

REVISED

Agenda Item # 5E1

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: May 20, 2008 Consent [ ] Regular [X]  
Public Hearing [ ]

Submitted By: Water Utilities Department  
Submitted For: Water Utilities Department

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: **A)** Reclaimed Water Agreement with Florida Power and Light (FP&L) to supply reclaimed water for the West County Energy Center; **B)** Interlocal Agreement with East Central Regional Wastewater Treatment Facilities Operation Board (ECRWTFOB) and the City of West Palm Beach (WPB) related to the construction, operation, and maintenance of reclaimed water facilities; **C)** Interlocal Agreement with WPB related to reclaimed water service; **D)** Supplement No. 2 to Consultant Service Authorization No. 21 to the contract with Jordan Jones and Goulding, Inc. (R2005-0775) for design, permitting and bidding of the ECRWRF Reclaimed Water Facility in the lump sum amount of \$1,634,875; **E)** Consultant Services Authorization No. 49 to the contract with Heller-Weaver & Sheremeta, Inc. (R2005-0778) for reclaimed water pipeline surveying and mapping services in the amount of \$685,957; and **F)** Consultant Services Authorization No. 73 to the contract with Mathews Consulting, Inc. (R2005-0777) for design, permitting and bidding of the FP&L on-site reclaimed water facilities in the amount of \$466,588.

**Summary:** The Agreement with FP&L provides for reclaimed water to become the primary source of cooling water supply to the West County Energy Center in 2011 and for FP&L to construct a 27 MGD reclaimed water facility at the East Central Regional Wastewater Reclamation Facility (ECRWRF) with a pipeline to the West County Energy Center. FP&L will utilize reclaimed water for cooling instead of Floridan Aquifer water thereby conserving the Floridan Aquifer for future drinking water supply. FP&L will reimburse the County for consultant and in-house design services for the reclaimed water facilities and piping. The estimated \$62,000,000 construction cost will be amortized over 30 years and paid in full by FP&L. Bonds will be issued by the County prior to the start of construction. The Agreement with FP&L is for 30 years of reclaimed water supply beginning in 2011 with three additional ten-year options for renewal. The Agreement provides for FP&L to have the first right of service and that interruptible reclaimed water may be provided to other users if is not required by FP&L thereby providing a potential benefit to communities in the vicinity of the reclaimed water transmission main. **Continues on Page 3**

**Attachments:**

1. Three (3) Original Agreements – County and FP&L
2. Three (3) Original Interlocal Agreements – County, WPB, and ECRWTFOB
3. Three (3) Original Interlocal Agreements – County and WPB
4. Two (2) Originals JJG Supplement No. 2 to Consultant Services Authorization No. 21
5. Two (2) Originals HW&S Consultant Services Authorization No. 49
6. Two (2) Originals Mathews Consultant Services Authorization No. 73
7. Location Map

Recommended By: [Signature] 5/19/08  
Department Director Date

Approved By: [Signature] 5/19/08  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	\$5,000,000.00	0	0	0	0
External Revenues	(\$5,000,000.00)	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
<b>NET FISCAL IMPACT</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

**Budget Account No.:** Fund 4011 Dept 721 Unit W029 Object 6543

Is Item Included in Current Budget? Yes  No

Reporting Category N/A

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

The Agreement (Exhibit C) with FP&L provides for reimbursement of design services including \$2,787,420 for consultants and approximately \$2,000,000 for in-house design staff plus previously incurred expenses for a total of \$5,000,000. Construction of the reclaimed water facilities and piping will require a bond issue in FY 2009-2010 with capital expenditures to be recovered from user fees over a 30 year period beginning in FY 2011. The agenda item for the budget amendment is scheduled for June 3, 2008.

