

MEMORANDUM

CPC
Agenda Item No. 2A

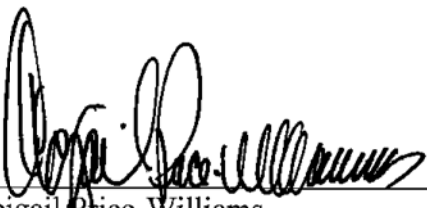
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 8, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving Joint Participation Agreements with Florida Power & Light Company providing for development of (1) an advanced reclaimed water project and (2) Next Generation Energy Projects; and authorizing the Mayor to execute the Agreements and exercise the Provisions contained therein

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Esteban L. Bovo, Jr.


Abigail Price-Williams
County Attorney

APW/lmp



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: April 10, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No.

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
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor'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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.
4-10-18

RESOLUTION NO. _____

RESOLUTION APPROVING JOINT PARTICIPATION
AGREEMENTS WITH FLORIDA POWER & LIGHT
COMPANY PROVIDING FOR DEVELOPMENT OF (1) AN
ADVANCED RECLAIMED WATER PROJECT AND (2) NEXT
GENERATION ENERGY PROJECTS; AND AUTHORIZING
THE MAYOR OR HIS DESIGNEE TO EXECUTE THE
AGREEMENTS AND EXERCISE THE PROVISIONS
CONTAINED THEREIN

WHEREAS, Miami Dade County (the County) and Florida Power and Light Company (FPL) share an interest in enhancing the sustainability of water resources and the resilience of energy supplies in the region; and

WHEREAS, FPL has an obligation to restore water quality conditions in the cooling canal system serving their facilities at Turkey Point and the County has an obligation to utilize reclaimed wastewater in cost-effective and beneficial ways; and

WHEREAS, FPL and Miami-Dade County have an opportunity to partner to support two significant transportation-related projects: battery storage to support the Metrorail system and electric-vehicle charging stations for County facilities; and

WHEREAS, based upon preliminary planning, there are significant opportunities for the County and FPL to collaborate on using reclaimed water for various purposes at the Turkey Point complex and for deploying solar generating capacity and battery storage capacity at a number of County facilities and properties throughout Miami-Dade County; and

WHEREAS, this collaboration could result in the largest wastewater reuse project in State history to support zero-emissions energy sources and the production of sufficient solar-

generated electrical power to match all of the County's electrical needs essential to preserve clean air and address climate change; and

WHEREAS, a collaborative effort can reduce the cost burdens of these projects to both parties and provide new cooperative opportunities while enhancing the resilience of critical infrastructure; and

WHEREAS, a formal engagement in detailed planning and preliminary engineering will provide the basis for specific long term agreements by which the County and FPL can realize the mutual benefits of these projects; and

WHEREAS, any agreement to implement the projects set forth in the JPAs will be presented to this Board for approval prior to incurring additional County obligations,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Joint Participation Agreements with Florida Power & Light Company providing for the development of agreements for (1) an advanced reclaimed water project and (2) next generation energy projects. The County Mayor or his designee is authorized to execute the Joint Participation Agreements, in substantially the form attached hereto and made a part hereof as Exhibits "A" and "B", respectively, and to exercise the provisions contained therein.

The Prime Sponsor of the foregoing resolution is Chairman Esteban L. Bovo, Jr. It 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:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of April, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman



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

**PROVIDING FOR DEVELOPMENT OF AN ADVANCED RECLAIMED WATER
PROJECT**

This Joint Participation Agreement (the "**Agreement**") is entered into as of _____, 2018 (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 "**FPL**"). The County and FPL are jointly referred to as the ("**Parties**") and individually as a ("**Party**").

RECITALS

WHEREAS, FPL operates two (2) nuclear power units ("**Units 3 and 4**") and one natural gas fueled Combined Cycle Unit ("**Unit 5**") at its existing Turkey Point generating complex located in Miami-Dade County (the "**TP Complex**"); 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**"), and (iii) the South District Wastewater Treatment Plant ("**SDWWTP**"), (NDWWTP, CDWWTP, and SDWWTP, jointly the "**County Wastewater Facilities**"); and

WHEREAS, the Parties anticipate that FPL will be able to utilize up to 60 MGD of treated wastewater as additional sources for cooling and freshening in connection with its operation of the existing Units 3, 4 and 5 and that the County desires to find beneficial uses within the boundaries of Miami-Dade County for the treated wastewater that is produced at the County Wastewater Facilities provided such treated wastewater is further treated to meet the requirements of this specific reuse application; and

WHEREAS, the Parties have engaged in preliminary discussions related to the joint development of an advanced wastewater treatment project that would further process and transport the County's treated wastewater to the TP Complex for cooling and freshening in connection with its operation of the existing Units 3, 4 and 5 and desire to enter into this Agreement in order to advance the development of the proposed advanced wastewater treatment project.

