

MEMORANDUM

Agenda Item No. 8(O)(1)

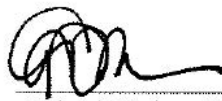
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: June 16, 2020

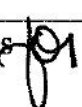
FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving Agreement
for Reclaimed Water Processing,
Treatment and Use at the Florida
Power & Light (FPL) Turkey
Point Complex with FPL;
authorizing annual payments to
FPL until 2053 in a total amount
not to exceed \$182,000,000.00;
and authorizing County Mayor to
execute the Agreement and
exercise the provisions contained
therein including the negotiation
and execution of an operating
agreement

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Co-Prime Sponsors Commissioner Esteban L. Bovo, Jr. and Vice Chairwoman Rebeca Sosa, and Co-Sponsors Chairwoman Audrey M. Edmonson, Commissioner Sally A. Heyman, Commissioner Barbara J. Jordan, Commissioner Joe A. Martinez and Senator Javier D. Souto.



Abigail Price-Williams
County Attorney



APW/smm

Memorandum



Date: June 16, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the name in the "From" field.

Subject: Resolution Approving Agreement for Reclaimed Water Processing, Treatment and Use at the Florida Power & Light Turkey Point Complex

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing execution of a Reclaimed Water Services Agreement (Agreement) between the County, through its Water and Sewer Department (WASD), and Florida Power and Light Company (FPL) for the delivery of reclaimed water from the South District Wastewater Treatment Plant to the FPL facilities at Turkey Point. The Agreement is attached as Exhibit 1.

SCOPE

The impact of this Agreement is countywide, as it provides compliance of the County with the State Ocean Outfall Statute, and it facilitates the use of reclaimed water by FPL to improve overall environmental conditions at Turkey Point.

FISCAL IMPACT/FUNDING SOURCE

The County will pay from WASD operating revenues \$6.5 million per year over the life of the Agreement through 2053 to support the project. Considering that the facility is scheduled to be operational beginning in 2026, the County is expected to undertake 28 payments, totaling \$182 million. FPL will provide an estimated \$300 million in capital costs and any additional operating costs needed to execute the project.

The County will be responsible for reimbursing FPL for the design and construction of any incremental facilities that the County requests to be constructed to enable the expansion of the facility for the treatment of additional reclaimed water for environmental or other uses. Any incremental facilities requested by the County are subject to Board approval. Additionally, the County expects to achieve the water quality parameters provided in the Agreement without any capital improvements to existing treatment facilities, and as such, additional costs related to reclaimed water quality standards are not anticipated. Although not anticipated, the County would be responsible for additional facilities that may be required by the County to meet such water quality standards.

DELEGATION OF AUTHORITY

Pursuant to section 5.03 of this Agreement, the County and FPL will also develop an operating agreement that will describe the operating protocols, communications, and reporting requirements for the safe and efficient operations of the Reclaimed Water Facility, in accordance with all applicable permits. This resolution delegates to the County Mayor or County Mayor's Designee

the authority to negotiate and execute such operating agreement, provided that the operating agreement is (1) limited to operating protocols, communications, and reporting requirements of the Reclaimed Water Facility; (2) consistent with the provisions of the Reclaimed Water Services Agreement; and (3) results in no additional fiscal impact to the County beyond this Reclaimed Water Services Agreement.

TRACK RECORD/MONITOR

WASD's Assistant Director of Planning and Regulatory Compliance, Josenrique Cueto, P.E., will oversee the implementation of the Reclaimed Water Services Agreement.

BACKGROUND

On April 10, 2018, the Board approved Resolution No. R-292-18, authorizing the County Mayor or County Mayor's Designee to execute a Joint Participation Agreement with FPL for development of an Advanced Reclaimed Water Project and to further negotiate a Reclaimed Water Services Agreement to implement such a project, subject to Board approval. The discussion at that time focused on extensive treatment of reclaimed water from the South District Wastewater Treatment Plant for use in the restoration of the cooling canals at the Turkey Point complex.

After extensive analysis and discussion with WASD and the Division of Environmental Resources Management (DERM) staff, a more cost-effective project was developed. Under this plan, up to 15 million gallons per day (MGD) of reclaimed wastewater will be piped to Turkey Point, where it will receive additional treatment to make it suitable for use in the cooling towers for FPL's Unit five generating facility. Currently brackish water from the Floridan aquifer is being used for these cooling towers. The Floridan water will then become available to improve conditions in the cooling canals, providing additional environmental benefits.

Under the Agreement, FPL is responsible for designing and constructing the pipeline from the South District Wastewater Treatment Plant to the FPL facilities at Turkey Point, an advanced treatment system at Turkey Point to further treat the reclaimed water for use in the cooling towers, and additional pumping facilities at the South District plant should it be determined that additional capacity is required. The capital cost of all these facilities is currently estimated by FPL at \$300 million.

The obligations of the parties are subject to both parties receiving necessary and appropriate permits, approvals and authorizations from regulatory authorities that support execution of the project and the County receiving approval from the Florida Department of Environmental Protection for the appropriate reclaimed credits for the duration of the Agreement.

The County will pay an annual fee of \$6.5 million to FPL beginning when the County delivers reclaim water to FPL and continue over the life of the Agreement. The initial term of the Agreement expires at the end of 2053 and the Agreement automatically renews for five-year increments unless either party provides notice not to renew. This payment plan caps with certainty the annual financial obligation of the County, and it avoids potential disputes regarding operating costs and cost escalation provisions. The County investment is equivalent to that which was approved by the Board in 2010 when a larger reclaimed water project was authorized as part of

FPL's plans to construct two additional nuclear units at Turkey Point. That plan is no longer feasible.

Pursuant to provisions under the State Ocean Outfall Statute, the County is required to evaluate and implement reclaimed water projects that are technically, environmentally, and economically feasible. Because of the extraordinary water quality requirements for water in the Everglades system, it is extremely expensive and energy intensive to treat wastewater to acceptable standards. This project, which would be the fourth largest reclaimed water project in the State of Florida, presents an opportunity to use reclaimed wastewater in a more cost-effective way, and thereby free up Floridan aquifer water to be used for environmental enhancement purposes.

In order to facilitate the County's future reuse program, FPL has also agreed to design and build a second pipeline to Turkey Point and additional treatment capacity should the County and its partners determine feasible uses for additional reclaimed water in the area. Along with the County, South Florida Water Management District and other various State and Federal agencies are key stakeholders in the development and implementation of future reuse projects which benefit the environment. Further collaborative engagement is required to establish implementation and funding requirements that would enhance their efficacy. At the time that the appropriate funding partners are identified, the County will be in a position to readily expand the treatment facility and its reuse program.