**C. Department Fiscal Review:** In Equity for DW

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**  
*No Contracts will be encumbered until the budget amendment is processed.*

*atwillhite* 5-19-08  
 OFMB *m* 05/19/08

*Mr. J. J. J...* 5/19/08  
 Contract Development and Control

**B. Legal Sufficiency:**

*[Signature]* 5/19/08  
 Assistant County Attorney

**This item complies with current County policies.**  
*many of the documents were in "draft" form at the time of our review.*

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

This summary is not to be used as a basis for payment.

**Summary: (Continues from Page 1)** The Interlocal Agreement with the ECRWTFOB and WPB provides for allocation of secondary effluent to the County and for the County to construct a 27 MGD reclaimed water facility at the ECRWRF site. The ECRWRF currently has a capacity to treat 70 MGD of wastewater and the average daily flow is 40 MGD. The FP&L reclaimed water facility will average 22 MGD and is anticipated to operate continuously throughout the year significantly reducing deep well injection at the ECRWRF thereby conserving water resources.

The Agreement with WPB provides for interruptible reclaimed water for three (3) developments within the city limits. WPB agrees to allow the pipeline to the West Coast Energy Center to be located to the south of the WPB catchment area berm, thereby minimizing wetland mitigation. In addition, WPB agrees to a step-in provision which allows an outside contractor to operate the reclaimed water facility to be built at the ECRWRF in certain emergency situations.

Supplement No. 2 to Consultant Services Authorization No. 23 with Jordan, Jones & Goulding, Inc. (JJG) provides engineering services for design, permitting and bidding of the ECRWRF 27 MGD reclaimed water facility to serve the West County Energy Center. The contract with JJG includes the small business (SBE) participation goal of 27%, which exceeds the 15% goal established by the Palm Beach County Ordinance (No. 2002-064). This Consultant Services Authorization includes 28.8% overall participation. The consultant's cumulative SBE participation, including this Authorization, is 27.44% overall.

Consultant Services Authorization No. 49 with Heller-Weaver & Sheremeta, Inc. (HW&S), provides surveying, and mapping services for approximately 20 miles of reclaimed water pipeline. The contract with HW&S includes the small business (SBE) participation goal of 51%, which exceeds the 15% goal established by the Palm Beach County Ordinance (No. 2002-064). This consultant services authorization includes 86.33% overall participation. The consultant's cumulative SBE participation, including this authorization, is 87.65% overall.

Consultant Services Authorization No. 73 with Mathews Consulting, Inc. provides for design, permitting and bidding of the FP&L on-site reclaimed water facilities, pipeline environmental permitting, value engineering, constructability review, project scheduling and facilitation of project management. The contract with Mathews Consulting, Inc. includes the small business (SBE) participation goal of 51%, which exceeds the 15% goal established by the Palm Beach County Ordinance (No. 2002-064). This consultant services authorization includes 84.50% overall participation. The consultant's cumulative SBE participation, including this authorization, is 52.62% overall. (WUD Project No. 08-031) Districts 2 and 6 (MJ)

**Background and Justification:** On November 29, 2007 the Board approved zoning modification DOA/EAC-2007-01182 to increase the FP&L West County Energy Center from 3,300 to 3,800 megawatts with a zoning condition requiring reclaimed water to be used as the primary source of cooling water. The use of reclaimed water for power plant cooling is allowed under FAC 62-610. This project increases reclaimed water usage, reduces deep well injection and conserves the Floridan Aquifer supply for future drinking water supply. Peak flows to FP&L are anticipated to occur during summer months and approximately 5 MGD of reclaimed water may be available for other uses during the spring dry season.

On April 19, 2005, the Board approved a contract for Professional Consulting Engineering Services with JJG (R2005-0775), to provide Wastewater & Telemetry Consulting Services. This Authorization provides for design, permitting and bidding of the 27 MGD ECRWRF reclaimed water facility to serve the West County Energy Center which will include reclaimed water filters, disinfection, storage, pumping, an emergency generator, and a control building.

On April 19, 2005, the Board approved a contract for Professional Consulting Engineering Services with HW&S (R2005-0778) to provide Utility Distribution & Collection System Consulting Services. This Authorization provides for surveying, mapping and utility soft-dig locates required for 20 miles of reclaimed water piping which will be designed by in-house staff.

