Memorandum

MIAMI-DADE COUNTY

Date: July 20, 2010

Agenda Item No. 8(R)(1)(A)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of a Joint Participation Agreement with Florida Power & Light Company to Develop a Reclaimed Water System to Serve the Company's Turkey Point Facility

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing execution of a Joint Participation Agreement (JPA) between Miami-Dade County and Florida Power & Light Company (FP&L) for development of a reclaimed water project to serve FP&L's Turkey Point power generation facility. The project will help the County fulfill its reuse requirements at a lower cost than alternative approaches and will also assist FP&L in meeting the growing regional electricity demands. The system will only be constructed if FP&L receives the appropriate permits to construct two new nuclear power generation units at Turkey Point. If these units are not constructed, there is no fiscal impact to the County.

SCOPE

The County's 20-Year Water Use Permit (WUP) issued by the South Florida Water Management District (SFWMD) in November 2007, required that Water and Sewer Department (WASD) reuse at least 170 million gallons per day (MGD) of reclaimed water. This requirement presented an opportunity for WASD and FP&L to work together as FP&L developed new power generation facilities. FPL requires a reliable primary source of water for the operation of the two proposed nuclear power plants. Other options for securing these large amounts of cooling water could present significant permitting and water supply concerns. Both parties jointly determined that using 90 MGD of WASD reclaimed water is the most feasible and economical alternative to meet FP&L's cooling water needs while simultaneously satisfying a more than half the reuse volume contained in the WUP.

The South District Wastewater Treatment Plant (SDWWTP), located in District 8, will be the source for the reclaimed water to be used at the Turkey Point Facility. The agenda item will have a countywide impact with respect to its environmental and economic benefits.

FISCAL IMPACT/FUNDING SOURCE

This agreement represents a significant cost savings to the County within the overall context of reuse mandates. It should be noted that FP&L costs to design, procure and manage the construction of the pipeline plus construction of additional treatment facilities to reduce nutrient content of the reclaimed water before it is used for cooling are estimated to exceed $400 million for this project. Other options for the County to satisfy WUP requirements, such as ground water replenishment could cost the County at least $300 million more than the option to provide reclaimed water to FP&L.

The system will only be constructed if FP&L receives the appropriate permits to construct two new nuclear power generation units at Turkey Point. If these units are not constructed, there is no fiscal impact to the County. If the project proceeds, the County's responsibility is to pay the actual cost (on a reimbursement basis) of materials and labor to construct approximately nine miles of pipeline and associated systems to deliver the water from the SDWWTP to Turkey Point. The amount payable by the County is capped at an amount not to exceed the January 1, 2010 estimate of $78 million plus a maximum escalation of 4% per year, until FP&L is reimbursed for all material and labor costs and the pipeline is conveyed to the County. Any labor and materials costs exceeding the cap will be the responsibility of FP&L. FP&L contribution to the project is to provide all of the funding for the design, permitting, procurement, environmental mitigation, and construction management of the pipeline plus funding additional treatment of the reclaimed water after it reaches the FP&L site. Additionally, FP&L will pay the maintenance and replacement cost of the pipeline plus the operational costs of pumping reclaimed water to Turkey Point.

There will be no impact on the County's current budget. The funding source for the County portion of this project will be future Water and Sewer Department (WASD) revenue bonds.

TRACK RECORD/MONITOR

This project will be monitored by WASD's Deputy Director for Capital Improvements and Regulatory Compliance.

BACKGROUND

The attached JPA allocates up to 90 million gallon per day (MGD) of reclaimed water treated with high level disinfectants to cool FP&L's existing gas powered plant and the two proposed nuclear power units. Additional reclaimed water requirements are included in the Wastewater Masterplan and the Ocean Outfall statute administered by the Florida Department of Environmental Protection (FDEP), and WASD has been coordinating all of these requirements to find the most cost-effective combination of projects to optimize water supply and reuse mandates. To that end, WASD has been working very closely with FP&L staff since early 2008 to evaluate water supply alternatives to meet FP&L's cooling needs at the Turkey Point Facility.

The SDWWTP is currently being upgraded to enhance waste water treatment processes to meet the high level disinfection requirements mandated in an existing consent order with the Florida Department of Environmental Protection. Therefore, the County does not need to design and construct additional treatment facilities at the treatment plant to provide reclaimed water to FP&L. The County's only obligation under this JPA is the cost of materials and labor for the nine miles of pipeline from the SDWWTP to Turkey Point and the ancillary facilities at the treatment plant to deliver the water to the pipeline.

The attached JPA includes a draft of a "Reclaimed Water Service Agreement" addressing the specific responsibilities for the design and construction of the pipeline, Exhibit I of the JPA. The draft agreement also details the obligations of each party once the project is operational and a description of the compensation methodology. The County will enter into the "Reclaimed Water Service Agreement" once FP&L receives the permits for the two proposed nuclear plants. If FP&L does not receive the required local, state and federal regulatory approvals for the nuclear plants or a decision is made by FP&L not to continue with the project, the "Reclaimed Water Service Agreement" will not be executed and the JPA will expire. If the "Reclaimed Water Service

Agreement" is executed, it will succeed the JPA as the operative agreement between the County and FP&L. After the "Reclaimed Water Service Agreement" goes into effect, maintenance and replacement costs over the life of the pipeline will be paid by FP&L including operation and maintenance expenses for the transmission of the reclaimed water. Either party can terminate the agreement with appropriate notice.

Construction of the reclaimed water pipeline and associated systems will be completed only if FP&L receives the permits for the two new nuclear plants. FP&L will be responsible for the design, engineering, permitting, and construction management of the pipeline, as well as any mitigation fees associated with environmental permitting. FP&L will also construct additional facilities at Turkey Point to reduce nutrient levels in the reclaimed water. At the completion of construction, which is expected to be in 2021, the pipeline will be conveyed to the County. At the time of conveyance, the County will reimburse FP&L for material and labor costs for the pipeline. The County will then own, operate and maintain the pipeline and be responsible for all aspects of security.

The proposed project detailed in the JPA is mutually beneficial to the County and FP&L in fulfilling their respective utility obligations. The concept of providing reclaimed water to support the growing demand for electricity has been endorsed by both the Florida Department of Environmental Protection and the South Florida Water Management District. In addition, the proposed project will generate both construction and other long term jobs in south Florida.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 20, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(R)(1)(A)

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(A)
7-20-10

RESOLUTION NO. _____

RESOLUTION APPROVING JOINT PARTICIPATION AGREEMENT WITH FLORIDA POWER AND LIGHT COMPANY FOR THE DEVELOPMENT OF A RECLAIMED WATER PROJECT WHICH INCLUDES A MATERIAL AND LABOR CAP OF $78 MILLION WITH A FOUR PERCENT ANNUAL ESCALATION FOR A PIPELINE TO THE TURKEY POINT FACILITY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE ALL PROVISIONS CONTAINED 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 approves a Joint Participation Agreement with Florida Power and Light Company for the development of a reclaimed water project with a material and labor cap of $78 million with a four percent annual escalation for a pipeline to the Turkey Point Facility; in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or County Mayor's designee to execute same and to exercise all provisions contained 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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

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The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of July, 2010. 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.

Henry N. Gillman

By:_____
Deputy Clerk

Execution Copy

JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT COMPANY

PROVIDING FOR DEVELOPMENT OF A RECLAIMED WATER PROJECT

This Joint Participation Agreement (the "**Agreement**") is entered into as of _____ ___, 2010 (the "**Effective Date**") between Miami-Dade County, a political subdivision of the State of Florida (hereinafter the "**County**"), and Florida Power & Light Company, a Florida Corporation (hereinafter "**FP&L**"). The County and FP&L are jointly referred to as the ("**Parties**") and individually as a ("**Party**").

RECITALS

WHEREAS, FP&L plans to develop, construct, and operate two (2) nuclear power units ("**Units 6 and 7**") at its existing Turkey Point generating complex located in Miami-Dade County (the "**TP Complex**") with anticipated in-service dates of July 31, 2018 and July 31, 2020, respectively (the "**In-Service Dates**"); and

WHEREAS, the County currently provides wastewater treatment within Miami-Dade County through three treatment facilities owned and operated by the County: (i) the North District Wastewater Treatment Plant ("**NDWWTP**"), (ii) the Central District Wastewater Treatment Plant ("**CDWWTP**"), (iii) the South District Wastewater Treatment Plant ("**SDWWTP**"), and (iv) the proposed West District Water Reclamation Plant ("**WDWRP**") (NDWWTP, CDWWTP, SDWWTP and WDWRP, jointly the "**Wastewater Facilities**"); and

WHEREAS, the Parties acknowledge that FP&L will be able to utilize significant quantities of water for cooling and other purposes in connection with its operation of the existing Unit 5 and the proposed Units 6 and 7 and that the County desires to find beneficial uses within the boundaries of Miami-Dade County for the treated wastewater (the "**Reclaimed Water**") that is produced by the Wastewater Facilities; and

WHEREAS, the Parties have engaged in preliminary discussions related to the joint development of a project (the "**Reclaimed Water Project**") that would be designed and engineered in a manner to provide significant quantities of water satisfying some or all of the cooling water requirements of FP&L for the TP Complex, as well as providing additional ancillary benefits to the Parties.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, and good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and subject to the terms and conditions hereinafter set forth, the County and FP&L hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

The following terms, when used herein, shall have the meanings set forth below.

"**Agreement**" has the meaning specified in the preamble to this hereto, and includes all exhibits, schedules, appendices attached hereto.

"**Applicable Laws**" means any and all federal, state, regional or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, governmental approvals, codes, licenses or permit requirements or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any Governmental Authority that apply to the facilities, services or obligations of either Party under this Agreement, whether now or hereafter in effect.

"**Business Day**" means any day on which Federal Reserve Member Banks in Miami, Florida are open for business.

"**Coordination Committee**" has the meaning specified in *Section 4.1*.

"**County**" has the meaning specified in the preamble to this Agreement.

