other than the Olympus gas turbine, dry-clad bag, and gas turbine log book, (free of all liens and encumbrances of any kind) to the County; (b) pay the County, in immediately available funds, the sum of \$237,500; and (c) present a Bill of Sale for such equipment and materials to the County in the form attached as Exhibit B. FEPLP shall comply with all notice and other requirements under Florida law (including the Uniform Commercial Code as adopted in Florida) that are necessary to deliver clear and marketable title to the equipment and materials to the County.

3. Duty of FEPLP to Deliver Plans, Documents, and Other Records. Contemporaneously with the execution of this Amendment, FEPLP shall deliver to the County the following documents, to the extent such documents are in the possession, custody, or control of FEPLP:

- A. All as-built construction drawings, plans, and specifications for the Facility, including a complete copy of the Construction Contract for the construction of the Facility (with all exhibits and attachments);
- B. All as-built drawings, plans, and specifications for construction of the Building;

- C. All maintenance records, manuals, schedules, logs, and repair histories for each piece of equipment constituting a part of the Facility;
- D. Copies of all maintenance contracts and warranties for each piece of equipment constituting part of the Facility;
- E. Copies of all evaluations, surveys, inspections, and test results relating to each piece of equipment constituting part of the Facility, including copies of any such documents in the possession, custody, or control of Ron Natole or any company employing him as an employee or independent contractor;
- F. Copies of correspondence, contact lists, e-mails, sales contracts, and other information relating to the actual or potential sale, or attempted sale, of any piece of equipment constituting part of the Facility, including copies of any such documents in the possession, custody, or control of Ron Natole or any company employing him as an employee or independent contractor; and
- G. Copies of all proposals, quotes, reports, evaluations, contracts (including draft contracts or offers) or other information regarding the proposed extraction of any portion of the Facility from the Premises, including copies of any such documents in the possession, custody, or control of Ron Natole or any company employing him as an employee or independent contractor.

4. Counterparts. This Release Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

5. Force and Effect. This Release Agreement has been executed as of the date first set forth above, and shall be treated as being in full force and effect as of such date.

6. Governing Law. This Release Agreement is delivered in the State of Florida and shall be governed by and construed in accordance with Florida law and venue for any court action arising hereunder shall lie exclusively in Miami-Dade County, Florida.

7. Subject to the County's receipt of all payments due under this Release Agreement, in immediately available funds, and subject to FEPLP's receipt of the letter referenced in paragraph 5 of this Release Agreement, the County and FEPLP affirm that no known material breach or default by the other party has occurred under the Agreement as of the date hereof.

8. Approval and Authority.

(A) The County hereby warrants and represents to FEPLP that: (I) the execution, performance and delivery by the County of this Release Agreement have been fully and validly authorized and approved by all necessary action on the part of the County, including receipt of the approval of the Board of Commissioners of the County; and (II) the person executing this Release Agreement has the authority to so execute and deliver this Extension and Agreement on behalf of the County.

(B) FEPLP hereby warrants and represents to the County that: (I) the execution, performance and delivery by FEPLP of this Release Agreement have been fully and validly authorized and approved by all necessary action on the part of FEPLP, including receipt of any written approvals required of any limited or general partners of FEPLP; and (II) the person executing this Release Agreement has the authority to so execute, perform and deliver this Extension and Agreement on behalf of FEPLP.

IN WITNESS WHEREOF, each of the parties hereto has caused this Release Agreement to be executed by its duly authorized officers, as of the date first above written.

MIAMI-DADE COUNTY

Attest:

County Clerk

By: _____
County Manager

FLORIDA ENERGY PARTNERS LIMITED
PARTNERSHIP

By: Winthrop Energy Manager, Inc., its General
Partner

(SEAL)

By: _____
Title: