

Memorandum



Date: September 1, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

Agenda Item No. 8(O)(3)

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Resolution No. R-834-22

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

EXECUTIVE SUMMARY

The attached resolution requests approval of Amendment Number One (Amendment) to the Agreement between Florida Power and Light Company (FPL) and Miami-Dade County (County) for Reclaimed Water Processing, Treatment and Use at the FPL Turkey Point Complex (Agreement). This Amendment further defines conditions for the design and construction of the FPL reuse pipeline to Turkey Point for cooling water purposes and establishes the process and timeline for granting of easements within County property necessary to facilitate the project. Further, the Amendment better articulates the County’s option to construct, own, and operate a second reuse pipeline (Incremental Facilities) for the purposes of environmental restoration, which Incremental Facilities would likely be designed and constructed in a similar manner, and located in close proximity, to the FPL reuse pipeline. It also establishes FPL’s obligations with regard to the granting of easements necessary for the County’s future reuse pipeline.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing execution of Amendment Number One to the 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. Amendment Number One is attached hereto as Exhibit 1.

SCOPE

The impact of this Amendment is countywide as it advances the County’s compliance with the State of Florida’s Ocean Outfall Statute (F.S. 403.086(9)(f)), facilitates the use of reclaimed water by FPL to improve overall environmental conditions at Turkey Point, and defines the mechanisms through which FPL and WASD may collaborate to design and construct a County-owned reuse pipeline to supply additional reclaimed water for environmental purposes.

FISCAL IMPACT/FUNDING SOURCE

This proposed Amendment has a potential fiscal impact not-to-exceed \$500,000.00 should WASD elect to request FPL’s assistance in acquiring property rights from third parties whose properties are located within the proposed routes of both FPL’s reuse pipeline and the County’s Incremental Facilities. To the extent WASD utilizes FPL’s assistance, the fiscal impact would be funded by WASD’s proprietary revenue. Authorization for the conveyance of easements between FPL and the County will be sought from the Board via future agenda item(s).

If the County decides to move forward with the design and construction of the Incremental Facilities, it is anticipated that funding for that project will be approved by the Miami-Dade County Board of County Commissioners as part of the Miami-Dade Water and Sewer Department’s Budget and Multi-Year Capital Plan.

DELEGATED AUTHORITY

This item authorizes the County Mayor or County Mayor’s designee to execute the Amendment and to exercise any and all rights conferred herein

TRACK RECORD/MONITOR

WASD’s Deputy Director of Planning and Regulatory Compliance, Marisela Aranguiz, P.E., will oversee the implementation of this Amendment.

BACKGROUND

On June 16, 2020, the Board approved Resolution No. R-579-20 that authorized the Mayor or Mayor’s designee to execute an Agreement with FPL for Reclaimed Water Processing, Treatment and Use at the Florida Power & Light Turkey Point Complex.

Pursuant to the terms of the Agreement, FPL is responsible for designing and constructing: a pipeline from the County’s South District Wastewater Treatment Plant (SDWWTP) to FPL’s Turkey Point Plant; an advanced treatment system at Turkey Point to further treat the reclaimed water for use in the cooling towers; and, if necessary, additional pumping facilities at the SDWWTP. The capital cost to FPL of these facilities is estimated at \$300 million.

Currently, brackish water from the Floridan Aquifer is being used for the cooling towers for the Natural Gas powered Turkey Point Unit 5. Upon the completion of this Project, the water from the Floridan Aquifer will become available to reduce the salinity in the cooling canals, which will provide environmental benefits.

Pursuant to Article 3.02(b) of the Agreement, the County has the option to request that FPL design and construct an additional reuse pipeline to be utilized for the conveyance of reclaimed water to be used to restore ecologically sensitive areas that require additional hydration and potentially improve freshwater deliveries to Biscayne Bay. The Amendment makes it feasible for the County to opt to site its pipeline (Incremental Facilities) within the same corridor as FPL’s pipeline and realize cost savings associated with the economies of scale inherent in the potential simultaneous construction of both pipelines.

Pursuant to the Amendment, the County may now seek to have FPL construct the County’s Incremental Facilities in exchange for reimbursement of all reasonable costs for design, financing, and construction.

Finally, to the extent easements are needed for either FPL’s reuse pipeline or the County’s Incremental Facilities, the Amendment provides that the parties will negotiate the costs of such easements, if any, in good faith, and specifies that FPL may assist the County with the acquisition of third-party real property rights needed to facilitate the construction of the Incremental Facilities.