"**County Facilities**" has the meaning set forth in *Section 3.3*.

"**Delivery Point(s)**" means a location at the property boundary of the Turkey Point Complex.

"**Delivery Water Quality** " means water delivered to FP&L that: (i) has been treated by High Level Disinfection, as defined herein; (ii) meets the water quality treatment requirements of Rule 62-610.668(2)(d), F.A.C., as of the effective date of this Agreement, for use in a cooling tower without a 300 foot setback, and (iii) satisfies the requirements of Chapter 62-528, F.A.C., as amended from time to time, for injection of non-hazardous wastewater in a Class I UIC well.

"**DEP**" means the Florida Department of Environmental Protection.

"**Dispute**" has the meaning specified in *Section 8.3*.

"**FP&L**" has the meaning specified in the preamble to this Agreement.

"**FP&L Facilities**" has the meaning set forth in *Section 3.2*.

"**Governmental Authority**" means any national, state, regional or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, public or statutory instrumentality, authority, body, agency, department, bureau or entity or any arbitrator with authority to bind a party at law.

"**High Level Disinfection (HLD)**" means reclaimed water that has received high level disinfection as defined in Rule 62-600.440(5), F.A.C., as amended from time to time.

"**In-Service Dates**" has the meaning specified in the preamble to this Agreement.

"**Institution**" has the meaning specified in *Section 8.7*.

"**Material and Labor Cap**" means the maximum amount of Material and Labor Costs to be paid by the County and shall be set at $78 million dollars as of January 1, 2010; with a cap escalating each year thereafter by four (4) percent per year, on a monthly pro-rata basis, until FP&L has been reimbursed for all actual Material and Labor Costs and the Pipeline has been conveyed by FP&L to the County.

"**Material and Labor Costs**" means any and all costs associated with procurement and financing of the materials, equipment and labor costs associated with the construction of the Pipeline, but shall not include the cost of any FP&L employees involved in the design, and construction management services for the Pipeline.

"**MGD**" means million gallons per day.

"**Parties**" has the meaning specified in the preamble to this Agreement.

"**Pipeline**" means the pipeline(s) that, in accordance with the requirements of this Agreement: (i) will be designed, engineered, procured, constructed, and commissioned by FP&L and conveyed to the County to operate and maintain, (ii) will run to the Delivery Point, and (iii) will be used to transport up to 90 MGD of the Reclaimed Water to FP&L.

"**Reclaimed Water**" means wastewater that is processed and treated by the Reclaimed Water Project and satisfies the Delivery Water Quality requirements.

"**Reclaimed Water Project**" or the "**RWP**" means the permitting, ownership, financing, siting, construction, commissioning, operation and maintenance of any facilities necessary for the County to produce and deliver, and for FP&L to accept and receive, Reclaimed Water exclusively for use by FP&L at the TP Complex for cooling and other purposes (i.e., process and/or irrigation).

"**Reclaimed Water Service Agreement**" has the meaning specified in *Section 3.1.3.*

"**Term**" has the meaning specified in *Section 2.3*.

"**Turkey Point Complex**" or "**TP Complex**" means FP&L's power generation site located in southeastern Miami-Dade County.

"**Unit**" means any of the included power generation units (Units 5, 6 and 7) that FP&L operates or has proposed to construct, at the TP Complex.

"**Unit 5**" means the combined cycle unit completed in 2007.

"**Units 6 and 7**" has the meaning specified in the preamble to this Agreement.

"**Wastewater Facilities**" has the meaning specified in the preamble to this Agreement.

ARTICLE II
PURPOSE; TERM

2.1 **Purpose.** This Agreement sets forth the mutually agreed to terms and conditions pursuant to which the Parties intend to develop jointly the Reclaimed Water Project. The Parties understand that additional discussions and negotiations with respect to the development of the Reclaimed Water Project will be required and that, except as otherwise provided for herein, neither Party will be bound to proceed with the development of the Reclaimed Water Project unless and until a mutually acceptable, service agreement for the sale and purchase of Reclaimed Water is negotiated, approved and executed (the **"Reclaimed Water Service Agreement"**). However, to facilitate further such discussions and negotiations, the Parties desire to set forth the basic proposed terms of the Reclaimed Water Project and their understandings with respect thereto.

The Parties acknowledge and agree that separate agreements will be required for the County to provide to FP&L potable water or wastewater service, or both, for Units 6 and 7.

2.2 **Expected Sequence of Events.** The expected sequence of events under this Agreement and the Reclaimed Water Service Agreement are as follows:

(1) FP&L and the County begin preliminary design, engineering, and permitting process.

(2) County provides Pipeline specifications to FP&L (Fall 2010).

(3) FP&L completes preliminary design of the FP&L Facilities and Pipeline (Fall 2010).

(4) FP&L receives Site Certification Order (Spring 2011).

(5) The Reclaimed Water Service Agreement is presented to FP&L Management and Miami-Dade County Board of County Commissioners for approval (Summer 2013).

(6) Upon Board of County Commission and FP&L Management approval, FP&L and County execute the Reclaimed Water Service Agreement.

(7) FP&L and County commence detailed design, engineering and continue permitting process.

(8) FP&L and County complete cost and schedule estimates for their respective facilities, in accordance with the Reclaimed Water Service Agreement (Spring 2014).

(9) FP&L obtains United States Army Corps of Engineers Permit and Nuclear Regulatory Commission ("NRC") Combined License (Fall 2015).

(10) FP&L and County commence construction of their respective Facilities in accordance with the terms of the Reclaimed Water Service Agreement.

(11) FP&L completes construction of the FP&L Facilities and County

completes construction of the County Facilities (Fall 2018).

(12) FP&L test period with intermittent delivery of Reclaimed Water.

(13) Delivery of Reclaimed Water commences on the Service Initiation Date, as defined in the Reclaimed Water Service Agreement (2019).

2.3 **Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall terminate on the Commitment Date as defined in the Reclaimed Water Service Agreement; provided, either FP&L or the County shall have the right to terminate this Agreement for its convenience in whole or in part at any time, upon thirty (30) days' written notice to the other Party. Upon termination of this Agreement, the Parties shall have no further obligations, duties or liabilities hereunder.

ARTICLE III
RESPONSIBILITIES; EXPENSES

3.1 **General Obligations of the Parties.** During the Term, each of the Parties shall (a) exercise reasonable efforts in performing its obligations under this Agreement and make available the personnel and resources reasonably necessary to complete such Party's responsibilities with respect to the development of the Reclaimed Water Project, (b) cooperate fully with the other Party to that end, and (c) continue in good faith the development of the Reclaimed Water Project subject to the terms of this Agreement. Consistent with the foregoing, the Parties shall also:

3.1.1 pursue the necessary administrative and budgetary approvals within their respective organizations to support the development of the Reclaimed Water Project.

3.1.2 support those activities reasonably necessary to secure other components of value associated with the Reclaimed Water Project including, without limitation, any applicable credits, offsets and environmental mitigation.

3.1.3 develop jointly the terms and conditions and form of the Reclaimed Water Service Agreement pursuant to which the County would sell and deliver, and FP&L would purchase and receive, at the Delivery Point and as of the Service Initiation Dates (as defined in the Reclaimed Water Services Agreement), Reclaimed Water during the term of such Reclaimed Water Service Agreement for use at Units 5, 6 and 7, as defined herein. For illustrative purposes, a form of such Reclaimed Water Service Agreement is attached at *Exhibit I*. The Reclaimed Water Service Agreement shall also include provisions for the following obligations:

(i) FP&L will manage the engineering, procurement and construction of the Pipeline;
(ii) FP&L will establish and maintain the Pipeline project schedule;
(iii) FP&L will consult with the County during the engineering design phase to ensure that the engineering design, material and construction methods of the Pipeline are consistent with all applicable regulations and meets the requirements for bond service obligations as identified by the County's Bonding Engineer;
(iv) FP&L will apply for and manage compliance with all permits and approvals necessary for the construction of the Pipeline;

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(v) FP&L will be responsible for implementing the mitigation plan and associated costs, if any, in connection with the Pipeline;

(vi) FP&L will bear the cost of (and will not be reimbursed for) designing and engineering the Pipeline;

(vii) At the time of conveyance, the County will reimburse FP&L for all actual Material and Labor Costs in an amount not to exceed the Material and Labor Cap, FP&L will convey the Pipeline to the County and the County will become the owner of the Pipeline; and

(viii) FPL will comply with all applicable federal, state, and local laws in the procurement and construction of the Pipeline.

3.1.4 Further Conditions. The Parties understand that additional discussions and negotiations with respect to developing the Reclaimed Water Service Agreement will be required, and that neither Party will be bound to proceed with the Reclaimed Water Service Agreement unless and until all necessary approvals are obtained (including without limitation senior management and board of director approvals).

3.1.5 use good faith efforts to comply with the estimated sequence of events set forth in Section 2.2.

3.2 **Specific Obligations of FP&L.** FP&L will undertake all activities related to designing, engineering, permitting, constructing, operating and maintaining, by FP&L, those improvements and facilities (the "**FP&L Facilities**") necessary: (a) to transport the Reclaimed Water from the Delivery Point(s) to the TP Complex, (b) for additional treatment of the Reclaimed Water at the TP Complex, if necessary, (c) to use best good-faith efforts to maximize the utilization of the Reclaimed Water in the existing Turkey Point Unit 5 and proposed Units 6 and 7, and (d) to utilize or dispose of the Reclaimed Water delivered to the TP Complex pursuant to the Reclaimed Water Services Agreement. Consistent with the foregoing, FP&L shall:

3.2.1 to the extent it is available, accept and utilize up to 90 million gallons per day of the Reclaimed Water for the existing Unit 5 and the proposed Units 6 and 7 at the TP Complex.

3.2.2 develop an independent cooling water supply sufficient to provide the full requirements of existing Unit 5 and the proposed Units 6 and 7, such independent cooling water supply would allow for the County Facilities to be designed and built on a schedule that would not place a significant burden on the County, and provide adequate cooling water supply in the event of system operational or maintenance issues on either Party's facilities.

3.2.3 develop and maintain a schedule that will identify key milestones related to the development of the FP&L Facilities and the Pipeline taking into account when Unit 5 and the proposed Units 6 and 7 will be in-service and otherwise equipped to receive specified volumes of Reclaimed Water from the County, such schedule to be used by the Coordination Committee to manage the timing of each Party's efforts and in the development of a delivery schedule anticipated to become part of the Reclaimed Water Services Agreement.

3.2.4 include the Pipeline in FP&L's Florida State Site Certification Application as an "Associated Facility" as defined in Section 403.503(7) Fla. Stat.

3.2.5 be responsible for the incremental cost of any pipeline(s) and or/or other infrastructure required by FP&L to satisfy its redundancy concerns, if any.

3.2.6 provide the County with reasonable access as necessary to FP&L's property for purposes of surveys, geotechnical investigations, and other pre-construction activities, provided, however, that the County shall have executed an access agreement with FP&L prior to any such access.

3.2.7 be responsible for the cost of any infrastructure required by FP&L to satisfy Condition 17 of the County's Zoning Resolution Z-56-07.

3.2.8 in accordance with the terms agreed upon by the Parties in an executed Reclaimed Water Service Agreement, (1) design, engineer, and manage the construction of the Pipeline, and (2) apply for and manage compliance with the environmental permitting of the Pipeline and implementation of the mitigation plan and associated cost, if any, in connection with the Pipeline .

3.3 **Specific Obligations of the County.** The County will undertake all activities, related to designing, engineering, permitting, constructing, operation and maintenance of those improvements and facilities (the "**County Facilities**") necessary: (a) to produce and pump the Reclaimed Water from its point(s) of origination to the designated FP&L Delivery Point(s), (b) for treatment of the Reclaimed Water at its point(s) of origination to the Delivery Water Quality requirements of FP&L, and (c) to dispose of non-delivered quantities of Reclaimed Water. Provided, however, FP&L shall be responsible for the environmental permitting of the Pipeline. Consistent with the foregoing, the County shall:

3.3.1 use good faith efforts, and consult and coordinate with FP&L, to ensure that the design of the Pipeline (i) satisfies all approvals and permits and (ii) does not create unreasonable costs or execution requirements necessary to satisfy Condition 17 of the County's Zoning Resolution Z-56-07.

3.3.2 produce up to 90 million gallons per day of reclaimed wastewater treated to the Delivery Water Quality for use as cooling water and other purposes for the existing Unit 5 and the proposed Units 6 and 7, as defined herein.

3.3.3 develop and maintain a schedule that will identify key milestones related to the development of the County Facilities, such schedule will be used by the Coordinating Committee to manage the timing of each Party's efforts and in the development of a delivery schedule anticipated to become a part of the Reclaimed Water Services Agreement.

3.3.4 support FP&L by providing prompt reviews and approvals of those materials necessary in order to include the Pipeline in the Florida State Site Certification Application as an "Associated Facility".

3.3.5 develop a redundant method of disposal of the Reclaimed Water to allow adequate disposal in the event of system operational or maintenance issues on either Party's facilities.

3.3.5 design and construct, at FP&L's expense, any pipeline(s) and/or other infrastructure required by FP&L to satisfy its redundancy concerns, if any.

3.3.6 in accordance with the terms agreed upon by the Parties in an executed Reclaimed Water Service Agreement, reimburse FP&L upon conveyance of the Pipeline.

3.4 **Expenses**. Each Party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation and execution of this Agreement; in connection with performing its obligations under this Agreement; and in connection with the negotiation, authorization, execution and delivery of the Reclaimed Water Service Agreement. At the request of the County, project costs will be reviewed by FP&L to determine if they are eligible for recovery by FP&L through the Nuclear Cost Recovery Rule and such eligible project costs will be submitted by FP&L.

ARTICLE IV
COORDINATION COMMITTEE

4.1 **Coordination Committee.** Development of the Reclaimed Water Project shall be managed by a committee (the "**Coordination Committee**") comprised of four (4) members. Each Party shall appoint two (2) members to the Coordination Committee. Each Party may, at any time, change its member of the Coordination Committee or appoint an alternate during its member's absence. Appointments shall be effected by written notice to the other Party. The Coordination Committee shall, among other things, meet regularly (which meetings may include telephonic meetings, and the minutes of which shall be recorded in writing) to discuss the schedule and progress of the Reclaimed Water Project, to schedule and coordinate future activities.

4.2 **Coordination Committee Function**. The Parties shall cause the Coordination Committee to perform diligently its duties and functions under this Agreement, including its obligations under Section 3.2.3 and 3.3.3. Additionally each Party shall advise the other Party as soon as reasonably practicable of any problems or issues which such Party is aware that could materially impact its ability to support the Reclaimed Water Project. Notwithstanding Section 8.3, in the event that the Coordination Committee is unable or unwilling to perform its duties and functions under this Agreement, or otherwise reaches an impasse, the Coordination Committee shall refer the matter to the director of WASD and Vice President (VP) of Development at FP&L, and such director of WASD and VP of Development at FP&L shall meet within ten (10) Business Days to resolve the matter.

ARTICLE V
INFORMATION; CONFIDENTALITY

5.1 **Access to Information.** The Parties shall each provide to the other Party full and complete access to data, documents, and any other information pertinent to the Reclaimed Water Project in order to permit each Party to perform its obligations under this Agreement.

FP&L acknowledges that the County, as a public entity, is subject to Florida's public records law. Said law establishes a right of access to any public record made or received in connection with the official business of any public body, except those records specifically exempted or made confidential by Florida law. The County agrees to notify FP&L of any request for disclosure and shall afford FP&L the opportunity to promptly assert in writing, within 10 business days, that the information is exempt from disclosure. Failure of FP&L to provide written objection to such disclosure shall be considered agreement to the disclosure. In the event FP&L objects to the disclosure, FP&L shall as soon as practicable seek an injunction restricting disclosure of the information. If FP&L objects to disclosure, FP&L agrees to assume all the costs of any litigation seeking disclosure and/or nondisclosure, including liability for attorney's fees and judgment. This provision shall survive termination.

ARTICLE VI
INDEMNIFICATION; LIMITS

6.1 FP&L and the County shall each be responsible for its own facilities, for protection of its own systems, and for ensuring adequate safeguards for FP&L and the County customers, and the personnel and equipment of the County and FP&L. To the extent permitted by law, and subject to the limitations set forth in Section 768.28, Florida Statutes, the County shall indemnify, defend and hold FP&L harmless, and FP&L shall indemnify, defend and hold the County harmless, from any and all claims, demands, costs or expenses, for loss, damage or injury to persons or property caused by, arising out of, or resulting from: (a) any act or omission by the respective Party or that Party's contractors, agents, servants and employees in connection with the development, construction or operation of that Party's facilities or systems, or the operation thereof in connection with the other Party's facilities or systems, (b) any defect in, failure of, or fault related to, a Party's facilities or systems, or (c) the negligence of the respective Party or negligence of that Party's contractors, agents, servants or employees. The respective Party shall pay all claims, costs, damages and losses in connection with (a), (b) or (c) above, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the other Party, where applicable, including appellate proceedings and shall pay all costs, judgment and attorney's fees that may issue thereon. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either Party to indemnify the other Party for such other Party's negligent, willful, or intentional acts or omissions. The provisions of this *Section 6.1* shall survive termination, cancellation, suspension, completion or expiration of this Agreement

6.2 To the fullest extent permitted by law, neither the County nor FP&L, nor their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, shall be liable to the other party or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, for claims, suits, actions or causes of action for incidental, indirect,

special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law, under any indemnity provision or any other theory of recovery. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct damages only, and such direct damages shall be the sole and exclusive measure of damages and all other remedies or damages at law or in equity are waived; provided, however, that this sentence shall not apply to limit the liability of a party whose actions giving rise to such liability constitute gross negligence or willful misconduct. The provisions of this *Section 6.2* shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this Agreement. Nothing contained in this Agreement shall be deemed to be a waiver of a party's right to seek injunctive relief.

ARTICLE VII
COMPLIANCE WITH CERTAIN REQUIREMENTS

7.1 **Compliance with Certain Legal Requirements.** Each Party shall comply and cause its contractors and consultants to comply with applicable federal, state and local codes, ordinances, rules and regulations in performing their respective duties, responsibilities and obligations pursuant to this Agreement. The Parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement. Such laws include but are not limited to the following: Miami-Dade County Resolution No. R-385-95, which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 ("**ADA**") and other laws prohibiting discrimination on the basis of disability; Miami-Dade County Ordinance No. 72-82 (Conflict of Interest); Resolution No. R-1049-93 (Affirmative Action Plan Furtherance and Compliance); Resolution No. R.-185-00 (Domestic Leave Ordinance); and Ordinance No. 02-68 (Security).

7.2 **Records.** FP&L shall maintain for at least three (3) years after completion of the Reclaimed Water Project a copy of its records pertaining to the Reclaimed Water Project within Miami-Dade County and, upon reasonable prior notice, such records shall be made available to representatives of the County.

7.3 **Inspections.** The Office of the Miami-Dade County Inspector General ("**IG**") has the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions pursuant to Section 2-1076 of the Miami-Dade County Code.

ARTICLE VIII
MISCELLANEOUS

8.1 **Representations and Warranties.** Each Party represents and warrants that: (a) it is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and is qualified to do business in all jurisdictions where it is required to be qualified; (b) it has the necessary power and authority to enter into and perform its obligations under this Agreement; (c) it has duly authorized the person(s) signing this Agreement to execute this Agreement on its behalf; (d) upon execution, this Agreement will be a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (e) the execution and delivery of this Agreement and its performance by such Party

will not violate, result in a breach of or conflict with any law, rule, regulation, order or decree applicable to such Party, its organizational documents or the terms of any other agreement binding on such Party.