Jack Osterholt
Deputy Mayor

EXECUTION VERSION

**AGREEMENT FOR RECLAIMED WATER PROCESSING, TREATMENT AND USE
AT THE FLORIDA POWER & LIGHT TURKEY POINT COMPLEX**

THIS AGREEMENT FOR RECLAIMED WATER PROCESSING, TREATMENT AND USE (this “**Agreement**”), is made and entered into this June [], 2020, by and between Miami-Dade County, a political subdivision of the State of Florida, (the “**County**”), and Florida Power & Light Company, a Florida corporation (“**FPL**”), and together with the County, the “**Parties**”).

WITNESSETH:

WHEREAS, the Miami-Dade Water and Sewer Department (the “**Department**”) operates and maintains the County’s wastewater treatment and reclamation system; and

WHEREAS, the County currently provides wastewater treatment within Miami-Dade County through three treatment facilities owned and operated by the County (the “**County Wastewater Facilities**”); and

WHEREAS, FPL owns power generation facilities located in southeastern Miami-Dade County, Florida (the “**Turkey Point Complex**” or “**TP Complex**”); and

WHEREAS, the Florida Department of Environmental Protection (“**FDEP**”) requires the County to process and treat wastewater in part to produce water technically and economically feasible for reuse (“**Reclaimed Water**”) pursuant to Section 403.064, F.S.; and

WHEREAS, FPL is encouraged to utilize Reclaimed Water at the TP Complex should it become available in the necessary quality and quantity; and

WHEREAS, on April 10, 2018, the Miami-Dade County Board of County Commissioners (“**Board**”) approved Resolution No. R-292-18 (“**Resolution**”); and

WHEREAS, the Resolution authorizes the County Mayor or his designee to execute a Joint Participation Agreement with FPL for development of an Advanced Reclaimed Water Project (“**Project**”) and to further negotiate a Reclaimed Water Service Agreement (“**RWSA**”) to implement such Project subject to approval by the Board; and

WHEREAS, the project design discussed at the time of the Resolution has been modified to exclude discharge of Reclaimed Water to the Turkey Point cooling canals, or surface waters of surrounding wetlands and Biscayne Bay as a component of this project, and

WHEREAS, the Parties recognize and acknowledge that the County’s primary goals in entering this Agreement are the beneficial use of County reclaimed water at the Turkey Point Complex to replace the existing use of Floridan water in cooling towers in a manner which will also protect water resources in the surrounding environment, and

EXECUTION VERSION

WHEREAS, the Advanced Reclaimed Water Project will serve to provide an alternative source of cooling water for Turkey Point Unit 5 Forced Draft Cooling Towers, thereby allowing FPL to seek authorization to redirect Floridan Aquifer water otherwise allocated for this purpose for use in managing salinity levels in the cooling canal system; and

WHEREAS, the Parties have negotiated this Agreement as the RWSA; and

WHEREAS, FPL has identified an opportunity to utilize up to 15,000,000 gallons of Process Water per day at the TP Complex that will help the County satisfy the reuse objectives set forth in Section 403.064, Florida Statutes; and

WHEREAS, FPL desires to construct an advanced reclaimed water treatment facility and associated pipelines and wells necessary to process and further treat up to 15 million gallons per day (“MGD”) of Reclaimed Water for use at the TP Complex (the “**FPL Facilities**”); and

WHEREAS, the 15 MGD of Process Water for cooling purposes at TP Unit 5 is consistent with the objectives of the October 7, 2015 Consent Agreement between the County and FPL; and

WHEREAS, the County is prepared to deliver up to 15 MGD of Reclaimed Water from the County Wastewater Facilities to the FPL Facilities; and

WHEREAS, FPL will be responsible for all costs of constructing the FPL Facilities estimated to be \$300 million; and

WHEREAS, the County will provide \$6.5 million annually to FPL to support operations of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the County and FPL hereby agree as follows.

ARTICLE I. DEFINITIONS; INTERPRETATION

1.01 Defined Terms. For the purposes of this Agreement, the following terms shall have the following meanings:

“Additional Facilities” shall have the meaning set forth in Section 6.04(b)(i).

“Advanced Reclaimed Water Project” (“ARWP” or “Project”) shall mean the siting, permitting, construction, commissioning, operation and maintenance of the Advanced Wastewater Treatment Facility, the FPL Facilities and the County Facilities for transporting, delivering, and processing Reclaimed Water from the County Facilities into Processed Water for use by FPL at the TP Complex for the Unit 5 existing Forced Draft Cooling Towers.

“Advanced Reclaimed Treatment Facility” means the advanced reclaimed treatment facility that would process Reclaimed Water into Processed Water.

EXECUTION VERSION

“Agreement” shall have the meaning set forth in the preamble hereto, and includes all exhibits, schedules and appendices attached hereto.

“Board” shall mean the Miami-Dade County Board of County Commissioners.

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

“County” shall have the meaning set forth in the preamble hereto.

“County Event of Default” shall have the meaning set forth in Section 9.01.

“County Facilities” shall mean facilities necessary for the delivery of up to 15 MGD of Reclaimed Water to the Delivery Point at the SDWWTP as shown on Figure B-1.

“Delivery Point” shall mean the location near the SDWWTP and at the point designated on Figure B-1 where the County will deliver Reclaimed Water to FPL.

“Department” shall have the meaning set forth in the recitals hereto.

“Dispute” shall have the meaning set forth in Section 11.01.

“Effective Date” shall mean the sooner of (1) the date of the expiration of the County Mayor’s veto period subsequent to the approval of this Agreement by the Board without the County Mayor vetoing the Board’s resolution approving same or (2) the date on which the County Mayor approves the Board-approved resolution authorizing the execution of this Agreement.

“Event of Default” shall mean a County Event of Default or an FPL Event of Default as the context requires.

“Extension Term” shall have the meaning set forth in Section 2.02.

“Force Majeure” shall have the meaning set forth in Section 10.01.

“FPL” shall have the meaning set forth in the preamble hereto.

“FPL Event of Default” shall have the meaning set forth in Section 9.02.

“FPL Facilities” shall mean (i) facilities necessary for the transportation of up to 15 MGD of Reclaimed Water from the County Wastewater Facilities to the FPL treatment facilities at Turkey Point, (ii) the FPL water treatment facility and associated pipelines and equipment to facilitate use of Reclaimed Water, (iii) deep injection well facilities to dispose of Process Wastewater

“Initial Term” shall have the meaning set forth in Section 2.02.

“Incremental Facilities” shall mean any additional pipeline requested by the County for conveyance of future Reclaimed Water volumes in excess of FPL needs up to 60 mgd.

“MGD” shall mean million gallons per day.

“Maximum Daily Quantity” shall have the meaning set forth in Exhibit C.

“Meter” shall have the meaning set forth in Section 7.05(a).

“Minimum Daily Quantity” shall have the meaning set forth in Exhibit C.

“O&M” means Operations and Maintenance.

“Operating Agreement” shall have the meaning set forth in Section 5.03.

“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 at the TP Complex and associated pipelines required for operation of the project.

“Process Wastewater” shall mean non-hazardous waste residuals produced by the FPL Facilities, including blowdown from the Unit 5 cooling towers.

“Process Water” shall mean Reclaimed Water that has been further processed by the FPL Facilities.

“Quality Standard” shall mean those standards for Reclaimed Water that are set forth on Exhibit A to be met at the Delivery Point

“Reclaimed Water” means treated wastewater delivered by the County at the Delivery Point that satisfies the Reclaimed Water Quality Requirements.

“Sentinel Limit” shall mean the water quality limits as defined in Exhibit A, Table A-2.

“Service Initiation Date” means that date on which the County first delivers Reclaimed Water to the Delivery Point for processing and treatment by FPL.

“SDWWTP” shall mean the Water & Sewer Department’s South District Waste Water Treatment Plant located in south Miami-Dade County approximately 10 miles north of Turkey Point.

“Target Value” shall mean the water quality limits as defined in Exhibit A, Table A-1.

“Term” shall have the meaning set forth in Section 2.02.

“True Accuracy” shall have the meaning set forth in Section 7.05(a).

“Turkey Point Complex” or “TP Complex” means FPL’s power generation site located in southeastern Miami-Dade County.

“Upper Limit” shall mean a upper water quality limit for each of the parameters set forth in Exhibit A, Table A-1.

EXECUTION VERSION

1.02 Interpretation. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation apply.

(a) Appendices, Exhibits and Schedules. Unless otherwise expressly indicated, any reference in this Agreement to an “Exhibit” or “Schedule” refers to an Exhibit or Schedule to this Agreement. The Appendices, Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof as if set forth in full herein and are an integral part of this Agreement. Any capitalized terms used in any Appendix, Exhibit or Schedule but not otherwise defined therein are defined as set forth in this Agreement. In the event of conflict or inconsistency, this Agreement shall prevail over any Appendix, Exhibit or Schedule.

(b) Certain Terms. The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement (including the Appendices, Exhibits and Schedules to this Agreement) as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The word “including” or any variation thereof means “including, without limitation” and does not limit any general statement that it follows to the specific or similar items or matters immediately following it. The words “to the extent” when used in reference to a liability or other matter, means that the liability or other matter referred to is included in part or excluded in part, with the portion included or excluded determined based on the portion of such liability or other matter exclusively related to the subject or period. The word “or” shall be disjunctive but not exclusive. A reference to any Party or to any party to any other agreement or document shall include such party’s successors and permitted assigns. Unless stated herein, a reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto (provided, that for purposes of any representations and warranties contained in this Agreement that are made as of a specific date, references to any statute shall be deemed to refer to such statute and any rules or regulations promulgated thereunder as amended through such specific date). References “written” or “in writing” include in electronic form. Any reference to “days” shall mean calendar days unless Business Days are expressly specified.

(c) Headings. The division of this Agreement into Articles, Sections, and other subdivisions, and the insertion of headings are for convenience of reference only and do not affect, and will not be utilized in construing or interpreting, this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

ARTICLE II. CONDITIONS PRECEDENT; TERM

2.01 Conditions Precedent. Notwithstanding the execution and delivery of this Agreement by the Parties, the obligations of the Parties contained herein shall only become effective upon the completion or waiver of those activities set forth in Exhibit D.

2.02 Term. The initial term of this Agreement (“**Initial Term**”) shall commence upon the Effective Date and shall, unless this Agreement is either (1) earlier terminated or (2) extended, in either case in accordance with this Agreement, continue through December 31, 2053.

This Agreement and each subsequent Extension Term (as defined below) shall automatically renew for a period of five (5) additional years (each such five-year period, an “**Extension Term**”), unless either Party provides written notice to the other of its intention to not have this Agreement renew, not less than one (1) year prior to the end of the Initial Term or Extension Term, as applicable.

2.03 Purchase Right. If FPL has provided notice to the County of its intention not to renew this Agreement, then the County shall have the right to purchase FPL Facilities including access rights to said facilities, at the higher of the book value or the then fair market value as determined by an independent, third-party appraiser agreed to by the Parties and on terms to be negotiated by the Parties acting in good faith. If the County desires to exercise its right to purchase the FPL Facilities, it must notify FPL no later than six (6) months prior to the end of the Initial Term or Extension Term, as applicable.

ARTICLE III. OBLIGATIONS OF FPL

3.01 Ownership and Operation. FPL shall design, permit, finance, construct, own, operate and maintain in good working order, consistent with industry practice, the FPL Facilities from and on the FPL side of the Delivery Point shown on Figure B-1, such that the Advanced Reclaimed Water Project meets the delivery requirements identified in Exhibit C.

3.02 Responsibilities for County and FPL Facilities.

(a) FPL shall finance, design and construct the County Facilities located on County property if necessary and subject to the County’s approval, to transfer the reclaimed water from the property line at the SDWWTP (the County Facilities) shown on Figure B-1 or such other location approved by the County to the TP Complex. For any work done by FPL on County property pursuant to this Agreement, FPL shall provide certificates of insurance as required by the County and shall include the County as an additional insured on all requisite insurance policies. County will own, operate and maintain the County Facilities and be responsible for the costs associated with such responsibilities.

(b) FPL will design and construct the Incremental Facilities requested by the County to provide future pipeline capacity for reclaimed water to the Turkey Point site. If the County requests FPL to construct Incremental Facilities, such Incremental Facilities will be delivered to the County for the County to own, operate and maintain and FPL shall provide the County with access to the Incremental Facilities for operational and maintenance purposes. Subject to the County’s review and approval of costs, County will reimburse FPL for all reasonable costs to design, finance, and construct the Incremental Facilities. County will own, operate and maintain the Incremental Facilities and be responsible for the costs associated with such responsibilities.