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 FPL hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

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

"Advanced Reclaimed Water Project" or the **"ARWP"** means the siting, permitting, construction, commissioning, operation and maintenance of the Advanced Wastewater Treatment Facility, the Pipelines and other facilities owned by the County or FPL to transport, deliver, receive and process Reclaimed Water from the County Wastewater Facilities into Processed Water for use by FPL at the TP Complex for cooling and other purposes (e.g., process and freshening).

"Advanced Reclaimed Treatment Facility" means the advanced wastewater treatment facility that would process Reclaimed Water into Processed Water.

"Agreement" has the meaning specified in the preamble 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.

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

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

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

"Delivery Point(s)" means a location or locations in the general proximity of the SDWWTP at which the County will deliver Reclaimed Water to FPL.

"DEP" means the Florida Department of Environmental Protection.

"Dispute" has the meaning specified in Section 7.3.

"FPL" has the meaning specified in the preamble to this Agreement.

"FPL 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.

"Institution" has the meaning specified in Section 7.8.

"MGD" means million gallons per day.

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

"Pipelines" means the pipelines that transport Reclaimed Water from the Delivery Point(s) to the Advanced Reclaimed Treatment Facility and the Processed Water from the Advanced Reclaimed Treatment Facility to the TP Complex and associated pipelines required for operation of the project.

"Processed Water" means the Reclaimed Water that has been processed and treated by the Advanced Reclaimed Water Project that satisfies the Processed Water Quality Requirements.

"Processed Water Quality Requirements" means Reclaimed Water treated in the Advanced Reclaimed Treatment Facility that meets or exceeds the applicable local, state and federal regulatory requirements for FPL's intended use.

"Reclaimed Water" means treated wastewater delivered by the County at the Delivery Point(s) that satisfies the Reclaimed Water Quality Requirements.

"Reclaimed Water Quality Requirements" means wastewater that (i) has received high level disinfection as defined in Rule 62-600.440(6), F.A.C., as amended from time to time; (ii) satisfies the water quality treatment requirements of Rule 62-610.668(2)(d), F.A.C., 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.

"Reclaimed Water Service Agreement" has the meaning specified in Section 2.1.

"Term" has the meaning specified in Section 2.3.

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

"Unit" means any of the included power generation units (Units 3, 4 and 5) that FPL operates at the TP Complex.

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 Advanced Reclaimed Water Project. The Parties understand that additional discussions and negotiations with respect to the development of the Advanced Reclaimed Water Project will be required and that, neither Party

will be bound to proceed with the development of the Advanced Reclaimed Water Project unless and until a mutually acceptable, service agreement for the processing of the Reclaimed Water into Processed Water is negotiated, approved and executed (the "**Reclaimed Water Service Agreement**") and subject to the terms and conditions precedent of 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 Advanced Reclaimed Water Project and their understandings with respect thereto.

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

- (1) FPL and County execute the Agreement (Spring 2018).
- (2) FPL, in coordination with the County, begins preliminary design, engineering, and negotiation of the Reclaimed Water Service Agreement (2018 and 2019).
- (3) County provides utility connection information to FPL (Spring 2018).
- (4) FPL completes preliminary design of the FPL Facilities, Pipelines and associated facilities (Fall 2018).
- (5) FPL receives Subsequent License Renewal Approval for Units 3 & 4 (Fall 2019)
- (6) The Reclaimed Water Service Agreement is presented to FPL management and Miami-Dade County Board of County Commissioners for approval (Fall 2019).
- (7) FPL obtains assurance that it can recover the costs it incurs in connection with the Reclaimed Water Service Agreement (tbd).
- (8) Upon Board of County Commission and FPL management approval, FPL and County execute the Reclaimed Water Service Agreement (Fall 2019), subject to any applicable or necessary regulatory approvals.
- (9) FPL and County commence detailed design, engineering and initiate permitting process (Fall 2019).
- (10) FPL and County complete cost and schedule estimates for their respective facilities, in accordance with the Reclaimed Water Service Agreement (Spring 2020).
- (11) FPL and the County commence construction of FPL and County Facilities in accordance with the terms of the Reclaimed Water Service Agreement.
- (12) FPL and the County complete construction of the FPL and County Facilities.