8.2 **Notice.** All notices required under this Agreement shall be in writing unless expressly specified otherwise herein, and shall be delivered in person, by certified mail or by a nationally recognized overnight courier, return receipt requested, or by facsimile transmission or electronic mail, if an electronic mail address is provided, with confirmation by voice or automatic answer-back service promptly following such facsimile transmission or electronic mail, as specified below:

As to the County:
Carlos Alvarez, Miami-Dade County Mayor
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-3618

With a copy to:

George Burgess, Miami-Dade County Manager
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-1262

John W. Renfrow, P.E., Director
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, Florida 33146]
Facsimile: (786) 552-8647

Robert. A. Cuevas, Jr., Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, Florida 33128
Facsimile: (305) 375-5634

As to FP&L:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 304-5233
Attention: Vice President of Development

With a copy to:

Florida Power & Light Company
Law Department (Law/JB)

700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 691-7305
Attention: Managing Attorney-Commercial Transactions

Notices shall be effective upon receipt; provided, that in the event a Party fails to notify the other of the correct person and address for notices pursuant to *Section 8.2*, any notice to that Party shall be deemed effective on the third day following the date such notice is sent to the person and address last provided by such Party. Either Party may, at any time, by notice designate any different person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

8.3 **Disputes.** In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "**Dispute**"), the Coordination Committee shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the director of WASD and VP of Development at FP&L of the Parties for resolution. If the Dispute has not been resolved within twenty (20) Business Days after such referral to the director of WASD and VP of Development at FP&L of the Parties, then either Party may pursue all available remedies. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner.

8.4 **Governing Law; Submission to Jurisdiction.**

8.4.1 This Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.

8.4.2 Any litigation between the Parties shall be conducted in the courts of the State of Florida in the Circuit Court for Miami-Dade County, Florida, or the United States District Court for the Southern District of Florida, and the parties hereby submit to the exclusive jurisdiction of such courts. The Parties irrevocably waive any objection that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of *forum non conveniens* and any objection based on the grounds of lack of *in personam* jurisdiction.

8.4.3 In any litigation arising from or related to the Agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with the Agreement, or any course of conduct, course of dealing, statements (whether oral or written) or actions of either Party to the Agreement. This provision is a material inducement for the County and FP&L to enter into this Agreement.

8.5 **Relationship of Parties.** The Parties understand and agree that no Party is an agent, employee, contractor, vendor, representative or partner of any other Party, that (except as expressly set forth in writing) no Party shall owe a fiduciary duty to any other Party; that no Party shall hold itself out as such to third parties; and that no Party is capable of binding any other Party to any obligation or liability without the prior written consent of the other Party. Neither the execution and delivery of this Agreement, nor consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement among the Parties.

8.6 **County as Sovereign.** It is expressly understood that notwithstanding any provision of this Agreement and the County's status thereunder:

8.6.1 The County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the FP&L Facilities or the operation thereof, or be liable for the same; and

8.6.2 The County shall not by virtue of this Agreement be obligated to grant FP&L any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the FP&L Facilities.

8.6.3 Notwithstanding and prevailing over any contrary provision in this Agreement or in the Reclaimed Water Service Agreement, any County covenant or obligation that may be contained in this Agreement or the Reclaimed Water Service Agreement, including but not limited to the following:

(a) to cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist FP&L regardless of the purpose required for such cooperation;

(b) to execute documents or give approvals, regardless of the purpose required for such execution or approvals;

(c) to apply for or assist FP&L in applying for any County, City or third party permit or needed approval; or

(d) to contest, defend against, or assist FP&L in contesting or defending against any challenge of any nature;

shall not bind the Board, the Planning and Zoning Department, DERM or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power; and the County shall be released and held harmless, by FP&L from any liability, responsibility, claims, consequential or other damages, or losses to FP&L or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the Parties recognize that the approval of development approvals and permits will require the County to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Agreement, the County shall have no obligation to approve, in whole or in part, any application for a development entitlement. The County's obligation to use reasonable good faith efforts in the processing and obtaining of such development approvals and permits shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any applications. Moreover, in no event shall a failure of the County to adopt any of the development approvals and permits be construed a

breach or default of this Agreement.

8.7 **Remedies.**

8.7.1 In the event of any breach or threatened breach of this Agreement by any Party hereto, the other Party shall be entitled to equitable relief through an injunction in addition to any other rights and remedies available to it.

8.7.2 Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

8.7.3 Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that Party of any claim for damages it may have by reason of the default. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

8.8 **Assignment or Sale, Etc.** Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that without the prior consent of FP&L, the County may assign its rights and interests under this Agreement to a financial institution (the "**Institution**") as collateral security, or create a security interest in favor of the Institution over its rights and interests in this Agreement. Any attempt by a Party to make any assignment, sale, lease, transfer or other disposition described in this *Section 8.8* in violation of this *Section 8.8* shall be void ab initio and shall not be effective.

8.9 **Amendments**. This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by the Parties. This Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and permitted assigns.

8.10 **Survival**. The obligations, rights, and remedies of the Parties hereunder, which by their nature survive the termination of this Agreement, shall survive such termination and inure to the benefit of the Parties.

8.11 **Construction of Agreement**. The Parties expressly agree that no provision of this Agreement should be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having been deemed to have structured or dictated such provision.

8.12 **Complete Agreement**. This Agreement is intended as the complete and exclusive statement of the agreement between the Parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement and recourse may not be had to alleged prior drafts, negotiations, prior dealings, usage of trade, course of dealing or course of performance to explain or supplement the express terms of this Agreement. Except as specifically set forth in this Agreement, there shall be no warranties, representations or other agreements among the Parties in connection with the subject matter hereof.

8.13 **Counterparts.** This Agreement may be executed and delivered in counterparts, and may be delivered by facsimile transmission.

8.14 **Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of the provisions hereof to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

8.15 **Integration.** The terms and provisions contained in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes and terminates all previous undertakings, representations and agreements, both oral and written, between the Parties with respect to the Reclaimed Water Project.

8.16 **General Interpretive Provisions**. Whenever the context may require, terms used in this Agreement shall include the singular and plural forms, and any pronoun shall include the corresponding masculine and feminine forms. The term "including", whenever used in any provision of this Agreement, means including but without limiting the generality of any description preceding or succeeding such term. Each reference to a Person shall include a reference to such Person's successors and assigns. All references to "Sections" or "Exhibits" shall be references to the Sections and Exhibits to this Agreement, except to the extent that any such reference specifically refers to another document. The Exhibits to this Agreement are incorporated into and form a part of this Agreement. Each of the Parties has agreed to the use of the particular language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman.

8.17 **Absence of Third-Party Beneficiaries**. Nothing in this Agreement, express or implied, is intended to (a) confer upon any person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

8.18 **Headings.** Captions and headings in this Agreement are included 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.

8.19 **Time of Essence.** Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

[signatures on following page]

JI

IN WITNESS WHEREOF, the COUNTY and FP&L, by their duly authorized officials, have executed this Agreement, with the Exhibit attached as of the day and year above.

ATTEST:

MIAMI-DADE COUNTY

_____
Witness

_____
Print Name

ATTEST:

By:_____
Clerk (Seal)

MIAMI-DADE COUNTY

By:_____
County Mayor

ATTEST:

By:_____
Witness

MANUEL J. RODRIGUEZ
Print Name

FLORIDA POWER & LIGHT COMPANY

By: _____
Name: Eric E. Silagy
Title: Senior Vice President, Regulatory and State Governmental Affairs

LEGAL
PEA

Approved as to form
and legal sufficiency:

Sarah Elizabeth Davis
Assistant County Attorney

Exhibit I – Form of Reclaimed Water Service Agreement

EXHIBIT I

FORM of AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
FLORIDA POWER & LIGHT COMPANY
PROVIDING FOR THE RENDITION OF RECLAIMED WATER SERVICE

THIS AGREEMENT, made and entered into at Miami-Dade County, Florida, this ____day of_____, 20__ by and between **Miami-Dade County**, a political subdivision of the State of Florida, (the "**COUNTY"**), and Florida Power & Light Company, a Florida Corporation (**"FP&L"**, and together with the COUNTY, the **"Parties"**). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Joint Participation Agreement (**"JPA"**) (as defined herein).

W I T N E S S E T H:

WHEREAS, the Miami-Dade Water and Sewer Department (the "**Department**") operates and maintains the COUNTY's water reclamation system; and

WHEREAS, the State of Florida, Department of Environmental Protection requires the COUNTY to process and treat wastewater in order to produce water for reuse ("**Reclaimed Water**") pursuant to Section 403.064, F.S.; and

WHEREAS, FP&L owns a nuclear power generation site located in southeastern Miami-Dade County, Florida (the "**Turkey Point Complex**" or "**TP Complex**"); and

WHEREAS, FP&L has identified the need and requested Reclaimed Water service at the TP Complex for the operation of its existing Unit 5 and for the construction and operation of two (2) proposed nuclear power units (**"Units 6 and 7"**, jointly with Unit 5 the "**Units**") with anticipated in-service dates of July 31, 2018 and July 31, 2020, respectively; and

WHEREAS, the COUNTY agrees to construct water reclamation facilities at its North, Central, South and proposed West District Wastewater Treatment Plants (jointly the "**WWTPs**") capable of satisfying FP&L's Reclaimed Water requirements at the TP Complex; and

WHEREAS, FP&L agrees to manage the engineering, procurement and construction of the transmission pipeline connecting the COUNTY's South District Wastewater Treatment Plant to the TP Complex (the "**Pipeline**"); and

WHEREAS, FP&L agrees to convey the Pipeline to the COUNTY (in accordance with the terms set forth herein) and following such conveyance, the County shall own the Pipeline; and

WHEREAS, the COUNTY and FP&L have entered into a Joint Participation Agreement Providing for the Development of a project (the "**Reclaimed Water Project**") dated _____, 2010 (the "**JPA**"), which sets forth various duties and obligations of the COUNTY and FP&L with respect to the development of the Reclaimed Water Project and utilization of Reclaimed Water at the TP Complex.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth, the COUNTY and FP&L hereby covenant and agree as follows:

1. **Conditions Precedent.** Notwithstanding FP&L's execution and delivery of this Agreement, FP&L's obligations hereunder shall only become effective upon the Commitment Date (as provided for in this Section) and upon the following conditions being satisfied prior to the Commitment Date (or waived by FP&L, in its sole discretion):

A. FP&L has received those federal, state and local governmental permits and regulatory approvals (the "**FP&L Required Approvals**") set forth in Exhibit I required for the continued operation of Unit 5 and the ownership, financing, siting, construction and operation of Units 6 and 7, including a final certificate issued by either the Siting Board (as such term is defined in the Power Plant Siting Act) or the Florida Department of Environmental Protection in Final Form (as provided for herein) and containing terms and conditions satisfactory to FP&L in its sole discretion; and

B. The COUNTY shall have received those federal, state and local governmental permits and regulatory approvals (the "**COUNTY Required Approvals**") set forth in Exhibit I required for the ownership, financing, siting, construction and operation of the COUNTY FACILITIES (as defined in the JPA) and related infrastructure in Final Form and containing terms and conditions satisfactory to the County and FP&L, in each party's respective discretion; and

C. FP&L has received all required management and Board of Director consents and authorizations to proceed with the Turkey Point 6 & 7 project.