3.03 Acceptance of Reclaimed Water. Except as otherwise provided herein, FPL shall accept at the Delivery Point (as described in Exhibit B) up to fifteen-million gallons of Reclaimed Water per day (15,000,000 gpd) from the County (the “Maximum Daily Quantity”) delivered in accordance with the delivery requirements set forth on Exhibit C.

3.04 Delivery and Processing of Reclaimed Water. FPL shall notify the County

EXECUTION VERSION

in writing of the volume of Reclaimed Water it requires each day. The County shall control the rate of delivery of Reclaimed Water. FPL shall process and treat, or shall cause to be processed and treated, Reclaimed Water that it has requested up to the Maximum Daily Quantity in accordance with this Agreement, in order to produce Process Water.

3.05 Use of Process Water. FPL shall utilize the Processed Water in the forced draft cooling towers for Turkey Point Unit 5. FPL shall not use Process Water for any other purpose without prior approval from applicable federal, state, and local regulatory agencies. If FPL plans to seek additional legal use(s) for reclaimed water at the TP Complex, FPL will advise the County as to the proposed use(s) and seek County input. Furthermore, FPL shall not discharge or dispose of Process Water or Process Wastewater into the Cooling Canal System.

3.06 Disposal of Process Wastewater. FPL is responsible for disposal of the Process Wastewater. FPL shall dispose of the Process Wastewater in compliance with all conditions of the applicable permits, authorizations and approvals.

3.07 Provision of Alternative Sources. FPL shall maintain an alternative source of cooling water for Turkey Point Unit 5 sufficient to provide FPL's needs, in the event of system failures, forced outages, maintenance or Force Majeure events at any portion of the ARWP or a failure of the County to provide Reclaimed Water in accordance with this Agreement.

3.08 Plant Management. FPL shall assign a qualified personnel to act as FPL ARWP Manager and discharge the duties described in Article V.

3.09 FPL Cooperation. FPL shall cooperate with the County in providing available data and information relating to the Project that is requested by the Department of Regulatory and Economic Resources, Division of Environmental Resources Management for the preparation of reports to the Board.

ARTICLE IV. OBLIGATIONS OF THE COUNTY

4.01 Delivery of Reclaimed Water. The County shall, at its sole cost and expense, deliver to FPL, at the Delivery Point the required volumes of Reclaimed Water as specified by the FPL ARWP Manager pursuant to Section 3.04, all of which shall meet the Quality Standards as contained in Exhibit A.

4.02 County Facilities. The County shall facilitate, seek to obtain permits, accept, own, operate and maintain the facilities located on County property necessary to transfer Reclaimed Water as required for the ARWP and, in general, cooperate with the development, permitting and construction of the ARWP. Coordination with existing and ongoing renovations at the SDWWTP site will be provided to safely and cost-effectively incorporate the ARWP.

4.03 Provision of Alternative Disposal Method. The County shall, at its sole cost and expense, develop or maintain an alternative method of disposal of the Reclaimed Water in the event of system failures, forced outages, facility maintenance or Force Majeure events at the Project or a failure of FPL to accept, process and treat Reclaimed Water in accordance with this Agreement.

4.04 Payment for Processing and Treatment. The County shall timely make all payments required pursuant to Article VIII.

4.05 Participation in Plant Operational Review. The County may assign qualified personnel to participate in the review of periodic reports provided by the FPL ARWP Manager.

ARTICLE V. OPERATIONAL MANAGEMENT

5.01 Authority. FPL will appoint an ARWP Manager who will be responsible for the routine supervision and direction of ARWP operations, maintenance, regulatory compliance, financial management and reporting as described herein. The ARWP Manager will be the point of contact for all communications and inquiries related to the functioning of the ARWP and coordination of operations with the County's SDWWTP. The County shall pay FPL an annual amount of \$6.5 million to support the ARWP and FPL shall be responsible for all ARWP operations, maintenance, regulatory compliance, financial management and reporting, excluding those costs identified in Section 4.01.

5.02 Standard of Care. All actions taken by the FPL ARWP Manager shall be consistent with: (i) FPL and County Required Approvals, (ii) all applicable laws, rules and regulations, including, with respect to the maintenance, repair and replacement of the FPL Facilities, Section 606 of County Ordinance No. 93-134, (iii) good industry practices, and (iv) the health and safety of the public, County and FPL employees, contractors, or agents.

5.03 Operating Agreement. Following completion of final design and permitting for the FPL and County Facilities, the Parties will coordinate to develop an Operating Agreement that will describe the operating protocols, sequences, systems, limits, notifications, communications and reporting requirements necessary for safe and efficient operations of the ARWP. Such Operating Agreement will be reviewed and updated annually and utilized by the Parties to train and direct staff and shall govern day-to-day operations of the ARWP.

5.04 Review. If the Agreement is not meeting the County's goals of beneficial use of County reclaimed water at the Turkey Point Complex to replace the use of Floridan water in the existing cooling towers in a manner which will also protect water resources in the surrounding environment within one year of the Service Initiation Date, the County shall notify FPL in order for the Parties to revisit the terms of the Agreement.

ARTICLE VI. QUALITY STANDARDS

6.01 Reclaimed Water Supply. The County shall ensure that all Reclaimed Water delivered to the Project meets the Reclaimed Water Quality Standards, as set forth in Exhibit A.

6.02 Testing. Testing of the Reclaimed Water shall be conducted in accordance

with Section 7.04 and Exhibit A (as applicable).

6.03 Right of Rejection - FPL. If at any time any of the parameters of the Reclaimed Water exceeds any of the Target Values of the Reclaimed Water Quality Standards specified in Exhibit A, Table A-1 or the Sentinel Limits of Table A-2, and such exceedance is confirmed by resampling and analysis by the County, FPL may stop receipt of all or any portion of the Reclaimed Water. Following such failure to meet the Quality Standards or Sentinel Limits, FPL shall be under no obligation to re-commence accepting Reclaimed Water until such time as it is satisfied, through additional testing, that the Reclaimed Water does not exceed the Target Values or Sentinel Limits.