- (13) FPL test period with intermittent delivery of Reclaimed Water from County.
- (14) Full delivery of Reclaimed Water for processing into Processed Water and utilization at the TP Complex commences (NLT 12/31/2025).

2.3 Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate upon execution of the Reclaimed Water Service Agreement; provided, either FPL or the County shall have the right to terminate this Agreement for its convenience in whole or in part at any time, and for any reason, 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, other than those obligations which expressly survive the termination of this Agreement.

ARTICLE III **RESPONSIBILITIES; EXPENSES**

3.1 General Responsibilities of the Parties. During the Term, each of the Parties agree to (a) make available the personnel and resources reasonably necessary to complete such Party's responsibilities hereunder, (b) cooperate fully with the other Party to that end, and (c) support those activities reasonably necessary to secure other components of value associated with the Advanced Reclaimed Water Project, including, without limitation, any applicable credits, offsets and environmental mitigation. Consistent with the foregoing, the Parties shall also:

3.1.1 Support the Advanced Water Reclamation Project as a mutually beneficial partnership.

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

3.1.3 Pursue two initiatives that are made possible by the Advanced Reclaimed Water Project:

3.1.3.1 Opportunities to improve cooling canal surface water quality that will minimize impact to regional groundwater quality and enable the restoration of a balanced and healthy ecosystem featuring submerged aquatic vegetation within the first ten years of operation following completion of the ARWP. Such improvement would support future decommissioning of the cooling canal system; and

3.1.3.2 Opportunities for future expansion of the ARWP to achieve 100% of County reuse targets when designing, siting and permitting the AWRP.

3.2 Responsibilities of FPL. FPL will undertake all reasonably necessary and appropriate development activities related to designing, engineering, permitting, constructing, operating, and maintaining, the Advanced Reclaimed Treatment Facility, Pipelines, and such

other improvements and facilities that would be necessary: (a) for treatment of the Reclaimed Water, as necessary to meet the Process Water Quality Requirements (b) to transport the Processed Water from the Advanced Reclaimed Treatment Facility and subsequently to the TP Complex, (c) to maximize the reasonable utilization of the Processed Water at the Turkey Point Complex, and (d) to utilize or dispose of the Processed Water delivered to the TP Complex (collectively, "**FPL Facilities**"), in a manner consistent with the County's groundwater and surface water standards and clean up target levels provided in Chapter 24 of the Code of Miami Dade County, at the applicable points of compliance. Until execution of the Reclaimed Water Services Agreement, FPL's activities will primarily involve the following:

3.2.1 Perform a limited engineering design study to provide a refined construction budget and schedule that will serve as the basis for the project plan and any financial commitments to be relied upon in the Reclaimed Water Service Agreement.

3.2.2 Develop an estimate of fixed and variable operations and maintenance costs for the Advanced Reclaimed Water Project that will serve as the basis for the project plan and any financial commitments to be relied upon in the Reclaimed Water Service Agreement.

3.2.3 Develop and maintain a schedule that will identify key milestones related to the development of the FPL Facilities taking into account when Unit 3, 4 and 5 will be in-service and otherwise equipped to receive specified volumes of Reclaimed Water from the County, such schedule to be used 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 Service Agreement.

3.2.4 Pursue all permits, approvals, and licenses from all applicable Governmental Authorities as may be necessary for the Advanced Reclaimed Water Project.

3.2.5 Potentially commence activities to include the FPL Facilities, as required, in the Florida State Site Certification Application as an "Associated Facility" as defined in Section 403.503(7) Fla. Stat.