For purposes of Sections 1(A) and 1(B), the term "**Final Form**" means that (i) the determination, decision or order (each referred to as an "**Order**") from the relevant governmental authority that issues, grants or confirms the FP&L Required Approvals or the COUNTY Required Approvals in question has been issued and adopted by such governmental authority, (ii) such Order has not been and cannot be stayed, enjoined, appealed, set aside or suspended, (iii) such Order is no longer subject to any prescribed waiting or appeal period, and (iv) any and all pre-conditions to the effectiveness of the FP&L Required Approvals or the COUNTY Required Approvals in question as are prescribed in such Order or as are otherwise required by applicable law have been satisfied.

Within fifteen (15) days following the receipt of all FP&L Required Approvals and COUNTY Required Approvals, the appropriate Party shall send written notice to the other Party confirming such receipt and whether such approvals are in Final Form. The "**Commitment Date**" shall be the date upon which FP&L provides final notice (the "**Final Notice**") to the COUNTY that the FP&L Required Approvals and the COUNTY Required Approvals are satisfactory to FP&L and that it has obtained all required management and Board of Director consents and authorizations.

2. **Design, Construction and Conveyance of the Pipeline.**

A. **Procurement of Services:** FP&L shall be responsible for the procurement of engineering and construction services to design and construct the reclaimed water Pipeline.

B. **Design and Construction of Facilities:** FP&L will manage the engineering, procurement and construction of the Pipeline. FP&L will establish and maintain the Pipeline project schedule. FP&L will consult with the County during the engineering design phase to ensure that the engineering design, material and construction methods of the Pipeline are consistent with all applicable regulations and meets the requirements for bond service obligations as identified by the County's Bonding Engineer. [Additional terms to be agreed upon by FP&L and the COUNTY].

C. **Approvals and Permits:** FP&L will apply for and manage compliance with all permits and approvals necessary for the construction of the Pipeline. [Additional terms to be agreed upon by FP&L and the COUNTY]. .

D. **Inspection:** [Terms to be agreed upon by FP&L and the COUNTY].

E. **Tests:** During construction and at the time when various tests are required, the COUNTY's engineer or its authorized representative, together with FP&L's engineer and contractor, shall jointly be present to witness tests for determination of conformance with approved plans and specifications. FP&L shall notify the COUNTY a minimum of forty-eight (48) hours in advance of the tests.

F. **Construction Meetings:** The Oversight Committee (as defined in Section 8(B)) shall be responsible for scheduling all construction meetings.

G. **Facilities Easements:** [Terms to be agreed upon by FP&L and the COUNTY].

H. **Reimbursement:** At the time of conveyance, the County will reimburse FP&L for all actual Material and Labor Costs in an amount not to

exceed the Material and Labor Cap, FP&L will convey the Pipeline to the County and the County will become the owner of the Pipeline. "**Material and Labor Cap**" means the maximum amount of Material and Labor Costs to be paid by the County and shall be set at $78 million dollars as of January 1, 2010; with a cap escalating each year thereafter by four (4) percent per year, on a monthly pro-rata basis, until FP&L has been reimbursed for all actual Material and Labor Costs and the Pipeline has been conveyed by FP&L to the County. "**Material and Labor Costs**" means any and all costs associated with procurement and financing of the materials, equipment and labor costs associated with the construction of the Pipeline, but shall not include the cost of any FP&L employees involved in the design, and construction management services for the Pipeline.

Upon conveyance of the facilities by FP&L to the COUNTY, FP&L shall submit an invoice to the COUNTY, including all necessary supportive documentation from FP&L's contractor, suppliers, and in-house expenses. The COUNTY shall reimburse FP&L for the amount specified on the invoice at the time of conveyance of the Pipeline.

I. **Drawings and Conveyance Documents:** Following completion of the Pipeline, FP&L shall convey to the COUNTY, by properly executed Bill of Sale, all of its right, title and interest in the Pipeline constructed by FP&L and appropriate easements for the operation and maintenance of such facilities. Following the COUNTY's acceptance of the Bill of Sale, the Pipeline shall be under the sole, complete and exclusive control and operation of the Oversight Committee (as defined in Section 8(B)). The Bill of Sale for the Pipeline shall be accompanied by copies of paid bills and lien waivers, releases, or satisfactions from all persons who performed work and from all persons who incorporate materials into the projects, together with a breakdown of the actual cost of said facilities. Concurrently, FP&L shall furnish the COUNTY with one (1) set of Mylar as-built drawings of all facilities showing specific locations and depths among other things, as located by a licensed surveyor, along with five (5) prints of the as-built drawings which have been sealed by a surveyor and certified by the engineer of record along with the electronic file acceptable to the Department. Approval by the COUNTY of all required documents, drawings and surveys specified herein shall constitute final approval by the COUNTY of said Pipeline.

J. **Warranty and Maintenance Bond:** [Terms to be agreed upon by FP&L and the COUNTY].

K. **Additional Conditions/Agreements:** The Parties shall continue to review all aspects of the design, engineering, and construction of the Pipeline, including, but not limited to, the subject matters and specific terms set forth in this Section 2 and shall address identified needs through the Oversight Committee via a mutually agreed upon method (e.g. amendment or separate contract).

3. **Term.** The term of this Agreement ("**Term**") shall commence upon the Service Initiation Date (as defined in Section 4 below) and shall, unless this Agreement is either: (a) earlier terminated or (b) extended, in either case in accordance with the provisions of this Agreement, continue until the fortieth (40th) anniversary of the Service Initiation Date (defined herein). After the forty (40) year Term, FP&L shall, in its sole discretion, have the right to extend the Term of this Agreement for as many as two (2) successive extension periods, each of which extension periods to run for an additional twenty (20) years. In order to effectuate such extensions, FP&L shall provide a written extension notice to COUNTY within two (2) years of the expiration of the initial Term, or, if applicable, the first extension Term is in effect.

4. **Reclaimed Water Service.** The "**Service Initiation Date**" shall be such date following the Commencement Date upon which the COUNTY shall deliver and FP&L shall receive at the Delivery Point (as such is described in Exhibit III) the quantities of Reclaimed Water set forth in Exhibit II.

5. **Water Quality.** The Reclaimed Water delivered to FP&L shall satisfy: (i) the requirements of High Level Disinfection as defined in Rule 62-600.440(5), F.A.C., as amended from time to time; (ii) the water quality treatment requirements of Rule 62-610.668(2)(d), F.A.C., for use in a cooling tower without a 300 foot setback, as such requirements exist as of the effective date of the JPA; and (iii) the requirements of Chapter 62-528, F.A.C., as amended from time to time, for injection of non-hazardous wastewater in a Class I UIC well ((i), (ii) and (iii) above, the "**Quality Standard**"). FP&L agrees to accept all quantities (consistent with Exhibit II) of Reclaimed Water delivered by the COUNTY that satisfies the Quality Standard; provided, FP&L shall be responsible for any additional treatment that may be required for the utilization of the Reclaimed Water by FP&L at the TP Complex.

6. **Delivery.** The Reclaimed Water furnished will be delivered by the COUNTY and will be accepted and received by FP&L at the Delivery Point.

7. **Additional Facilities.**

A. The COUNTY shall, at its sole expense, develop an alternative method of disposal of the Reclaimed Water and FP&L shall, at its sole expense, develop an alternative source of cooling water for its use at the TP Complex in the event of system failures, forced outages, facility maintenance or Force Majeure events.

B. FP&L shall design and construct any infrastructure that is required by FP&L to provide increased reliability or redundancy to the delivery of Reclaimed Water the "**Additional Facilities**"); FP&L shall be responsible for the actual costs and expenses related to such Additional Facilities.

8. **Specific Obligations of the Parties.**

A. The COUNTY shall own, operate and maintain those Reclaimed Water facilities up to and including the Delivery Point and FP&L shall own, operate and maintain those Reclaimed Water facilities from the Delivery Point to the TP Complex.