6.04 Exceedances of Reclaimed Water Quality Standards (Table A-1).

(a) If there is an exceedance of the Upper Limits of any of the Reclaimed Water Quality Standards specified in Exhibit A, Table A-1, more than three (3) times in any rolling six (6) month period that is confirmed by the County through its own resampling and analysis, FPL will notify the County and the County shall, within twenty (20) days of its receipt of such notice, develop and deliver to FPL a recovery plan setting out the steps the County will undertake to rectify the repeated exceedances.

(b) If there are no exceedances of the Upper Limits of the Reclaimed Water Quality Standards specified in Exhibit A, Table A-1, over a period of three (3) months following execution of the activities indicated in the County's recovery plan, the count of exceedances will reset to zero. If, however, exceedances persist, FPL, in its sole discretion, shall either (i) require the County to repeat the actions set forth in its recovery plan, (ii) require the County to provide a revised recovery plan, or (iii) independently develop or engage (in consultation with the County and, if the County concurs, at the County's expense) a third party consultant to develop a recovery plan which the County shall execute.

(i) The recovery plan(s) may include new facilities to address and prevent exceedances of the Reclaimed Water Quality Standards ("Additional Facilities"). Additional Facilities, if required by the County, will be paid for by the County.

(ii) If there are no exceedances of the Upper Limits of the Reclaimed Water Quality Standards specified in Exhibit A, Table A-1, over a period of three (3) months following execution of the activities indicated in the second recovery plan, the count of exceedances will reset to zero. If, however, exceedances persist it will be deemed a County Event of Default, as described in Section 9.01(c).

6.05 Exceedence of Sentinel Limits (Table A-2).

(a) If there is an exceedance of any of the Sentinel Limits (Table A-2), more than three (3) times in any rolling six (6) month period that is confirmed by the County through its own resampling and analysis, FPL will notify the County and the County shall, within twenty (20) days of its receipt of such notice, submit a report that will identify the root cause, potential for continued exceedances and steps to be taken to prevent future exceedances, if such steps are possible. If the issue can be addressed by reasonable process adjustments or other mitigating steps within the SDWWTP facility and at no additional costs, such changes or mitigating steps will be

taken.

(b) If there are no exceedances of the Sentinel Limits (Table A-2), over a period of three (3) months following execution of the activities indicated in the County's recovery plan, the count of exceedances will reset to zero. If, however, exceedances persist or the County report of Section 6.04(a) identifies no mitigating action can be taken by the County, the County and FPL will jointly determine what Additional Facilities could be added to SDWWTP operations or the ARWP to address the exceedances.

(c) The recovery plan(s) may include new facilities to address and prevent exceedances of the Reclaimed Water Quality Standards ("Additional Facilities"). The capital costs of Additional Facilities under this Section 6.04, if required, will be equally shared by the County and FPL.

6.06 Notice. If FPL must stop receiving all or any portion of the Reclaimed Water because it fails to meet the Reclaimed Water Quality Standards or the Sentinel Limits, it shall notify the County as soon as is reasonably practicable, per the notification requirements of Section 7.06.

ARTICLE VII. OPERATIONS, MAINTENANCE & METERING

7.01 Generally. FPL will ensure that the FPL Facilities will be operated and maintained, and related additions and repairs made, in accordance with prudent industry practice and in compliance with all applicable water quality and environmental protection regulations in the governing permits and authorizations for the ARWP. Further, FPL will ensure operations are conducted in accordance with the Operating Agreement.

7.02 Staffing. FPL shall provide sufficient qualified staff and resources to operate the FPL Facilities in normal and reasonably anticipated atypical modes.

7.03 Emergencies. Notwithstanding any other provision in this Agreement, FPL may take any action it reasonably believes is necessary to address a situation or circumstance that threatens the safe or reliable operation of the Project, threatens to cause damage to the Project or a portion thereof or as required to comply with applicable laws or regulations, in accordance with prudent industry practice and using commercially reasonable efforts to keep its annual O&M costs within the Operating Budget.

7.04 Water Quality Testing.

(a) FPL and the County shall include in the Operating Agreement of Section 5.03, a sampling plan to facilitate the following:

(b) Periodic sampling by FPL and the County and analysis of influent Reclaimed Water to determine whether such Reclaimed Water meets the Reclaimed Water Quality Standards and Sentinel Limits, as set forth in Exhibit A. The sampling plan shall include sampling frequency and define sample collection points. Sampling methodologies and laboratory analysis shall be in accordance with applicable state and federal regulations or best practices as applicable.

EXECUTION VERSION

Standard analytical methods and certified laboratories shall be used at all times to determine water quality and the County shall have the right to conduct its own testing to verify water quality.

(c) FPL shall conduct all required testing of Process Water effluent from the Project to demonstrate compliance with all applicable permits, approvals and authorizations.

7.05 Metering.

(a) FPL shall, at its own expense, own, install, operate and maintain any required flow meters and associated measuring and recording equipment (the “**Meter**”) necessary to provide an accurate determination of the quantities of Reclaimed Water, delivered daily under this Agreement and make available to the County, at no cost to the County, all of the data from such Meter. The Meter(s) shall indicate flow with an error not to exceed plus or minus 2% of full scale reading (“**True Accuracy**”); and

(b) FPL shall exercise reasonable care in the maintenance and operation of the Meter(s) 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 FPL’s Meter(s) shall be tested and verified by FPL and the County, at FPL’s sole expense, once every six months. FPL shall provide the results of the verification to the County no later than thirty (30) days after each Meter is checked. If the County desires to be present for such Meter checks, it shall be the County’s responsibility to contact FPL and make arrangements to be present.

7.06 Notification of abnormal conditions. If abnormal conditions prevent the County from delivering all or a portion of the Maximum Daily Quantity, or meeting the Quality Standards, County will notify FPL as soon as practicable. If abnormal conditions prevent FPL from receiving all or a portion of the Maximum Daily Quantity, FPL will notify County as soon as practicable. The parties will use all reasonably practicable efforts to expedite a return to normal operations.

ARTICLE VIII. COMPENSATION & PAYMENT

8.01 Annual Fee. Commencing on the Service Initiation Date and for the term of this Agreement, County shall pay to FPL, an annual fee in the amount of \$6.5 million. FPL shall invoice the County for the annual fee by June 1 of each year, and the County will make payment within 45 days of receipt of the invoice. The initial and final invoices shall be prorated according to the number of days of service between the Service Initiation Date and June 1 for the initial invoice and for the number of days of service from June 1 to the termination of the agreement for the final invoice.