3.3 Responsibilities of the County. The County will undertake such reasonably necessary and appropriate activities related to development of facilities that would be necessary: (a) to produce and pump the Reclaimed Water in the specified quantities from its point(s) of origination at the County Wastewater Facilities to the Delivery Point or Delivery Points, (b) for treatment of the Reclaimed Water at its point(s) of origination to the Reclaimed Water Quality Requirements, (c) to maintain the ability to dispose of all treated wastewater produced at SDWWTP if the FPL Facilities are unavailable, and (d) to satisfy any redundancy requirements of FPL, at FPL's expense, such as additional pipeline(s) and/or other infrastructure (collectively, the "**County Facilities**"). Until execution of the Reclaimed Water Services Agreement, the County's activities will involve the following:

3.3.1 Identify County-owned real property suitable for potential use in conjunction with an Advanced Wastewater Treatment Facility and Pipelines and to identify real property not owned by the County and suitable to be secured by FPL for the Pipelines.

3.3.2 Consult and coordinate with FPL to assist FPL in the design of the FPL Facilities which satisfy all necessary permits, approvals, and licenses, subject to the limitations set forth in Section 7.6.

3.3.3 Perform a limited engineering design study to provide a refined construction budget and schedule for the County Facilities.

3.3.4 Develop and maintain a schedule that will identify key milestones related to the development of the County Facilities; such schedule will be used 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.

3.3.5 If requested by FPL, support the ARWP by providing reasonably prompt reviews of those materials necessary in order to include the FPL Facilities in the Florida State Site Certification Application as an "Associated Facility", as necessary.

3.4 Reclaimed Water Service Agreement. During the Term, each of the Parties shall exercise reasonable efforts to develop and negotiate jointly the terms and conditions and form of the Reclaimed Water Service Agreement pursuant to which the County would deliver at the Delivery Point, up to 60 MGD of Reclaimed Water for processing by FPL at the Advanced Reclaimed Treatment Facility into Processed Water, which would be used by FPL at the TP Complex, for a term expiring not earlier than December 31, 2053. It is anticipated that the terms and conditions of the Reclaimed Water Service Agreement would provide for, without limitation, the following:

3.4.1 The responsibility and allocation of costs associated with actions to: (1) design, engineer, and construct FPL Facilities, and (2) apply for and manage compliance with the environmental permitting of the FPL Facilities and implementation of the mitigation plan and associated capital cost, if any, in connection with the FPL Facilities.

3.4.2 The responsibility and allocation of costs associated with actions to: (1) design, engineer, and manage the construction of the County Facilities, and (2) apply for and manage compliance with the environmental permitting of the County Facilities and implementation of the mitigation plan and associated cost, if any, in connection with the County Facilities, provided, however, FPL be responsible for the incremental cost of any pipeline(s) and or/other infrastructure required by FPL to satisfy its redundancy concerns, if any.

3.4.3 The County shall provide, the real property upon which the Advanced Reclaimed Treatment Facility will be constructed and the County and FPL shall cooperate and share in the costs associated with obtaining the easements, rights of way, or other real property rights or licenses for the Pipelines.

3.4.4 The County will deliver up to 60 MGD of the Reclaimed Water to the Delivery Point(s), for processing by FPL to the Processed Water Quality Requirements.

3.4.5 FPL will process all of the Reclaimed Water received to the Processed Water Quality Requirements for use as cooling water and other purposes for the existing Units 3, 4 and 5, as stipulated in the Reclaimed Water Service Agreement.

3.4.6 The responsibility and allocation of costs incurred to provide the treatment and disposal of the Reclaimed Water, based on the annual fixed and variable costs of operating and maintaining the ARWP.

3.4.7 FPL and the County will incorporate appropriate contractual mechanisms and oversight to incentivize the lowest practicable capital, operations and maintenance costs through design and operation that reliably meets the Processed Water Quality Requirements.

3.4.8 FPL will maintain an independent cooling water supply sufficient to provide the full requirements of existing Units 3, 4 and 5, 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.

3.4.9 FPL and the County will jointly form an Oversight Committee that will provide review and approval of annual O&M budgets and capital replacement decisions necessary for the safe and reliable ongoing operations of the Advanced Reclaimed Water Project.

3.4.10 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).

3.5 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.