B. Oversight for the operation and maintenance of the Pipeline shall be provided by a committee (the "**Oversight Committee**") comprised of four (4) members. Each Party shall have the right to appoint two members to the Oversight Committee. Each Party may, at any time, change either or both of its members of the Oversight Committee or appoint an alternate during the absence of either or both members. Appointments shall be effected by written notice to the other Party. The Oversight Committee shall be the final authority on, and shall render all decisions material to, the operation and maintenance of the Pipeline; provided, however, that the authority of the Oversight Committee as to the operation and maintenance of the Pipeline located on COUNTY Property shall not exceed the authority of the COUNTY. The duties of the Oversight Committee shall include: (i) review of Pipeline operations and maintenance plans and budget, and (ii) review of Pipeline long term renewal and replacement plans and budget. All such decisions made by the Oversight Committee shall be decided pursuant to the voting majority and consistent with: (i) FP&L and COUNTY Required Approvals, (ii) all applicable laws, rules and regulations, including, with respect to the maintenance, repair and replacement of the Pipeline, Section 606 of COUNTY Ordinance No. 93-134, (iii) good engineering practices, and (iv) the health and safety of the public or COUNTY or FP&L employees, contractors, or agents. Pursant to Section 607 of COUNTY Ordinance No. 93-134, the COUNTY'S bond consultant shall be permitted to inspect the Pipeline and prepare and deliver to the Oversight Committee an annual report containing recommendations on renewal and replacement of the Pipeline. Notwithstanding the foregoing, if the COUNTY in good faith believes that a specific course of action is required to protect the health and safety of the public or COUNTY, or FP&L employees, contractors, or agents, the COUNTY shall have the ability to invoke the dispute resolution procedures set forth in Section 21. The Oversight Committee shall meet regularly (which meetings may include telephonic meetings, and the minutes of which shall be recorded in writing) to discuss, among other items: (i) the operation of the Pipeline, and (ii) schedule and coordination of future activities. If the Oversight Committee is unable to reach agreement on any matter within its duties and authority, the Parties shall follow the dispute resolution process as set forth in Section 21.

9. **Meter.**

A. The COUNTY shall, at its own expense, own, install, operate and maintain any required Reclaimed Water meters and associated measuring and recording equipment (the "**Meter**") necessary to permit an accurate determination of the quantities of reclaimed water delivered daily to FP&L under this Agreement and make available to FP&L, at no cost to FP&L, all of the data from such Meter.

The Meter shall indicate flow with an error not to exceed plus or minus two percent of full scale reading ("**True Accuracy**"); and

B. The COUNTY shall exercise reasonable care in the maintenance and operation of the Meter so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of reclaimed water delivered under this Agreement; and

C. The accuracy of the COUNTY's Meter shall be tested and verified by the COUNTY, at its sole expense, once every six months. The COUNTY shall provide the results of the checking to FP&L no later than 30 days after the Meter is checked. If FP&L desires to be present for such Meter checks, it shall be FP&L's responsibility to contact the COUNTY and make arrangements to be present; and

D. If the Meter is found to be in error exceeding two percent (2%) of True Accuracy, the Meter shall be recalibrated to the satisfaction of both parties. If such error of more than two percent is discovered, bills for the periods following the prior Meter accuracy check shall be adjusted to reflect the quantity of over-read or under-read exceeding two percent. In calculating such billing adjustment it will be assumed that the Meter inaccuracy existed for the entire time interval between Meter accuracy tests; and

E. FP&L shall have the right, at its own expense, to own, install and maintain a "check" meter on the outlet side of the COUNTY's Meter.

10. **Required Approval.** Except for such activities as set forth in Section 2 of the JPA, prior to the COUNTY's commencement of the detailed design of the reclamation water facilities to serve the TP Complex, FP&L must have obtained the FP&L Required Approvals.

11. **Compensation**. Commencing on the Service Initiation Date and for the term of this Agreement, FP&L shall pay to the COUNTY, as compensation for the treatment and transmission of all Reclaimed Water delivered to the TP Complex, a monthly charge based on the sum of the following:

A. R&R Charge: A charge per month equal to one-twelfth of the annual renewal and replacement funding requirement for the Pipeline, which shall equal the average of the projected renewal and replacement funding requirement for the Pipeline for the current year and subsequent two years as recommended by the Oversight Committee (the "**R&R Fee**"). Such proceeds shall be used exclusively by the COUNTY to provide for a renewal and replacement fund (the "**FP&L R&R Fund**") for the benefit of the Pipeline. The FP&L R&R Fund shall be interest bearing, managed by the Oversight Committee, accounted for separately by the COUNTY and be dedicated solely to the Reclaimed Water Project. The Oversight Committee shall comply with all

applicable COUNTY procurement and expenditure policies and procedures when making expenditures from the FP&L R&R Fund. In the event the funds available in the FP&L R&R Fund are not sufficient for necessary repairs as agreed upon by the Oversight Committee, FP&L will be responsible to fund any shortfall necessary to affect the necessary repairs.

(1) In the event there are third party customers utilizing the Pipeline, then FP&L shall be reimbursed annually by the COUNTY for a portion of the R&R Fee related to such third party use of the Pipeline. Such reimbursement shall be calculated on a pro rata, metered flow basis.

(2) Any proceeds remaining in the FP&L R&R Fund at the end of the initial Term shall be applied to the renewal and replacement of the Pipeline during any extension period (as such is provided for in Section 3), or, if there is no such extension, such proceeds shall be distributed promptly to FP&L. Prior to the execution of any extension hereto, the COUNTY shall determine whether the funds remaining in the FP&L R&R Fund are sufficient to cover any renewals, replacements, repairs, and/or capital improvements necessary for the Pipeline to provide Reclaimed Water to FP&L in accordance with the terms and conditions of said extension (the "**Necessary Improvements**"). Where the COUNTY determines that the funds remaining in the FP&L R&R Fund are not sufficient to complete the Necessary Improvements, the COUNTY shall provide to the Oversight Committee the COUNTY's recommendation for additional funds required to complete the Necessary Improvements. If the Oversight Committee is in agreement with the COUNTY's recommendation, or if the Oversight Committee provides an alternative recommendation of Necessary Improvements that is acceptable to the COUNTY, the COUNTY shall cause said Necessary Improvements to be completed. In such case, COUNTY shall utilize the funds remaining in the FP&L R&R Fund, and FP&L shall be responsible for payment of any costs not covered by the FP&L R&R Fund. If the Oversight Committee is not in agreement with the COUNTY's recommendation, and any alternative recommendation provided by the Oversight Committee is not acceptable to the COUNTY, the Parties shall follow the dispute resolution process as set forth in Section 22. Following the dispute resolution process as set forth in Section 22, the COUNTY shall cause the recommendations from such process to be completed. In such case, the COUNTY shall utilize the funds remaining in the FP&L R&R Fund, and FP&L shall be responsible for payment of any costs not covered by the R&R Fund. The R&R Fee shall be paid over the Term of the Agreement and any extensions thereto.

B. O&M and Other Service Charges. A monthly service charge equal to the sum of the following:

(1) An amount equal to (a) (i) all budgeted annual operating and maintenance expenses, including taxes assessed, if any, and the costs of electricity for pump station operation, but excluding capital maintenance of the pump stations, for the Pipeline, divided by (ii) the budgeted annual flows through the Pipeline, multiplied by (b) FP&L's monthly metered volume of reclaimed water usage; and

(2) An amount equal to (a) the budgeted annual sewer allocation for customer accounting and customer service, divided by (b) the projected number of retail sewer customers for the budget period; and

(3) An amount equal to (a) the budgeted annual sewer allocation for general and administrative costs, divided by (b) the projected number of retail sewer customers for the budget period.

C. Additional Facilities. For any Additional Facilities, as defined in Section 7(B) of this Agreement, required by FP&L that are funded through revenue bonds or other COUNTY obligations, in addition to the above charges, a fixed monthly charge equal to one-twelfth the sum of the following:

(1) An amount equal to the portion of annual interest obligations of outstanding notes and bonds issued to fund such Additional Facilities; and

(2) An amount equal to the portion of budgeted annual charge for the amortization of the COUNTY's outstanding notes and bonds issued to fund such Additional Facilities; and

(3) An amount equal to the charge for the portion of debt service coverage requirement for bonds issued to fund such Additional Facilities.

Exhibit V contains an example compensation calculation created by the COUNTY based on estimated numbers from 2008.

12. **Right to Revise Rates.** The COUNTY reserves the right to revise or modify the rate as may be approved by the Board of County Commissioners in accordance with applicable law and, except as set forth in Section 3, FP&L agrees to be bound thereby, provided, however, that such revision is consistent with the actual operation and maintenance costs detailed in Section 11.

13. **Duty to Consult.** The Parties agree to consult one another in all aspects of the Pipeline design, engineering, construction, operation and maintenance. Without limiting the foregoing, the COUNTY shall consult FP&L in its design of the Pipeline and the COUNTY shall consider any and all reasonable changes to the Pipeline design requested by FP&L. Furthermore:

A. The COUNTY shall notify FP&L of any and all maintenance, renewal or replacement activities performed on the Pipeline or operational changes that result in flow variations in excess of those set forth in Exhibit II.

B. The Parties shall coordinate the maintenance and periodic shut-down of their respective facilities as set forth in Exhibit II.

14. **Venue, Relief, Remedies.** Any and all suits brought by either Party shall be instituted and maintained in any court of competent jurisdiction in Miami-Dade County, Florida. In the event of any breach or threatened breach of this Agreement by any Party hereto, the other Party shall be entitled to equitable relief through an injunction in addition to any other rights and remedies available to it.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

Any failure of a Party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that Party of any claim for damages it may have by reason of the default. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

15. **Submission to Jurisdiction.** In any litigation arising from or related to this Agreement, the Parties hereto each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, or any course of conduct, course of dealing, statements (whether oral or written) or actions of either Party to this Agreement. This provision is a material inducement for the COUNTY and FP&L to enter into this Agreement.

16. **Indemnification.** FP&L and the COUNTY shall each be responsible for its own facilities, for protection of its own systems, and for ensuring adequate safeguards for FP&L and the COUNTY customers, and the personnel and equipment of the COUNTY and FP&L. To the extent permitted by law, and subject to the limitations set forth in Section 768.28, F.S., the COUNTY shall indemnify, defend and hold FP&L harmless, and FP&L shall indemnify, defend and hold the COUNTY harmless, from any and all claims, demands, costs or expenses, for loss, damage or injury to persons or property caused by, arising out of, or resulting from: (a) any act or omission by the respective Party or that Party's contractors, agents, servants and employees in connection with the development, construction or operation of that Party's facilities or systems, or the operation thereof in connection with the other Party's facilities or

systems, (b) any defect in, failure of, or fault related to, a Party's facilities or systems, or (c) the negligence of the respective Party or negligence of that Party's contractors, agents, servants or employees. The respective Party shall pay all claims, costs, damages and losses in connection with (a), (b) or (c) above, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the other Party, where applicable, including appellate proceedings and shall pay all costs, judgment and attorney's fees that may issue thereon. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, F.S., nor shall the same be construed to constitute agreement by either Party to indemnify the other Party for such other Party's negligent, willful, or intentional acts or omissions.