On April 19, 2005, the Board approved a contract for Professional Consulting Engineering Services with Mathews Consulting, Inc. (R2005-0777) to provide Utility Architectural & Value Engineering Consulting Services. This Authorization provides for design, permitting and bidding of the FP&L on-site reclaimed water pipelines and a 5 million gallon reclaimed water storage tank, pipeline environmental permitting, value engineering, constructability review and project scheduling.

FPL Draft 05 08 08

**RECLAIMED WATER AGREEMENT**

between

**PALM BEACH COUNTY**

AND

**FLORIDA POWER & LIGHT COMPANY**

This RECLAIMED WATER AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date"), by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter the "County"), and the FLORIDA POWER & LIGHT COMPANY, a Florida Corporation (hereinafter "FPL"). The County and FPL are hereinafter sometimes collectively referred to as the "Parties" and individually referred to as a "Party."

**WITNESSETH**

**WHEREAS**, FPL is currently constructing, and upon completion will own and operate, the West County Energy Center ("WCEC"), comprised of two (2) nominal 1250 MW combined cycle natural gas-fired power generation units and related facilities (collectively referred to as "WCEC Units 1 and 2") located on Southern Boulevard at 20 Mile Bend in the County;

**WHEREAS**, FPL has now filed a Site Certification Application with the Florida Department of Environmental Protection ("DEP") pursuant to the Florida Power Siting Act, requesting approval to construct a third combined cycle natural gas unit at WCEC (referred to as "WCEC Unit 3");

**WHEREAS**, FPL currently holds a license granted by the South Florida Water Management District ("SFWMD"), pursuant to which FPL has been allocated approximately twenty million (20,000,000) gallons of water per day (to be obtained from the Floridan Aquifer and surface water drawn from the L10/L12 Canals) to support FPL's operation of WCEC Units 1 and 2;

**WHEREAS**, FPL could similarly apply to the SFWMD for an additional allocation for approximately ten million (10,000,000) gallons of water per day (also to be obtained from the Floridan Aquifer and surface water drawn from the L10/L12 Canals) to support FPL's operation of WCEC Unit 3;

**WHEREAS**, the Floridan Aquifer is considered an alternative water supply by the SFWMD and the SFWMD encourages applicants for water use permits to use the deeper, more brackish water of the Floridan Aquifer, as opposed to the shallower and cleaner Surficial Aquifer;

**WHEREAS**, the County and the City of West Palm Beach ("WPB") are members of the East Central Regional Wastewater Treatment Facilities Operation Board (hereinafter "ECR"), which was organized and operates pursuant to that certain interlocal agreement among the County, WPB, the Town of Palm Beach, the City of Riviera Beach, and the City of Lake Worth (collectively, the "Members") dated September 9, 1992 (the "1992 Interlocal"). In accordance with the 1992 Interlocal, WPB operates and maintains the East Central Regional Wastewater Treatment Facilities

(the "ECR Wastewater Facility").

**WHEREAS**, operating pursuant to Permit No. FL004136, issued by the DEP, the ECR Wastewater Facility has a permitted capacity of sixty four million (64,000,000) gallons of wastewater per day and then uses deep-well injection to dispose of the majority of such treated wastewater;

**WHEREAS**, the County desires to find beneficial uses within the boundaries of the County for one hundred percent (100%) of the treated wastewater that is produced by the ECR Wastewater Facility;

**WHEREAS**, the Parties acknowledge that FPL will require an uninterrupted supply of significant quantities of water on a constant basis for cooling and other purposes in connection with its operation of the WCEC Units 1, 2 and 3;

**WHEREAS**, the location of the WCEC is sufficiently proximate to the ECR Wastewater Facility that the County can operate a pipeline to transport reclaimed water from the ECR Wastewater Facility to WCEC on a cost-effective basis and in a quantity sufficient to satisfy the operating demands of the WCEC Units 1, 2 and 3;