ARTICLE IV **INFORMATION; CONFIDENTIALITY**

4.1 Access to Information. The Parties shall exercise reasonable efforts in order to provide each other data, documents, and any other information in its possession regarding the development of the Advanced Reclaimed Water Project as reasonably necessary and pertinent to permit each Party to perform its obligations under this Agreement; provided, however, neither Party shall have any obligation to provide the other Party any information which it determines is internal confidential or proprietary information of such Party, or would give the other party an advantage in any potential competitive process necessary to accomplish the goals of this Agreement or any other government purpose.

FPL 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 use reasonable efforts to notify FPL of any request for disclosure. Failure of FPL to provide written objection to such disclosure within 48 hours shall be considered a waiver of any confidentiality to the requested information and consent to the disclosure. In the event FPL objects to the disclosure, FPL shall

within 48 hours of notice seek an injunction restricting disclosure of the information. This provision shall survive termination of this Agreement.

ARTICLE V

INDEMNIFICATION; LIMITS

5.1 FPL and the County shall each be responsible for its own facilities, for protection of its own systems, and for ensuring adequate safeguards for FPL and the County customers, and the personnel and equipment of the County and FPL. The County to the extent permitted by law, and subject to the limitations set forth in Section 768.28, Florida Statutes, shall indemnify, defend and hold FPL harmless, and FPL 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 5.1 shall survive termination, cancellation, suspension, completion or expiration of this Agreement

5.2 To the fullest extent permitted by law, neither the County nor FPL, 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 5.2 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 VI
COMPLIANCE WITH CERTAIN REQUIREMENTS

6.1 Compliance with Certain Legal Requirements. Each Party shall comply and cause its contractors and consultants to comply with Applicable Laws 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).

6.2 Inspections. FPL acknowledges that 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 VII
MISCELLANEOUS

7.1 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; and (d) 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.

7.2 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 Gimenez, 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:

Mayor's Designee
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-1262

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

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

As to FPL:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 304-5233
Attention: Vice President of FPL 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 7.2, 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.

7.3 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 project managers 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 Mayor's Designee and VP of FPL Development 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 FPL Development of the Parties, then either Party may pursue all available remedies. The Parties agree to attempt to promptly resolve all Disputes promptly, equitably and in a good faith manner.

7.4 Governing Law; Submission to Jurisdiction.

7.4.1 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.

7.4.2 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.

7.4.3 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 FPL to enter into this Agreement.

7.5 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.

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

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 FPL Facilities or the operation thereof, or be liable for the same; and

The County shall not by virtue of this Agreement be obligated to grant FPL 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 FPL Facilities.

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

(a) to cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist FPL 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 FPL in applying for any County, City or third party permit or needed approval; or

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

shall not bind the Board, the Regulatory and Economic Resources Department (RER) or its successor(s) 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 FPL from any liability, responsibility, claims, consequential or other damages, or losses to FPL 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.

7.7 Remedies.

7.7.1 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.

7.7.2 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.

7.7.3 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.

7.8 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 FPL, 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 7.8 in violation of this Section 7.8 shall be void ab initio and shall not be effective.

7.9 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.

7.10 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.

7.11 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.

7.12 Complete Agreement. This Agreement is intended as the complete and exclusive statement of the agreement with respect to the subject matter hereof 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.

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

7.14 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.

7.15 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" shall be references to the Sections to this Agreement, except to the extent that any such reference specifically refers to another document. 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.

7.16 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.

7.17 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.

7.18 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]

IN WITNESS WHEREOF, the COUNTY and FPL, by their duly authorized officials, have executed this Agreement as of the day and year above.

ATTEST:

MIAMI-DADE COUNTY

By: _____
Clerk (Seal)

By: _____
County Mayor

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By: Deane Malachuk
Witness

By: [Signature]
Name: Eric Silagy
Title: President and CEO, Florida Power & Light

Approved as to form
and legal sufficiency:

Assistant County Attorney

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

PROVIDING FOR DEVELOPMENT OF NEXT GENERATION ENERGY PROJECTS

This Joint Participation Agreement (the "**Agreement**") is entered into as of _____, 2018 (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 "**FPL**"). The County and FPL are jointly referred to as the ("**Parties**") and individually as a ("**Party**").

RECITALS

WHEREAS, FPL and the County embrace a shared vision of next generation water and energy use for the citizens of the County to allow the County and FPL to lead the way forward toward the next generation of energy in the United States; and

WHEREAS, in an effort to advance the application of renewable energy and innovative technologies within the County, FPL has worked with County staff to identify a series of solar and technology initiatives within the County (collectively, the "**Next Generation Energy Projects**"); and

WHEREAS, the Parties desire to enter into this Agreement in order to advance the development of the proposed Next Generation Energy Projects.