Jimmy Morales
Chief Operations Officer

AMENDMENT NUMBER ONE
TO
AGREEMENT FOR RECLAIMED WATER PROCESSING, TREATMENT AND USE AT THE
FLORIDA POWER & LIGHT TURKEY POINT COMPLEX

THIS AMENDMENT NUMBER ONE is made and entered into the __ day of June, 2022, 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 collectively with the COUNTY, the "Parties").

W I T N E S S E T H

WHEREAS, on June 16, 2020, the Miami-Dade County Board of County Commissioners approved Resolution No. R-579-20, which authorized the County to enter into an Agreement with FPL for Reclaimed Water Processing, Treatment and Use at the Florida Power & Light Turkey Point Complex (the "Agreement"); and

WHEREAS, pursuant to Resolution No. R-579-20, on July 6, 2020, the County executed the Agreement; and

WHEREAS, Section 3.02(b) of the Agreement provides that the County may request that FPL design and/or construct the Incremental Facilities for the County from the County's South District Wastewater Treatment Plant ("SDWWTP") to FPL's Turkey Point Complex ("TPC"); and

WHEREAS, the County intends to build the Incremental Facilities for purposes of environmental benefits including but not limited to wetland rehydration; and

WHEREAS, consistent with Section 3.02(b) of the Agreement, should the County's Incremental Facilities be designed and constructed on FPL property, FPL will provide the County with access to the FPL property upon which the County's Incremental Facilities will be housed for construction, operation, and maintenance purposes; and

WHEREAS, the County has informed FPL that it intends to design the Incremental Facilities itself in coordination with the design FPL is developing for its reclaimed waterline; and

WHEREAS, the County has requested FPL to undertake negotiations with landowners to attempt to obtain easements on a voluntary basis on behalf of the County in portions of the route where FPL does not already hold fee simple ownership; and

WHEREAS, under Section 3.02(b) of the Agreement, if FPL constructs the County's Incremental Facilities, FPL will deliver those Incremental Facilities to the County for the County's ownership, use and maintenance; and

WHEREAS, Section 3.02(b) of the Agreement provides that, in exchange for FPL designing and/or constructing the Incremental Facilities for the County, the County will reimburse FPL for all reasonable costs to design, finance, and/or construct the Incremental Facilities,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the COUNTY and FPL hereby agree to the following:

1. The AGREEMENT, and all of the terms, conditions, and warranties contained therein, are hereby reaffirmed and shall continue in full force and effect, except as specifically modified by this Amendment Number One.
2. The WHEREAS clauses set forth above are incorporated into the body of this Amendment Number One as if fully set forth herein.
3. This Amendment Number One shall be governed by Florida Law.
4. The Parties agree to modify Section 2.01 by adding the following sentence to the end of the existing paragraph:

The County shall use its best efforts to complete its conditions precedent as set forth on Exhibit D on or before December 1, 2022.

5. The Parties agree to modify Section 3.02 as follows:

3.02 Responsibilities for County and FPL Facilities.

Section 3.02(b) is deleted in its entirety and replaced with the following.

- (b) Subject to Sections 3.02 (g) and 3.02 (j) below, FPL shall construct the Incremental Facilities to provide future pipeline capacity for reclaimed water to the Turkey Point Complex for purposes of possible environmental uses. If the County requests FPL to construct the County's Incremental Facilities, such Incremental Facilities will be delivered to the County for the County to own, operate and maintain, and FPL shall construct the County's Incremental Facilities as designed by the County. To the extent the County's Incremental Facilities are situated on real property owned by FPL, FPL shall provide the County with access to the County's Incremental Facilities for operational and maintenance purposes. Subject to the County's review and approval of costs, which approval shall not be unreasonably withheld, conditioned, delayed or denied, the County will reimburse FPL for all reasonable costs to finance and construct the County's Incremental Facilities. The County will own, operate and maintain the County's Incremental Facilities and be responsible for the costs associated with such responsibilities.

The following Sections 3.02(c)-(k) are hereby added following Section 3.02(b).

- (c) FPL will design its Facilities in a manner consistent with Florida law and FPL's public purpose and necessity. In designing its Facilities, FPL will consider and use commercially reasonable efforts to make accommodations for the anticipated installation of the Incremental Facilities, to the extent such facilities are on real property owned by FPL.
- (d) With respect to that portion of the County's Incremental Facilities, which may be sited on FPL fee simple owned land, FPL will grant the County all easements necessary for the installation, operation, and maintenance of the Incremental

Facilities once the County delivers to FPL the following (i) written notification that the County completed its design and (ii) mutually agreed upon sketches and legal descriptions of the easement areas for the installation, operation, and maintenance of that portion of the Incremental Facilities, which consent by FPL shall not be unreasonably withheld, conditioned, delayed or denied. FPL shall grant the County easements for the Incremental Facilities within 120 days of the submittal of sketches and legal descriptions of easement areas by the County and acceptance by FPL. The cost of such easements shall be negotiated in good faith by FPL and the County prior to their issuance.