**WHEREAS**, the County has performed an evaluation of the current capabilities of the ECR Wastewater Facility, as well as the time and resources required to upgrade and expand the ECR Wastewater Facility and construct a water delivery pipeline running between the ECR Wastewater Facility and the WCEC and, based on the evaluation, has concluded that the upgrade and expansion of the ECR Wastewater Facility for the specific purpose of providing reclaimed water suitable for cooling and other purposes to FPL at the WCEC and the construction of the necessary pipeline to supply reclaimed water to WCEC can be achieved on a cost-effective basis;

**WHEREAS**, in light of such evaluation, the County has determined that the WCEC constitutes a highly-suitable user of large quantities of reclaimed water produced by the ECR Wastewater Facility;

**WHEREAS**, the County is willing, subject to and in accordance with the terms and conditions hereinafter specified in this Agreement, and subject to and in accordance with the terms and conditions related to ownership and operation of the ECR Wastewater Facility, to design, engineer, permit, finance and procure, and cause WPB to operate and maintain, the expanded ECR Wastewater Facility, and to design, engineer, permit, finance, procure, own and operate (i) the water delivery pipeline (and related easements) running between the ECR Wastewater Facility and the WCEC and (ii) the WCEC On-Site RWP Facilities (as defined in Section 1), all as hereinafter more fully described and specified in this Agreement (as hereinafter more fully defined, the "Reclaimed Water Project");

**WHEREAS**, FPL is willing, subject to and in accordance with the terms and conditions hereinafter specified in this Agreement, to construct and commission the Reclaimed Water Project and to reimburse the County for those costs incurred directly and indirectly by the County for designing, engineering, permitting, financing, procuring, operating and maintaining the Reclaimed Water Project;

WHEREAS, the Parties recognize and acknowledge that implementation of this Agreement would significantly: (i) enhance the conservation of vital water resources; (ii) reduce UIC injection costs currently being incurred by the Members at the ECR Wastewater Facility; and (iii) promote a variety of associated environmental benefits for South Florida, thus providing substantial additional support for the Parties' decision to enter into this Agreement.

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

**1. Definitions**

The following definitions and references are given for the purpose of interpreting the terms used in this Agreement and apply unless the context indicates a different meaning:

"1992 Interlocal" has the meaning specified in the preamble to this Agreement.

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

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

"Base Service" means the supply of Reclaimed Water to WCEC Units 1 and 2 in the quantities specified in Section 7.1.

"Bill of Sale" has the meaning set forth in Section 6.10.

"Bond Account" has the meaning set forth in Section 6.9(b).

"Bond Documents" has the meaning set forth in Section 6.5(c).

"Bond Proceeds" has the meaning set forth in Section 6.9(a).

"Bonds" means the long-term, tax exempt, Reclaimed Water Project-specific bonds to be issued by the County to finance the permitting, design, engineering, procurement, construction, and commissioning of the Reclaimed Water Project.

"Budget" has the meaning set forth in Section 6.8.

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

“**Capital Fee**” has the meaning specified in Section 8.1(a).

“**Carrying Fee**” has the meaning set forth in Section 8.1(b).

“**Change in Law**” has the meaning set forth in Section 6.8(b).

“**Commitment Date**” has the meaning set forth in Section 4.

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

“**County RWP Costs**” has the meaning set forth in Section 6.8.

“**County Services**” means, consistent with the terms of this Agreement: (i) the procurement of all permits, lands and easements necessary for the Reclaimed Water Project, (ii) the financing of the Reclaimed Water Project, (iii) designing, engineering, and procuring the Reclaimed Water Project, and (iv) operating and maintaining the Pipeline and WCEC On-Site RWP Facilities and causing WPB to operate and maintain the expanded ECR Wastewater Facility, all as more specifically detailed in Section 6.1(a).

“**County Subcontractor(s)**” has the meaning specified in Section 6.4.

“**County’s Potable Water System**” means the system owned and/or operated by the County for the production and distribution of Potable Water to all retail, wholesale, and/or bulk customers of the County and including all Potable Water meters and related appurtenances.

“**Coverage Fund**” shall have the meaning specified in Section 8.1(a).

“**Declaration**” has the meaning specified in Section 9.4.

“**Deficiency**” has the meaning specified in Section 6.6.

“**Delivery Point**” shall be at the Meter (as defined herein) to be located at the WCEC, as more specifically identified on Exhibit A.

“**DEP**” means the Florida Department of Environmental Protection.

“**Dispute**” has the meaning specified in Section 16.13.

“**ECR Authority**” means the authority of the County as set forth in the ECR-WPB-County Interlocal (as amended or supplemented), the 1992 Interlocal (as amended or supplemented), and any other delegation, agreement, rule, regulation, or ordinance regulating the operation and maintenance of the ECR Wastewater Facility.

“**ECR Governing Board**” means the governing board for the ECR Facility.

“**ECR Property**” means the property described in Exhibit B.

“**ECR Wastewater Facility**” has the meaning specified in the preamble to this Agreement.

“**ECR-WPB-County Interlocal**” has the meaning specified in Section 5.

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

“**Event of Default**” has the meaning set forth in Section 12.1.

“**Final Form**” has the meaning set forth in Section 4.

“**Final Notice**” has the meaning set forth in Section 4.

“**Force Majeure**” shall mean an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including Governmental Authority); acts of God; war, riot or insurrection; blockades; embargoes; sabotage; epidemics; explosions and fires not caused by the operation of the ECR Wastewater Facility; floods; national labor disputes and state-wide strikes; and legal challenges to permitting, procurement and/or construction of the Reclaimed Water Project. Force Majeure shall not include events that affect the cost of equipment, labor, materials or supplies (except to the extent such events have been otherwise caused by a Force Majeure event), strikes, lockouts or other labor disputes with respect to the labor of the County, FPL or any subcontractor or vendor (provided to the extent the subcontractor or vendor is entitled to Force Majeure relief with respect to a strike, lockout or other labor dispute, the County or FPL shall be entitled to Force Majeure relief hereunder if all other requirements regarding a Force Majeure are satisfied), economic hardship or the lack of money, changes in market conditions or the availability of a more attractive market, normal climactic conditions (including normal inclement weather) affecting construction, testing, start-up, operation or maintenance of the ECR Wastewater Facility or the Reclaimed Water Project, equipment breakdown (or inability to use equipment) caused by a failure to properly operate or maintain the ECR Wastewater Facility or the Reclaimed Water Project, or the inability of the County, for any reason to maintain, or comply with all governmental approvals required under Applicable Law, including environmental requirements.

“**Force Majeure Aggregate Allowance**” has the meaning set forth in Section 12.1 and Section 12.2.

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

“**FPL Entities**” shall mean FPL, its parent, present and future subsidiaries and affiliated entities and any other entity that directly or indirectly controls, is controlled by or under common control with any of the foregoing, and each of their respective officers, directors, employees, and agents.

“**FPL RWP Costs**” has the meaning set forth in Section 6.8.

“**FPL Services**” means, consistent with the terms of this Agreement, those construction and commissioning services (and limited design and procurement services) provided by FPL related to the Reclaimed Water Project, as more specifically detailed in Section 6.1(b).



“FPL Subcontractor(s)” has the meaning specified in Section 6.4.

“GAAP” means generally accepted accounting principles, consistently applied throughout the specified period and in the immediately prior comparable period.

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

“Institution” shall have the meaning specified in Section 6.9(a).

“Interest Rate” has the meaning set forth in Section 8.2.

“Interruptible Service” has the meaning specified in Section 10.1.

“Interruption” has the meaning specified in Section 9.3.

“Labor Costs” means the costs related to those employees of the County and of FPL that are detailed, and contribute, to the Reclaimed Water Project, including salary, payroll taxes, insurance and fringe benefits as specified in Exhibit C.

“Licenses” shall have the meaning specified in Section 6.6.

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

“Meter” shall have the meaning specified in Section 7.4.

“MGD” means million gallons per day.

“Milestone Schedule” has the meaning set forth in Section 6.2(a).

“Monthly Base Fee” has the meaning set forth in Section 8.1(c).

“Monthly Commodity Fee” has the meaning set forth in Section 8.1(d).

“Obligation Month” has the meaning set forth in Section 8.2.

“Office of Small Business Assistance” or “OSBA” means the County office responsible for certification of and assistance to Small Business Enterprises in relation to County procurements.

“Operating Fee” means the total of the Monthly Base Fee, Capital Fee, Carrying Fee, Monthly Commodity Fee, the R&R Fee and RPB Service Area Fee.

“Order” has the meaning set forth in Section 4(a).

“Oversight Committee” has the meaning specified in Section 6.2(b).

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

“Pipeline” means the pipeline that, in accordance with the requirements of this Agreement, is to be: (i) designed, engineered, procured, permitted, financed, owned and operated by the County, (ii) constructed and commissioned by FPL, (iii) will run from the ECR Property to the Delivery Point, and (iv) will be used by the County to transport the Reclaimed Water to FPL pursuant to this Agreement.

“Plan” has the meaning specified in Section 6.6.

“Potable Water” means water for human consumption that meets all applicable federal, state, and County standards;

“Project Completion Date” means the date that all construction and commissioning activities related to the Reclaimed Water Project are completed and FPL has provided any and all requisite final acceptance notices.

“Project Contracts” has the meaning set forth in Section 6.5(a).

“Project Control Requirements” are set forth in Exhibit D.

“Project Manager” means that individual who shall be responsible for developing the Reclaimed Water Project on a schedule that achieves the Service Initiation Date consistent with the Budget.

“Quality Requirements” has the meaning set forth in Section 9.1.

“Reclaimed Water” means water that is processed and treated by the Reclaimed Water Project and, subsequent to such processing and treatment, meets the Quality Requirements set forth in Section 9.1.

“Reclaimed Water Project” or the “RWP” means (i) the permitting, ownership, financing, siting, construction, commissioning, operation and maintenance of any additional facilities or upgrades at the ECR Wastewater Facility enabling the facility to produce and deliver Reclaimed Water exclusively for use by FPL at the WCEC for cooling and other purposes, together with (ii) the permitting, ownership, financing, siting, construction, commissioning and operation of the Pipeline and associated easements; and (iii) the permitting, ownership, financing, siting, construction, commissioning, operation and maintenance of the WCEC On-Site RWP Facilities.

“Required Funding” has the meaning set forth in Section 6.9(a).

“Reserve” has the meaning set forth in Section 8.1(a).

“RPB Service Area Fee” has the meaning set forth in Section 8.1(e).

“R&R Fee” has the meaning set forth in Section 8.1(c).

“R&R Fund” has the meaning set forth in Section 8.1(c).

**"RWP Required Approvals"** means all federal, state and local governmental permits and regulatory approvals required for the ownership, financing, siting, construction and operation of the Reclaimed Water Project, which are listed in Exhibit E.

**"Service Account"** has the meaning set forth in Section 6.9(c).

**"Service Initiation Date"** has the meaning specified in Section 7.1.

**"SFWMD"** has the meaning specified in the Recitals to this Agreement.

**"Siting Board"** means the Governor and Cabinet for the State of Florida, acting in their capacity as the siting board pursuant to the Power Plant Siting Act.

**"Small Business Enterprise"** or **"SBE"** means a business certified by the Palm Beach County Office of Small Business Assistance as a Small Business Enterprise.

**"SBE Project Goal"** has the meaning specified in Section 6.1(b)(iii).

**"Supplemental Service"** means the supply of Reclaimed Water to WCEC Unit 3 in the quantities specified in Section 7.2.