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 FPL 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 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.

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

“**Dispute**” has the meaning specified in Section 7.3.

“**FPSC**” means the Florida Public Service Commission.

“**FPL**” has the meaning specified in the preamble to this Agreement.

“**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.

“**Institution**” has the meaning specified in Section 7.8.

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

“**Term**” has the meaning specified in Section 2.3.

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 the Next Generation Energy Projects. The Parties understand that additional discussions and negotiations with respect to the development of the Next Generation Energy Projects will be required and that neither Party will be bound to proceed with the development of the Next Generation Energy Projects unless and until mutually acceptable definitive agreements for the individual projects are negotiated, approved and executed and all regulatory conditions have been satisfied.

2.2 Next Generation Energy Projects. The Next Generation Energy Projects include the following:

- (1) Universal Solar: The development, construction, and operation of at least 223.5 MW (ac) of photovoltaic electricity generating facilities owned and operated by FPL to provide electric service to its customers, to be located within the County.
- (2) Shared Solar: The development, construction, and operation of a Shared Solar project on County owned or contributed land.
- (3) Floating Solar: The development, construction, and operation of a Floating

Solar pilot program within the County to assess the viability and challenges of this novel approach.

- (4) SolarNow: The development, construction, and operation of multiple SolarNow projects in highly-visible community spaces throughout the County.
- (5) Battery Storage: The development, construction, and operation of two battery storage projects within the County – one of which will support Metrorail systems.
- (6) Electric Vehicle Charging Stations: The development, construction, and operation of several electric vehicle charging stations at or adjacent to County buildings.
- (7) START Corridor: A “START corridor” concept to coordinate the installation of future solar, battery and electric vehicle infrastructure

2.3 Term and Right of Termination. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate upon execution of definitive agreements for each of the Next Generation Energy Projects; provided, either FPL or the County shall have the right to terminate this Agreement for its convenience in whole or in part at any time, and for any or no reason, 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 other than those obligations which expressly survive the termination of this Agreement.

ARTICLE III **RESPONSIBILITIES; EXPENSES**

3.1 General Responsibilities of the Parties. During the Term, each of the Parties agree to (a) make available the personnel and resources reasonably necessary to complete such Party's responsibilities hereunder, and (b) support those activities reasonably necessary to secure other components of value associated with the Next Generation Energy Projects including, without limitation, any applicable credits, offsets and environmental mitigation

3.2 Responsibilities of FPL. FPL will undertake all reasonably necessary and appropriate development activities related to designing, engineering, permitting, constructing, operating, and maintaining, the Next Generation Energy Projects (subject to obtaining sites and securing all applicable permits, administrative and budgetary approvals). FPL's activities will primarily involve the following:

3.2.1 FPL will pursue site acquisition and permitting in order to develop and construct at least 223.5 MW (ac) of Universal projects within the County.

3.2.2 FPL will file a petition with the FPSC with the objective of authorizing a Shared Solar project on real property owned by the County.

3.2.3 FPL will develop a Floating Solar pilot project within the County to assess the viability and challenges of this approach.

3.2.4 FPL will develop and construct multiple SolarNow projects in highly-visible community spaces throughout the County.

3.2.5 FPL will develop and construct multiple electric vehicle charging stations within the County.

3.2.6 FPL will work with the County on a "START corridor" concept to develop the vision for the installation of future solar, battery and electric vehicle infrastructure within the County.

3.2.7 FPL will pursue all permits, approvals, and licenses from all applicable Governmental Authorities as may be necessary for the Next Generation Energy Projects.

3.3 Responsibilities of the County. The County will undertake such reasonably necessary and appropriate activities related to supporting the development of the Next Generation Energy Projects as set forth herein. The County's activities will involve the following:

3.3.1 Identify County-owned real property suitable for potential use in conjunction with a Next Generation Energy Project or other similar solar power projects.

3.3.2 Identify real property not owned by the County and suitable to be secured by FPL for Next Generation Energy Projects.