ARTICLE IX. EVENTS OF DEFAULT

9.01 County Events of Default. Each of the following shall constitute an event

of default by the County (each a “**County Event of Default**”):

- (a) the County fails to provide support reasonably required for the County to carry out its obligations set forth in this Agreement;
- (b) the County fails to make a payment due to FPL that is not subject to a good-faith dispute within forty-five (45) calendar days after notice from FPL that such payment is due under this Agreement;
- (c) the Reclaimed Water has failed to meet the Upper Limits of the Reclaimed Water Quality Standards as described in Exhibit A, Table A-1, and the recovery plans of Section 6.03 have not resolved the issue(s);
- (d) The County fails to achieve any of its milestones necessary to complete or operate the ARWP; provided, it shall not be considered a default of the County if the failure to achieve such milestone is caused by force majeure or by a failure on the part of FPL in the performance of its milestones;
- (e) If, during any month following the Service Initiation Date, the County fails, for ten (10) consecutive calendar days or fifteen (15) days in any thirty (30) day period, to make available to FPL the quantities of Reclaimed Water in the FPL ARWP Manager’s forecast and generally set forth in Exhibit C, and such failure is not excused by reason of Force Majeure; or
- (f) The County is in default of any material provision of this Agreement (including water quality provisions) not specifically mentioned in this Section 9.01. and the County has failed to cure such default within ten (10) calendar days after notice of such default from FPL to the County. If it is not feasible to correct such default within ten (10) calendar days after FPL 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 FPL, the County provides FPL 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 FPL, it shall not constitute a County 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 FPL, (ii) such corrective action is diligently pursued, (iii) the County provides FPL 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 FPL.

9.02 FPL Events of Default. Each of the following shall constitute an event of default by FPL (each an “**FPL Event of Default**”):

- (a) FPL refuses, in writing, to receive the Reclaimed Water and such refusal is not (i) subject to good faith dispute, or (ii) excused by reason of Force Majeure;
- (b) FPL is in default of any material provision of this Agreement not specifically mentioned in this Section 9.02. and FPL has failed to cure such default within ten calendar (10) days after notice of such default from the County to FPL. If it is not feasible to correct such default within ten (10) calendar days after the County has delivered notice of such

default to FPL, but it remains feasible to correct within thirty (30) calendar days, and if within ten (10) calendar days after said notice from the County, FPL 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 FPL 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 FPL is instituted within ten (10) calendar days following the notice from the County, (ii) such corrective action is diligently pursued, (iii) FPL 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) FPL fails to achieve any of its milestones necessary to complete or operate the ARWP; provided, it shall not be considered a default of FPL if the failure to achieve such milestone is caused by force majeure or by a failure on the part of the County in the performance of its milestones

9.03 Remedies for a County Event of Default. Upon the occurrence of any County Event of Default, FPL may, in its sole discretion:

(a) terminate this Agreement without penalty or further obligation to FPL by providing written notice to the County; and

(b) require that the County, and the County covenants that it shall, purchase the FPL Facilities from FPL at book value on terms to be negotiated by the Parties acting in good faith;

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

9.04 Remedies for an FPL Event of Default. Upon the occurrence of any FPL Event of Default, the County may, in its sole discretion:

(a) if the FPL Event of Default occurs pursuant to Section 9.02(a), terminate this Agreement without penalty or further obligation to the County by providing written notice to FPL;

(b) if an FPL Event of Default results from a material non-compliance with applicable water quality and environmental protection regulations in the governing permits and authorizations specifically for the ARWP (Section 7.01), the County may withhold delivery of Reclaimed Water until such material non-compliance is resolved.

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

9.05 Specific Performance. In addition to the remedies set forth in Section 9.03 and 9.04, 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.

9.06 Pre-Termination Liabilities. No termination under this Article IX (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.

ARTICLE X. FORCE MAJEURE

10.01 Force Majeure. Except as otherwise provided in this Agreement, each Party shall be excused, pursuant to the procedures set forth in this Article X, 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, or local governmental restrictions, regulations and restraints, military action, civil disturbances, or conditions in federal, state or local permits.

10.02 Notification. 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.

10.03 Mitigation. 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.

ARTICLE XI. DISPUTES, VENUE AND GOVERNING LAW

11.01 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 FPL Plant Manager 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 Turkey Point Site Vice President and the Mayor of Miami-Dade County or his/her designee for resolution. If the Dispute has not been resolved within twenty (20) business days after such referral to the Turkey Point Site Vice President and the Mayor of Miami-Dade County or his/her designee, 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.

11.02 Venue, Relief, Remedies.

(a) Any and all suits brought by either Party shall be instituted and maintained in any court of competent jurisdiction in Miami-Dade County, Florida.

(b) 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.

(c) 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.

11.03 Governing Law. This agreement shall be governed by and construed according to the laws of the State of Florida.

**ARTICLE XII.
INDEMNIFICATION; LIMITATION OF LIABILITY**

12.01 Indemnification. 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. 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 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, 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. The provisions of this Section 12.01 shall survive termination, cancellation, suspension, completion or expiration of this Agreement.

12.02 Limitation of Liability. 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 of up to One Million Dollars (\$1,000,000) for each such breach, 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 12.02 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

12.03 No Liability for Exercise of Police Power. Notwithstanding and prevailing over any contrary provision in this Agreement, nothing in this Agreement shall bind the County, the Department of Regulatory and Economic Resources or successor department, or any other County, federal, or state department or authority, committee, or agency: to grant or leave in effect any environmental permit approvals, 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 Bodies in the exercise of its police power; or to withhold, revoke, or modify any actions taken by the County or other applicable Governmental Bodies to enforce ordinances, regulations, or other laws, including, without limitation, the Consent Agreement entered into on October 7, 2015, between FPL and the County, through its Department of Regulatory and Economic Resources, Division of Environmental Resources Management, regarding the Cooling Canal System located at Turkey Point. 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 such approvals of any kind or nature whatsoever. This limitation on liability for the exercise of the County's police power shall specifically, and without limitation, prevail over the County obligations in this Agreement: to cooperate with the development, permitting and construction of the ARWP;; to execute documents or give approvals, regardless of the purpose required for such execution or approvals; to apply for or assist FPL in applying for any County or third party permit or needed approval; and to contest, defend against, or assist FPL in contesting or defending against any challenge of any nature.

ARTICLE XIII.
MISCELLANEOUS

13.01 Assignment, or Sale, Etc. Neither the County nor FPL 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 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 13.01 shall be void *ab initio*.