17. **Limitation of Liability.** To the fullest extent permitted by law, neither the COUNTY nor FP&L, nor their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, shall be liable to the other Party or their respective officers, directors, agents, employees, members, parents, subsidiaries or affiliates, successors or assigns, for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this agreement, or any actions undertaken in connection with or related to this agreement, including without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law, under any indemnity provision or any other theory of recovery. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct damages only, and such direct damages shall be the sole and exclusive measure of damages and all other remedies or damages at law or in equity are waived; provided, however, that this sentence shall not apply to limit the liability of a party whose actions giving rise to such liability constitute gross negligence or willful misconduct. The provisions of this Section 17 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this contract. Nothing contained in this agreement shall be deemed to be a waiver of a Party's right to seek injunctive relief.

18. **Default.**

A. Each of the following shall constitute an **"Event of Default"** by the COUNTY:

(1) The COUNTY abandons the development, permitting, acquisition of easements and lands, financing or the operation and maintenance of the Reclaimed Water Project (as such term is defined in the JPA); or

(2) The COUNTY fails to achieve any of its milestones as set forth by the Oversight Committee; provided, it shall not be considered a

default of the COUNTY if the failure to achieve such milestone is caused by a failure on the part of FP&L in the performance of its milestones; or

(3) If, during any month following the Service Initiation Date, the COUNTY fails, for ten(10) consecutive calendar days, to make available to FP&L the quantities of Reclaimed Water set forth in Exhibit II and such failure is not excused by reason of Force Majeure; or

(4) The COUNTY is in default of any material provision of this Agreement (including water quality provisions) not specifically mentioned in this Section 18.A. and the COUNTY has failed to cure such default within ten (10) calendar days after notice of such default from FP&L to the COUNTY. If it is not feasible to correct such default within ten (10) calendar days after FP&L has delivered notice of such default to the COUNTY, but it remains feasible to correct within thirty (30) calendar days, and (ii) if within ten (10) calendar days after said notice from FP&L, the COUNTY provides FP&L notice of its intention to cure such default and evidence that it remains feasible to correct such default within thirty (30) calendar days after such notice from FP&L, it shall not constitute an Event of Default hereunder until the earliest feasible date within such thirty (30) calendar days period when a cure could be effected so long as (i) corrective action by the COUNTY is instituted within ten (10) calendar days following the notice from FP&L, (ii) such corrective action is diligently pursued, (iii) the COUNTY provides FP&L bi-weekly written reports as to the nature and progress of such corrective action, and (iv) such cure is effected within thirty (30) calendar days of the notice from FP&L.

B. Each of the following shall constitute an "**Event of Default**" by FP&L:

(1) FP&L refuses, in writing, to receive the Reclaimed Water or make payments due to the COUNTY and such refusal is not (a) subject to good faith dispute, or (b) excused by reason of Force Majeure;

(2) FP&L fails to make a payment due to the COUNTY that is not subject to a good-faith dispute within forty-five (45) calendar days after notice from the COUNTY that such payment is due under this Agreement;

(3) FP&L fails to achieve any of its milestones as set forth by the Oversight Committee; provided, it shall not be considered a default of FP&L if the failure to achieve such milestone is caused by a failure on the part of the COUNTY in the performance of its milestones; or

(4) FP&L is in default of any material provision of this Agreement not specifically mentioned in this Section 18.B. and FP&L has failed to cure such default within ten calendar (10) days after notice of

such default from the COUNTY to FP&L. If it is not feasible to correct such default within ten (10) calendar days after the COUNTY has delivered notice of such default to FP&L, but it remains feasible to correct within thirty (30) calendar days, and (ii) if within ten (10) calendar days after said notice from the COUNTY, FP&L provides the COUNTY notice of its intention to cure such default and evidence that it remains feasible to correct such default within thirty (30) calendar days after such notice from the COUNTY, it shall not constitute an Event of Default hereunder until the earliest feasible date within such thirty (30) calendar day period when a cure could be effected so long as (i) corrective action by FP&L is instituted within ten (10) calendar days following the notice from the COUNTY, (ii) such corrective action is diligently pursued, (iii) FP&L provides the COUNTY bi-weekly written reports as to the nature and progress of such corrective action, and (iv) such cure is effected within thirty (30) calendar days of the notice from the COUNTY.

C. Upon the occurrence of any Event of Default:

(1) If FP&L is the non-defaulting Party, FP&L may, at its option:

(a) terminate this Agreement by written notice to the COUNTY, provided, however, that such option is only available if the COUNTY has defaulted under Section 18.A.1;

(b) apply to any court of competent jurisdiction for the appointment of a receiver to take charge of, manage, preserve, protect, complete the development and construction of, and operate the Reclaimed Water Project (as such term is defined in the JPA), to make all necessary and needed repairs to the Reclaimed Water Project, and to pay all taxes and assessments against the Reclaimed Water Project and insurance premiums for insurance thereof, it being hereby agreed that, upon occurrence of an Event of Default, (i) FP&L shall be entitled to such appointment; (ii) upon application by FP&L, the court may forthwith appoint such receiver with the usual powers and duties thereof; (iii) the COUNTY consents, and the COUNTY shall not object to such appointment; and (iv) appointment of a receiver under this Section 18.C(a) shall not in and of itself terminate this Agreement;

(c) FP&L may, by providing prior written notice to the COUNTY(the "**Step-In Notice**"), effect repair to, and restore operations of, the Reclaimed Water Project consistent with the terms of this Agreement and at FP&L's expense (the "**Step-In**"). Upon receipt of a Step-In Notice the COUNTY shall: (i) cooperate in good faith with FP&L to effect the Step -In, and (ii) grant FP&L any reasonable additional access rights to the Reclaimed Water Project not on FP&L property for the purpose of ingress and egress

to and from to facilitate FP&L's repair and operation of the Reclaimed Water Project. In the event of a Step -In, FP&L's reasonable and documented costs and expenses incurred pursuant to the Step -In by FP&L shall be deducted from the COUNTY'S compensation pursuant to Section 11 until such costs and expenses have been reimbursed in full to FP&L. Such Step-In will be without prejudice to the other remedies FP&L may have under this Agreement, and

(d) exercise any other right or remedy available to FP&L under generally applicable law, under this Agreement or in equity.

(2) If the COUNTY is the non-defaulting Party, the COUNTY may, at its option:

(a) terminate this Agreement without penalty or further obligation to the County by written notice to FP&L, provided, however, that such option is only available if FP&L has defaulted under Section 18.B.1, and

(b) exercise any other right or remedy available to the COUNTY under generally applicable law, under this Agreement or in equity.

(c) Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material obligation of the other Party under this Agreement.

(d) No termination under this Section 18 (or otherwise under this Agreement) shall affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Agreement.

19. **Force Majeure.** Except as otherwise provided in this Agreement, each Party shall be excused, pursuant to the procedures set forth in this Section 19, from performance of its obligations under this Agreement to the extent its nonperformance is caused by Force Majeure. "**Force Majeure**" shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, fires, earthquakes, landslides, hurricanes, epidemics, explosions or other forces of nature, strikes, lockouts, other industrial disturbances, wars, blockades, acts of terrorism, insurrections, riots, federal, state, governmental restrictions, regulations and restraints, military action, civil disturbances, or conditions in federal, or state permits.

A. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall notify the other of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) for performance may be affected thereby. Such notice shall be given to the other Party as soon as practicable but in no event later than three (3) business days after the claiming Party's awareness of the Force Majeure and shall provide such substantiating documentation as may reasonably be required to verify such event or circumstances and its effects within ten (10) days of such notice. The Party claiming Force Majeure shall notify the other Party of the status of its efforts in such form and with such frequency as the other Party reasonably may request under the circumstances (but not less than weekly). When the Party claiming Force Majeure is able to resume performance of its obligations under this Agreement, such claiming Party shall give the other Party prompt notice to such effect.

B. Any Party suffering an occurrence of Force Majeure shall use commercially reasonable efforts to remedy the cause(s) preventing its performance of this Agreement as promptly as possible.

20. **Assignment, or Sale, Etc.** Neither the COUNTY nor FP&L may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that without the prior consent of FP&L, the COUNTY may assign its rights and interests under this Agreement to a financial institution as collateral security, or create a security interest in favor of the financial institution over its rights and interests in this Agreement. Any attempt by a Party to make any assignment, sale, lease, transfer or other disposition described in this Section 20 in violation of this Section 20 shall be void ab initio and shall not be effective.

21. **Notice.** All notices required under this Agreement shall be in writing unless expressly specified otherwise herein, and shall be delivered in person, by registered or certified mail or by a nationally recognized overnight courier, return receipt requested, or by facsimile transmission or electronic mail, if an electronic mail address is provided, with confirmation by voice or automatic answer-back service promptly following such facsimile transmission or electronic mail, as specified below:

As to the COUNTY:

Miami-Dade County
c/o The Director
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, Florida 33146
Facsimile: (786) 552-8647

As to the FP&L:

Florida Power & Light Company
c/o Vice-President of Development
700 Universe Blvd. (EX1/JB)
Juno Beach, Florida 33408-0420
Facsimile: (561) 304-5233

With a copy to:
Florida Power & Light Company
Law Department (Law/JB)
c/o Managing Attorney—Commercial Transactions
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 691-7305

Notices shall be effective upon receipt; provided, that in the event a Party fails to notify the other of the correct person and address for notices pursuant to this Section 21, any notice to that Party shall be deemed effective on the third day following the date such notice is sent to the person and address last provided by such Party. Either Party may, at any time, by notice designate any different person(s) or different address(es) or phone number(s) for receipt of notices and correspondence.