- (e) If; (i) the County has not begun construction of the Incremental Facilities by the 15th anniversary of the issuance of the easements described in Section 3.02(d); or (ii) if the County constructs the Incremental Facilities on land other than the easements provided by FPL as described in section 3.02(d) above; or (iii) if at any time after the easements have been granted, the County notifies FPL that it will not construct the Incremental Facilities, then FPL shall refund to the County the cost of the easements, and the easements (and any rights granted thereunder) shall be terminated. To that end, the County agrees to execute any documentation reasonably requested by FPL to memorialize such termination.
- (f) Except as provided in section 3.02 (d) above and section 3.02(g) below, the County shall be responsible for the acquisition of all third-party landowner real property rights associated with the Incremental Facilities.
- (g) Notwithstanding the foregoing, at the County's request, FPL may assist the County with the voluntary acquisition of third-party, private landowner real property rights associated with the Incremental Facilities, when the Parties agree that such assistance would be beneficial to the parties hereto for a period of time, not to extend beyond June 2024. Consummation of any third-party land acquisition or easement acquisition activities, including but not limited to, negotiation and execution of all necessary documentation with landowners or closing, shall be the sole responsibility of the County. The County shall promptly reimburse FPL for FPL's and FPL's contractors' time, and any documented, out of pocket expenses incurred, in assisting the County with the County's third-party landowner voluntary easement negotiations. The County shall authorize any assistance by FPL or FPL's contractors via a work order system to be established, which shall define the scope, schedule, and budget of any assistance by FPL that has been requested by the County. The County agrees to reimburse FPL for services rendered up to a maximum budgeted amount of \$500,000. Should the \$500,000 maximum be reached, FPL will provide notice to the County that the cap has been reached and await further direction from the County as to how to proceed, if at all. The County reserves the right to issue work orders that exceed the \$500,000 cap if additional funding is included within the Miami-Dade Water and Sewer Department's Budget and Multi-Year Capital Plan as approved by the Miami-Dade County Board of County Commissioners for FPL's assistance.
- (h) Condemnation of easements associated with the County's Incremental Facilities shall be the sole responsibility of the County.

- (i) In accordance with Exhibit D, Subsection A, the County shall support and assist FPL in the acquisition of real property rights from the County for County fee-owned property and, which will be required for the construction, ownership, use and maintenance of FPL's Facilities, as well as construction access to construct the County's Facilities. As set forth in Exhibit D, Subsection A, Conditions Precedent, Paragraph 6 below, the cost of any easements required by FPL from the County shall be negotiated in good faith by FPL and the County prior to their issuance.
- (j) If the County exercises its option for FPL to construct the County's Incremental Facilities, FPL will negotiate a procurement and construction agreement and, subject to the County's timely approval of the estimated cost of the Incremental Facilities, FPL will perform such procurement and construction work.
- (k) The County's Incremental Facilities shall be designed and constructed to be compliant with FPL safety and transmission right-of-way requirements and in such a way as to not interfere with FPL's abilities to construct, operate, and maintain FPL's Facilities. The County shall provide FPL with a reasonable opportunity to review the proposed design of the Incremental Facilities, and if FPL determines, in its reasonable discretion, that the design of the Incremental Facilities would not be compliant with FPL safety and transmission right-of-way requirements or would interfere with FPL's abilities to construct, operate, and maintain FPL's Facilities, the County shall modify its design accordingly.
- (l) FPL agrees to coordinate with the County in the County's efforts to design the Incremental Facilities. This coordination shall include sharing information not subject to confidentiality obligations, including but not limited to, route analyses, geotechnical reports, topographic surveys, environmental studies, permits, conceptual design documents, detailed design documents, specifications, schedules, and cost estimates for the reclaimed waterline portion of FPL's Facilities (so long as providing such information does not negatively impact FPL's ability to acquire the parcels FPL requires for the FPL Facilities), and information regarding FPL's existing infrastructure along the project corridor where the Incremental Facilities and FPL's reclaimed waterline will be located. Additionally, to the extent not subject to confidentiality obligations, FPL shall provide information pertaining to third party infrastructure located along the project corridor; provided, however, that the County, in designing its Incremental Facilities, may not rely upon any information provided by FPL, unless and until the County has obtained a reliance letter from the party which provided the applicable information to FPL, and in any event the County hereby agrees to release and hold FPL harmless from any and all claims and other liabilities arising from the County's use of such information. For purposes of this provision only, paragraph 12.01 of the Agreement does not apply. Additionally, only as it relates to information received from FPL pursuant to a request from the County, but not from third-parties, FPL hereby agrees to release and hold the County harmless from any and all claims and other liabilities arising from a claim that FPL's sharing such information violated a confidentiality obligation of FPL. FPL shall also assist by reviewing County plans and specifications and assisting with all reasonable requests of the County.