3.3.3 Consult and coordinate with FPL to assist FPL in the design of Next Generation Energy Projects which satisfy all necessary permits, approvals, and licenses, subject to the limitations set forth in Section 7.6.

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 any definitive agreements and regulatory filings associated with the Next Generation Energy Projects.

ARTICLE IV **INFORMATION; CONFIDENTIALITY**

4.1 Access to Information. The Parties shall exercise reasonable efforts in order to provide each other data, documents, and any other information in its possession regarding the development of the Next Generation Energy Projects as reasonably necessary and pertinent to permit each Party to perform its obligations under this Agreement; provided, however, neither Party shall have any obligation to provide the other Party any information which it determines is internal confidential or proprietary information of such Party or would give the other party an advantage in any potential competitive process necessary to accomplish the goals of this Agreement or any other government purpose.

FPL 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 use reasonable efforts to notify FPL of any request for disclosure. Failure of FPL to provide written objection to such disclosure within 48 hours shall be considered a waiver of any confidentiality to the requested information and consent to the disclosure. In the event FPL objects to the disclosure, FPL shall within 48 hours of notice seek an injunction restricting disclosure of the information. This provision shall survive termination of this Agreement.

ARTICLE V

INDEMNIFICATION; LIMITS

5.1 FPL and the County shall each be responsible for its own facilities, for protection of its own systems, and for ensuring adequate safeguards for FPL and the County customers, and the personnel and equipment of the County and FPL. The County, to the extent permitted by law, and subject to the limitations set forth in Section 768.28, Florida Statutes, shall indemnify, defend and hold FPL harmless, and FPL 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 5.1 shall survive termination, cancellation, suspension, completion or expiration of this Agreement.

5.2 To the fullest extent permitted by law, neither the County nor FPL, 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 5.2 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 VI

COMPLIANCE WITH CERTAIN REQUIREMENTS

6.1 Compliance with Certain Legal Requirements. Each Party shall comply and cause its contractors and consultants to comply with Applicable Laws 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).

6.2 Inspections. FPL acknowledges that 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 VII

MISCELLANEOUS

7.1 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; and (d) 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.

7.2 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 Gimenez, 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:

Mayor's Designee
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Facsimile: (305) 375-1262

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

As to FPL:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Facsimile: (561) 304-5233
Attention: Vice President of FPL 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 7.2, 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.

7.3 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 applicable project managers 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 FPL Development of the Parties for resolution. If the Dispute has not been resolved within twenty (20) Business Days after such referral to the Mayor's Designee and VP of FPL Development of the Parties, then either Party may pursue all available remedies. The Parties agree to attempt to promptly resolve all Disputes promptly, equitably, and in a good faith manner.

7.4 Governing Law; Submission to Jurisdiction.

7.4.1 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.

7.4.2 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.

7.4.3 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 FPL to enter into this Agreement.

7.5 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.

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

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 FPL Facilities or the operation thereof, or be liable for the same; and

The County shall not by virtue of this Agreement be obligated to grant FPL 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 FPL Facilities.

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

(a) to cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist FPL 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 FPL in applying for any County, City or third party permit or needed approval; or

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

shall not bind the Board, the Regulatory and Economic Resources Department (RER) or its successor(s) 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 FPL from any liability, responsibility, claims, consequential or other damages, or losses to FPL 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.

7.7 Remedies.

7.7.1 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.

7.7.2 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.

7.7.3 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.

7.8 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 FPL, 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 7.8 in violation of this Section 7.8 shall be void ab initio and shall not be effective.

7.9 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.

7.10 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.

7.11 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.

7.12 Complete Agreement. This Agreement is intended as the complete and exclusive statement of the agreement with respect to the subject matter hereof 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.

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

7.14 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 Next Generation Energy Projects.

7.15 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" shall be references to the Sections to this Agreement, except to the extent that any such reference specifically refers to another document. 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.

7.16 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.

7.17 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.

7.18 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]

IN WITNESS WHEREOF, the COUNTY and FPL, by their duly authorized officials, have executed this Agreement as of the day and year above.

ATTEST:

MIAMI-DADE COUNTY

By: _____
Clerk (Seal)

By: _____
County Mayor

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By: Alene H. Blank
Witness

By: [Signature]
Name: Eric Silagy
Title: President and CEO, Florida Power & Light

Approved as to form
and legal sufficiency:

Assistant County Attorney