22. **Disputes.** In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "**Dispute**"), the Oversight Committee shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the director of the Department and VP of Development of FP&L for resolution. If the Dispute has not been resolved within twenty (20) business days after such referral to the director of the Department and VP of Development of FP&L, then either Party may pursue all available remedies. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner.

23. **Governing Law.** This agreement shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

24. **Complete Agreement.** This Agreement contains the entire Agreement of the parties with respect to the subject matter and replaces and supersedes all prior agreements or understandings, oral or written, with respect to such subject matter, and such agreements or understandings are now void and no longer in effect.

25. **Severability.** If any Section of this Agreement is found to be null and void, the other Sections shall remain in full force and effect.

26. **Counterparts.** This Agreement may be executed and delivered in counterparts, and may be delivered by facsimile transmission.

27. **Heading.** Captions and headings in this Agreement are included for ease of reference and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provision herein.

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, COUNTY and FP&L, by their duly authorized officials, have executed this Agreement, with the Exhibits attached.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By:_____

Signed in the presence of:

_____
Witness

Date:_____

_____
Print Name

MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor
Miami-Dade County

Date:_____

MIAMI-DADE COUNTY

By: _____
Clerk of the Board

Approved as to form
and legal sufficiency:

_____
Assistant County Attorney

The following provides example content of this Exhibit I of the RWSA. The specific content of this exhibit will be developed by the COUNTY and FP&L as the project due diligence is completed.

[FP&L Required Approvals

(1) Final Order Approving Site Certification of Units 6 & 7 from the State of Florida Siting Board
(2) US Army Corp of Engineers Permits
(3) Nuclear Regulatory Commission Combined Operating License
(4) Florida Department of Environmental Protection Underground Injection Control Permit
(5) Federal Fish and Wildlife Approvals]

COUNTY Required Approvals

(1) [To be provided by Miami-Dade County]

The following provides example content of this Exhibit II of the RWSA. The specific content of this exhibit will be developed by the COUNTY and FP&L as the project due diligence is completed.

[Quantity

Target Range Maximum Daily Quantity (MGD):	90 MGD
Average Daily Quantity (MGD):	75 MGD
Target Range Minimum Daily Quantity (MGD):	40 MGD
Rate of Change Limit (gpm/hour)	TBD
Measurement Methodology at Delivery Point:	[MDC to provide]

Coordination Requirements

This section will outline the requirements on the Parties to coordinate maintenance and operational activities. The section will address such items as:

- Periodic planning meetings between COUNTY and FP&L operational staff to jointly identify and resolve future schedule issues and ongoing operational concerns.
- Notification criteria and lead times for required notification of FP&L by COUNTY regarding ability to produce and deliver Reclaimed Water related to Pipeline operation and maintenance.
- Notification criteria and lead times for required notification of COUNTY by FP&L regarding the ability to receive Reclaimed Water related to operation and maintenance of the Units or related facilities.]

Exhibit III – Delivery Point

Delivery Point Description

This exhibit will provide a diagrammatic representation of the interconnection of the Pipeline and the FP&L TP Complex, including a demarcation of ownership.

Exhibit IV – Sample Form of Easement

The following is subject to further comment by FP&L & the COUNTY.

[Prepared by & Return to:

Florida Power & Light Company
700 Universe Boulevard LAW/JB
Juno Beach, FL 33408

RE Parcel #: _____

RECLAIMED WATER PIPELINE EASEMENT

THIS RECLAIMED WATER PIPELINE EASEMENT made this _____day of_____20__, between **FLORIDA POWER & LIGHT COMPANY,** a Florida Corporation whose business address is 700 Universe Boulevard, Juno Beach, FL 33408 (the "**Grantor**"), and **MIAMI DADE COUNTY,** with an address of _____ (the "**Grantee**").

WITNESSETH: that Grantor, for and in consideration of the sum of Ten and 00/100 dollars ($10.00) and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt of which is hereby acknowledged, hereby grants, bargains, sells, and conveys to Grantee, its successors and assigns forever, a non-exclusive, unobstructed easement with the right, privilege, and authority to said Grantee, its successors and assigns, to construct, operate, lay, maintain, improve, and/or repair, below the surface of the ground, one _____inch reclaimed water pipeline (the "**Pipeline**") under and through a strip of land _____feet in width situate in Miami Dade County, Florida and more particularly described in the attached **Exhibit "A"** (the **"Easement Area**") which is located within land owned by Grantor in fee and geographically depicted on the attached **Exhibit "A-1":**

SEE EXHIBIT "A" and EXHIBIT "A-1" ATTACHED HERETO

TOGETHER with the right of ingress and egress to the Easement Area, and for the purpose of surveying and clearing the Easement Area of brush, trees and obstruction, and for excavating, constructing, operating, inspecting, repairing, replacing, protecting, altering, moving or removing the Pipeline and appurtenances of the Grantee located thereon, in whole or in part, at the will of the Grantee.

It is further agreed by Grantor and Grantee as follows:

1. That the exact location of the Easement Area conveyed hereunder is set forth on **Exhibit "A".**

2. That prior to commencing construction, Grantee will hold a meeting with Grantor regarding construction guidelines, procedures and requirements, at which time Grantee will provide Grantor with detailed final construction drawings. No construction can commence without Grantee's receipt of Grantor's written consent to the final construction drawings, which consent shall not be unreasonably withheld, and all construction shall be in compliance with such approved drawings.

3. That in the exercise of Grantees rights hereunder, Grantee shall: (a) bury all line pipe to provide a minimum cover of thirty-six (36) inches, except in rock where a minimum cover of twenty-four (24) inches will be provided; (b) restore the ground surface as nearly as practicable to the original contour which existed immediately prior to the commencement of any work; (c) repair in a good and workmanlike manner all fences and drainage and irrigation systems which are cut or disturbed by Grantee; (d) and, at its option, restore or pay the Grantor for any damages caused by Grantee to Grantor's grasses, trees, shrubbery, fences or buildings; provided, however, that the Grantee shall have the right, without liability for damages, from time to time to cut or clear trees, brush or other obstructions on the Easement Area that might interfere with the operation or maintenance of Grantee's facilities, though Grantee has no obligation to do so. Notwithstanding the foregoing, Grantee shall take no action which shall in any way interfere with, endanger or impede Grantor's use of its existing or future facilities.

4. That Grantor shall have the right to use and enjoy the surface of the Easement Area for purposes which will not interfere with the use of the Easement Area by the Grantee for any of the purposes hereinabove granted, it being understood that no building shall be placed within or upon the Easement Area, and that there shall be no alteration of the ground surface or grade of the Easement Area, without the express written consent of the Grantee, which consent shall not be unreasonably withheld.

5. This instrument may be executed in counterparts, each of which is an original, but all of which together constitute one and the same instrument.

6. The rights of the Grantee under this Easement may not be assigned, in whole or in part, without the prior, written consent of the Grantor.

7. This instrument contains the entire agreement of the parties, there are no other agreements or understandings between the Grantor and Grantee regarding the subject matter of this Easement. The persons executing this Easement on behalf of Grantor and Grantee have authority to do so.

GRANTOR represents and warrants that it is the fee owner of record of the property described herein and that it has full power and authority to grant to Grantee the rights granted hereunder.

IN WITNESS WHEREOF, Grantor and Grantee have caused these presents to be executed in their respective names the day and year first above written.

Signed and Sealed in Our Presence as Witnesses:

(sign)_____
(print)_____

(sign)_____
(print)_____

GRANTOR:

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

(sign)_____
(print).
(title)

Signed and Sealed in Our Presence as Witnesses:

(sign)_____
(print)_____

(sign)_____
(print)_____

GRANTEE:

MIAMI DADE COUNTY

(sign)_____
(print).
(title)

ACKNOWLEDGMENT

STATE OF FLORIDA)
)ss:
COUNTY OF PALM BEACH)

On this _____ day of _____, 20___ before me, the undersigned notary public, personally appeared _____, _____of FLORIDA POWER & LIGHT COMPANY, personally known to me to be the person who subscribed to the foregoing instrument or who has produced _____, as identification, and acknowledged that he/she/ executed the same on behalf of said corporation and was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
NOTARY PUBLIC, STATE OF FLORIDA

Name (Print):_____
Commission No.: _____
My Commission Expires:_____

ACKNOWLEDGMENT

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI DADE)

On this _____ day of _____, 20___ before me, the undersigned notary public, personally appeared _____, _____of MIAMI DADE COUNTY, personally known to me to be the person who subscribed to the foregoing instrument or who has produced _____, as identification, and acknowledged that he/she executed the same on behalf of said entity and was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
NOTARY PUBLIC, STATE OF FLORIDA
Name (Print):_____
Commission No.: _____
My Commission Expires:_____

EXHIBIT A
To Reclaimed Water Pipeline Easement by and between, Florida Power & Light Company and Miami Dade County

[Legal Description of the Easement Area]

Example Compensation Calculation

The following provides example content of this Exhibit V of the RWSA. The specific content of this exhibit will be developed by the COUNTY and FP&L as the project due diligence is completed.

	Annual Budgeted Amount	Division	Estimated Cost Per Month
Fixed Fee Component:			
Project Renewal and Replacement Costs	$3,812,674.80	12 months	$317,722.90
Per 1,000 Gallon Rate Component: (1)			
Project O & M Expenses	$1,900,000.00	90,000,000	$158,333.33
Customer Accounting/Customer Service	Y	# of cust / yr.	$8.42
General & Administrative	Z	# of cust / yr.	$8.76
	Monthly Charge as Calculated per Budget		$476,073.41

Note (1): Project Operations and Maintenance costs based on current year estimated costs

Additional Facilities Fee:			
Amortization of Debt Service for Additional Facilities	A	12 months	
Interest Portion of Debt Service for Additional Facilities	B	12 months	
Coverage Portion of Debt Service for Additional Facilities	C	12 months	
	Monthly Charge as Calculated per Budget		$0.00