**"Term"** has the meaning specified in Section 3.1.

**"UIC"** means underground injection control.

**"Unit"** means any of the three natural gas-fired power generation units that FPL is constructing or has proposed to construct, and will operate, at the West County Energy Center.

**"WCEC On-Site RWP Facilities"** shall mean the storage tank and other facilities which are located at the WCEC and are a part of the Reclaimed Water Project.

**"WCEC Required Approvals"** means all federal, state and local governmental permits and regulatory approvals required for the ownership, financing, siting, construction and operation of WCEC Unit 3, which are set forth in Exhibit F, including a final certificate issued by either the Siting Board or the DEP with respect to WCEC Unit 3.

**"WCEC Units 1 and 2"** means FPL's fully licensed and approved two (2) natural gas-fired power generation units that are currently under construction at West County Energy Center.

**"WCEC Unit 3"** means the third Unit that FPL seeks to construct and operate at the West County Energy Center.

**"West County Energy Center"** or **"WCEC"** means FPL's power plant located near 20 mile bend on Southern Boulevard in the County.

**"Work"** has the meaning set forth in Section 6.4.

**"WPB"** has the meaning set forth in the Recitals to this Agreement.

2. Rules for Interpretation

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the term "Section" refers to the specified Section of this Agreement; (v) the words "include" and "including" are not words of limitation and shall be deemed to be followed by the words "without limitation;" and (vi) the use of the word "or" to connect two or more phrases shall be construed as inclusive of all such phrases (e.g., "A or B" means "A or B, or both").

(b) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(c) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(d) Unless the context otherwise requires, a reference to any law includes any amendment, modification or successor thereto.

(e) Any representation or warranty contained herein as to the enforceability of this Agreement shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors' rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(f) In the event of a conflict between the body of this Agreement and any exhibit, schedule or appendix hereto, the body of this Agreement shall control.

(g) The paragraph headings have been used solely for convenience, and are not intended to describe, interpret, define or limit the scope of this Agreement.

(h) Conflicts or discrepancies, errors or omissions in this Agreement or the various documents delivered in connection with this Agreement will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the Parties at the time of contracting.

(i) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

(j) Any reference herein to a time of day means Juno Beach, Florida local time.

### 3. Term

3.1 The term of this Agreement ("Term") shall commence upon the Effective Date and shall, unless this Agreement is either: (a) earlier terminated or (b) extended, in either case in accordance with the provisions of this Agreement, continue until the thirtieth (30th) anniversary of the Service Initiation Date. After the thirty (30) year Term, FPL shall, in its sole discretion, have the right to extend the Term of this Agreement for as many as three (3) successive extension periods, each of which extension periods to run for an additional ten (10) years; provided, any such extension is contingent on, and would run concurrent with, an extension of the ECR-WPB-County Interlocal agreed to by the ECR, WPB, and the County, such extension to the ECR-WPB-County Interlocal on terms and conditions satisfactory to FPL in all material respects. In order to effectuate such extensions, FPL shall provide a written extension notice to County within two (2) years of the expiration of the initial Term, or, if applicable, whichever extension Term is then in effect and, promptly upon receipt of such notice, the County shall use best efforts to obtain an extension of the ECR-WPB-County Interlocal. In the event that despite the County's best efforts the ECR WPB County Interlocal extension is not obtained, the County shall dedicate and cause to be processed and delivered to FPL the County's entitlement to secondary treated effluent produced by the ECR Wastewater Facility up to 22 MGD annual average daily flow/27 MGDF peak flow (calculated consistent with Section 9, herein); provided, the County shall be permitted to reserve six (6) MGD for sale by the County to the Central Region Reclaimed Water Production Facility.

3.2 Notwithstanding anything to the contrary contained in this Agreement, FPL may, at its convenience, terminate this Agreement at any time for any reason in its sole discretion with no liability or obligations to the County by giving written notice thereof to the County, which termination shall be effective upon the giving of such notice by FPL; provided, if such termination notice is delivered prior to the issuance of the Bonds, FPL shall remain obligated to reimburse the County for County RWP Costs incurred prior to FPL's termination for convenience of this Agreement; and, provided, further, if such termination notice is delivered after the issuance of the Bonds, FPL shall be obligated to reimburse the County for County RWP Costs incurred prior to FPL's termination for convenience of this Agreement and any and all costs related to the issuance of the Bonds, including the repayment of the Bond Proceeds in a manner consistent with Section 12.6.

### 4. Conditions Precedent

Notwithstanding FPL's execution and delivery of this Agreement, FPL's obligations hereunder (except for FPL's obligation to provide the FPL Services and to reimburse the County for County RWP Costs in a manner consistent with Section 6.8) shall only become effective upon the Commitment Date (as provided for herein) and upon the following conditions being satisfied prior to the Commitment Date (or waived by FPL, in its sole discretion):

(a) FPL has received all WCEC Required Approvals in Final Form and containing terms and conditions satisfactory to FPL in its sole discretion.

(b) The County shall have received all RWP Required Approvals required for the

commencement of construction if the RWP in Final Form and containing terms and conditions satisfactory to FPL in its sole discretion.

For purposes of Sections 4(a) and 4(b), the term "**Final Form**" means that (i) the determination, decision or order (each referred to as an "**Order**") from the relevant Governmental Authority that issues, grants or confirms the WCEC Required Approval or the RWP Required Approval in question has been issued and adopted by such Governmental Authority, (ii) such Order has not been and cannot be stayed, enjoined, appealed, set aside or suspended, (iii) such Order is no longer subject to any prescribed waiting or appeal period, and (iv) any and all pre-conditions to the effectiveness of the WCEC Required Approval or the RWP Required Approval in question as are prescribed in such Order or as are otherwise required by applicable law have been satisfied.

Within fifteen (15) days following the receipt of all WCEC Required Approvals and RWP Required Approvals, the appropriate Party shall send written notice to the other Party confirming such receipt and whether such approvals are in Final Form. The "**Commitment Date**" shall be the date upon which FPL provides final notice (the "**Final Notice**") to the County that the WCEC Required Approvals and the RWP Required Approvals are satisfactory to FPL and that the County should issue the Bonds as contemplated in Section 6.9.

**5. ECR Commitment to Reclaimed Water Project**

The ECR Governing Board, on \_\_\_\_\_, 2008, approved an interlocal agreement between the ECR, WPB, and the County, relating to the Reclaimed Water Project (a copy of that interlocal agreement is attached as Exhibit B hereto and is referred to herein as the "**ECR-WPB-County Interlocal**"). The ECR-WPB-County Interlocal allows the County to: (a) design, engineer, finance, procure, construct, commission, own, operate and maintain those portions of the Reclaimed Water Project not located on ECR Property, (b) design, engineer, finance, procure, construct and commission those portions of the Reclaimed Water Project located on ECR Property, (c) produce Reclaimed Water in the quantities necessary to supply Reclaimed Water to FPL in accordance with this Agreement, and (d) transport and sell such Reclaimed Water to FPL.

**6. Development and Operations of the Reclaimed Water Project**

**6.1 Services**

(a) In accordance with the terms and conditions specified in this Agreement, the County shall be responsible for:

(i) obtaining the RWP Required Approvals and any other permits necessary for designing, engineering, financing, procuring, constructing, commissioning, owning, operating and maintaining the Reclaimed Water Project in such manner and pursuant to such schedule as will enable the County to deliver Reclaimed Water to FPL at the WCEC;

(ii) acquiring all lands and easements necessary for the construction, commissioning, operation and maintenance of the Reclaimed Water Project; provided, to the maximum extent possible, the County shall utilize public lands and, as permitted by law, shall exercise its power of eminent domain to obtain such lands and easements;