13.02 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

With a copy to:

Miami-Dade County Attorney

111 NW First St. Suite 2810

Miami, Florida 33128

As to FPL:

Florida Power & Light Company
c/o Site Vice-President of Turkey Point

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 13.02, 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.

13.03 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 successor-in-interest and permitted assigns.

13.04 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.

13.05 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.

13.06 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the Parties and their permitted successors and assigns any right or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement.

13.07 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.

13.08 Relationship of Parties. The Parties understand and agree that no Party is an agent, employer, contractor, vendor, representative or partner, 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.

13.09 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.

13.10 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).

13.11 Inspector General. 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.

13.12 Audit. The County retains the right to audit and access all relevant non-proprietary files, correspondence and documents directly related to the cost of the work performed under this Agreement.

13.13 Public Records. 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 to seek an injunction restricting the disclosure of the information. This provision shall survive termination of this Agreement.

13.14 General Interpretative 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 or Party shall include reference to such Person or Party'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.

13.15 No Waiver. Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

13.16 Integration. 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.

13.17 Severability. If any Section of this Agreement is found by a court of competent jurisdiction to be null and void, the other Sections shall remain in full force and effect and the Parties shall work in good faith to renegotiate the provisions found to be null and void so that they (i) comply with the law, and (ii) maintain the commercial and legal benefits and obligations of each Party as originally negotiated for as much as is practicable.

13.18 Preparation. 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 and in connection with performing its obligations under this Agreement.

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

EXECUTION VERSION

IN WITNESS WHEREOF, the County and FP&L have executed this Agreement acknowledging their mutual agreement thereto and the obligations and requirements contained herein.

ATTEST:

Harvey Ruvin, Clerk

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

By: _____

Carlos Gimenez

Mayor

Deputy Clerk

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____

[NAME]

[Title]

By: _____

Eric Silagy

President & CEO

Florida Power & Light Company

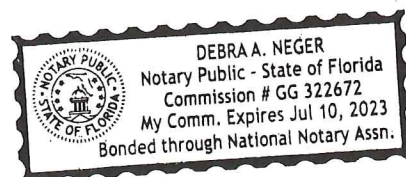
STATE OF
COUNTY OF

Florida
Palm Beach

The foregoing instrument was acknowledged before me by means of: (check one)
☒ physical presence; or _____ remote audio-visual means, this 29th day of
May 2020, by Eric Silagy, as President, and
_____, as Secretary, of FP & L, a
_____, on behalf of the corporation. He/She/They is/are personally known to me or
has/hasn't/have/haven't produced identification and did/did not take an oath.

Debra Neger
Notary Public
Print Name

GG322672
Serial Number



EXECUTION VERSION

Approved for Legal Sufficiency:

Assistant County Attorney

Exhibit A

Table A-1 Reclaimed Water Quality Standards

Parameter	Units	Target Value	Upper Limit
TSS	mg/l	5	20
pH	units	6.0 – 8.0	8.5

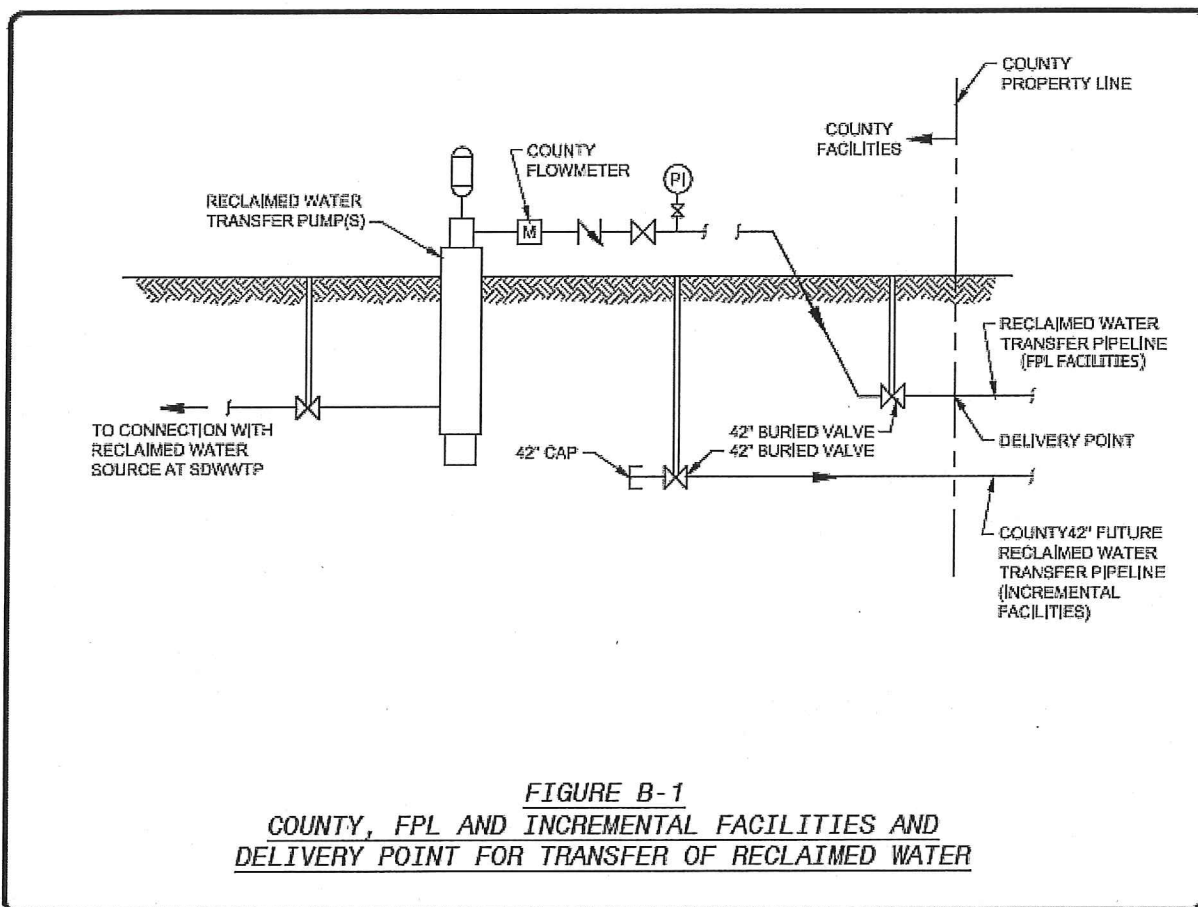
Table A-2 Sentinel Limits

Parameter	Units	Limit
TDS	mg/L	500
Chloride	mg/L	160
Alkalinity (as CaCO ₃)	mg/L	250
Total Phosphorous	mg/L	4.0
Ammonia (as N)	mg/L	35
Nitrate	mg/L	3.5
Nitrite	mg/L	2.5
Magnesium (as Mg)	mg/L	20
Sodium	mg/L	210

Notes:

1. Persistent production of Reclaimed Water in excess of Upper Limits of Table A-1 that is not resolved by a recovery plan is a County Event of Default, as described in paragraph 9.01(c).
2. Standard frequency of testing for each parameter will be established by FPL and the County in the sampling plan, that will be part of the Operating Agreement as described in paragraph 5.03. The Sentinel Limits will be reviewed when the sampling plan is developed to verify the appropriateness of these limits in relation to the final ARWP design and final permits and authorizations.
3. The County will fully cooperate on monitoring other water quality parameters that are important to the effective operation of the Advanced Reclaimed Water Treatment System but which are not regulated or treated at the South District Wastewater Treatment Plant.

Exhibit B
Delivery Point, FPL Facilities and County Facilities



Notes:

1. County Facilities include the Reclaimed Water transfer pumps and motors, transfer piping, valves, instruments and electrical components on SDWWTP property including the buried 42" valve adjacent to the SDWWTP Property Line (Delivery Point). County Facilities also includes the Incremental Facilities necessary to provide additional pipeline capacity of up to 60 MGD for Reclaimed Water transport to the Turkey Point site. Incremental Facilities will include a parallel 42" pipeline and related components and will terminate 10' inside the TP Complex property line and 10' inside the SDWWTP property line.
2. FPL Facilities include the Reclaimed Water transfer pipeline from the SDWWTP property line to the FPL treatment facilities at Turkey Point, the FPL treatment facilities and associated Process Water and Process Wastewater pipelines and equipment, the

cooling tower basins, the deep injection well facilities on the Turkey Point site, and, possibly, on-site Process Wastewater disposal.

Exhibit C

Delivery and Coordination Requirements

<u>Parameter</u>	<u>Quantity</u>
Maximum Daily Quantity (MGD):	15 MGD
Average Daily Quantity (MGD):	9 MGD
Minimum Daily Quantity (MGD):	3.5 MGD
Rate of Change Limit (gpm/hour):	Note 1
Measurement Methodology at Delivery Point:	Note 1

Note 1. An Operating Agreement (Section 5.03 of the Agreement) will be developed in conjunction with the permitting and final design of the ARWP to describe the responsibilities of the Parties in regards to coordinated operations and maintenance of the FPL and County Facilities.

Exhibit D

Conditions Precedent & Sequence of Events

A. Conditions Precedent:

1. FPL receives approval / assurance that the costs incurred in connection with the FPL Facilities can be recovered.
2. FPL receives Subsequent License Renewal Approval for Turkey Point Units 3 & 4.
3. County receives approval / assurance that it will receive the appropriate reclaimed credits for the project in accordance with Section 403.064, Florida Statutes for the duration of this Agreement.
4. FPL and County receive necessary and appropriate permits, approvals and authorizations from regulatory authorities that support execution of the project. Examples include modifications to any existing permit, authorization or certification that are necessary to proceed with the project.
5. FPL and County receive the necessary and appropriate approvals from the respective authorizing entities; NextEra Energy Board of Directors and Miami-Dade County Board of County Commissioners.

B. Expected Sequence of Events:

1. FPL receives Subsequent License Renewal Approval for Units 3 & 4. (December 2019).
2. The Reclaimed Water Service Agreement is presented to FPL management and Miami-Dade County Board of County Commissioners for approval (Summer 2020).
3. Upon Board of County Commission and FPL management approval, FPL and County execute the Reclaimed Water Service Agreement (Summer 2020), subject to any applicable or necessary regulatory approvals.
4. FPL obtains assurance that it can recover the costs it incurs in connection with the Reclaimed Water Service Agreement (Fall 2021).
5. FPL and County identify and obtain all necessary permits, modifications to existing permits, authorizations, or certifications to proceed with project
6. FPL and County commence detailed design, engineering and initiate permitting

process.

7. FPL and County complete cost and schedule estimates for their respective facilities, in accordance with the Reclaimed Water Service Agreement.
8. FPL and the County commence construction of FPL and County Facilities in accordance with the terms of the Reclaimed Water Service Agreement.
9. FPL and the County develop the Operations Agreement reflecting the ARWP final design, permits, approvals and authorizations.
10. FPL and the County complete construction of the FPL and County Facilities.
11. FPL test period with intermittent delivery of Reclaimed Water from County.
12. Full delivery of Reclaimed Water for processing into Processed Water and utilization at the TP Complex commences (NLT 12/31/2025).

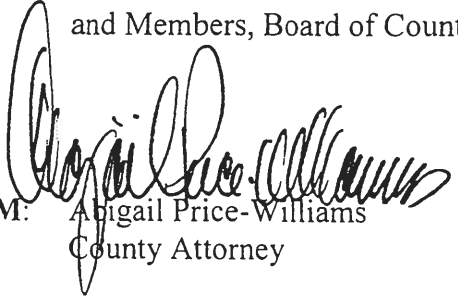


MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: June 16, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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. 8(O)(1)
6-16-20

RESOLUTION NO. _____

RESOLUTION APPROVING AGREEMENT FOR RECLAIMED WATER PROCESSING, TREATMENT AND USE AT THE FLORIDA POWER & LIGHT (FPL) TURKEY POINT COMPLEX WITH FPL; AUTHORIZING ANNUAL PAYMENTS TO FPL UNTIL 2053 IN A TOTAL AMOUNT NOT TO EXCEED \$182,000,000.00; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND EXERCISE THE PROVISIONS CONTAINED THEREIN INCLUDING THE NEGOTIATION AND EXECUTION OF AN OPERATING AGREEMENT

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 the Agreement for Reclaimed Water Processing, Treatment and Use at the Florida Power & Light Turkey Point Complex with Florida Power & Light; authorizing annual payments to FPL until 2053 in a total amount not to exceed \$182,000,000.00; and authorizes the County Mayor or County Mayor's designee to execute the Agreement, in substantially the form attached to the accompanying County Mayor's Memorandum, and to exercise the provisions contained therein including the negotiation and execution of an operating agreement.

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:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared this resolution duly passed and adopted this 16th day of June, 2020. 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