- m) The County will have until April 1, 2023, to provide written notice to FPL of its intent to have FPL construct the Incremental Facilities on the County's behalf. In such Notice, the County shall demonstrate its ability to have its Incremental Facilities designs completed, including evidence of necessary real property rights and permits, and agrees that the procurement and construction agreement described in Section 3.02(g) shall, among other things, provide FPL with a waiver from the Miami-Dade County Board of County Commissioners, if necessary, that permits FPL to negotiate with contractors and execute the project utilizing FPL's practices without adhering to the State of Florida statutory requirements, Miami Dade County Code Requirements and Miami Dade County procedures and processes.
7. The Parties agree to amend Exhibit D, Subsection A, Conditions Precedent, to include the following new paragraph:
6. FPL shall provide the County with sketches and legal descriptions for all necessary easements for the FPL Facilities on County-owned lands prior to July 31, 2022 for the County's review, acceptance and subsequent granting by the Miami-Dade County Board of County Commissioners. Sketches and legal descriptions of the easement areas for the installation, operation, and maintenance of FPL's Facilities shall be mutually agreed upon prior to September 30, 2022 in order to facilitate the grant to FPL of all real property easements on County-owned lands reasonably required for the construction, operation and maintenance of the FPL Facilities by no later than December 1, 2022. The cost of such easements shall be negotiated in good faith by FPL and the County prior to their issuance. If FPL does not construct the FPL Facilities on an easement provided by the County, or if upon the 15th anniversary after the easements have been granted FPL has not begun construction of the FPL Facilities, then the County shall refund to FPL the cost of the easements, if any, and the easements (and any rights granted thereunder) shall be terminated. To that end, FPL agrees to execute any documentation reasonably requested by the County to memorialize such termination.

(SIGNATURES PAGES FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have executed Amendment Number One to the AGREEMENT by their duly authorized officers on the date first written above.

ATTEST:

HARVEY RUVIN,
CLERK OF THE BOARD

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

By: _____
Deputy Clerk

By: _____
County Mayor

FLORIDA POWER & LIGHT COMPANY,
A Florida Corporation

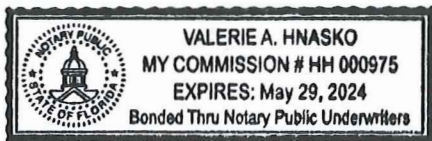
By: [Signature]
Eric Silagy
President & CEO
Florida Power & Light Company

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 8th day of June, 2022, by
Eric Silagy, as President + CEO of
Florida Power + Light, on behalf of the _____.

[NOTARIAL SEAL]



Notary: Valerie A. Hnasko
Print Name: Valerie A. Hnasko
Notary Public, State of Florida
My commission expires: May 29, 2024

☒ Personally Known OR ☐ Produced Identification
Type of Identification Produced _____



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: September 1, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(3)

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)(3)
9-1-22

RESOLUTION NO. R-834-22

RESOLUTION APPROVING AMENDMENT NUMBER ONE TO THE AGREEMENT FOR RECLAIMED WATER PROCESSING, TREATMENT AND USE AT THE FLORIDA POWER & LIGHT TURKEY POINT COMPLEX BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT COMPANY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AMENDMENT AND EXERCISE THE PROVISIONS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Amendment Number One to the Agreement for Reclaimed Water Processing, Treatment and Use at the Florida Power & Light Turkey Point Complex between the County and Florida Power & Light Company; and authorizes the County Mayor or County Mayor's designee to execute the Amendment, in substantially the form attached to the accompanying County Mayor's Memorandum, and to exercise the provisions contained therein.

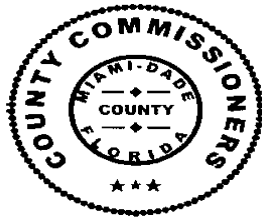
The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	absent	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	absent
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of September, 2022. 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: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis