

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 17, 2021

Consent []
Public Hearing []

Regular [X]

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Settlement Agreement and Amendment No. 2 to Reclaimed Water Agreement (Settlement Agreement/Amendment No. 2) with Florida Power and Light (FPL).

Summary: Palm Beach County (County) and FPL entered into a Reclaimed Water Agreement dated May 20, 2008 (R2008-0906) (Agreement). In accordance with the Agreement, a Reclaimed Water Project (RWP) was constructed, consisting of a reclaimed water plant located adjacent to the East Central Regional Water Reclamation Facility (ECR), a reclaimed water pipeline from the ECR to FPL’s West County Energy Center (WCEC), and certain other facilities located at the WCEC. In accordance with the County’s Interlocal Agreement with the ECR (R2008-0907) (ECR Interlocal), the ECR provides treated wastewater from the ECR to the RWP to produce reclaimed water for delivery to the WCEC. The County issued bonds for the capital costs of the RWP, and FPL is responsible for repayment of the bonds. In addition, FPL is responsible for the payment of all operation and maintenance costs of the RWP. Pursuant to the Agreement, FPL is to receive up to 22 million gallons per day (MGD) annual average daily flow and 27 MGD peak usage of reclaimed water for cooling and other purposes at the WCEC. The Agreement contains certain reclaimed water quality requirements, and pursuant to Section 9.3 of the Agreement, the County is required to provide 3.2 MGD of potable water at no cost to FPL on days when the quality requirements are not met. The Agreement was amended by Amendment No. 1 to the Agreement dated January 24, 2012 (R2012-0212). On September 26, 2016, and in accordance with the Agreement, FPL provided the County with a notice of dispute letter (Dispute Letter) regarding a failure of the County to deliver reclaimed water in accordance with certain supply and quality requirements under the Agreement. Said failure related to deteriorating conditions at the ECR, which affected the quality of the treated wastewater provided to the RWP for treatment and delivery to the WCEC.
Continued on page 3. Countywide (MJ)

Background and Policy Issues: FPL’s WCEC currently has 4.5 million customers in 35 counties and is located in Western Palm Beach County. The WCEC’s primary water source for its natural-gas-fired, combined-cycle generating units is the reclaimed water produced by the RWP. Water quality and quantity produced by the ECR for the WCEC has been an ongoing dispute between the County and FPL since at least 2016. This Settlement Agreement/Amendment No. 2 provides resolution and clarity of future expectations, and also a mechanism for annual true-up moving forward as well as mutual release of all claims.

Attachments:

- 1. Three (3) copies of Settlement Agreement/Amendment No. 2 (including Attachments 1, 2 and 3).

Recommended By: Ali Bayat Department Director 8/11/21 Date

Approved By: Will J. Blum Assistant County Administrator 8/16/2021 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund Dept Unit Object

Is Item Included in Current Budget? Yes ___ No X

Does this item include the use of federal funds? Yes ___ No X

Reporting Category N/A

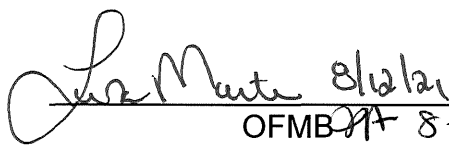
B. Recommended Sources of Funds/Summary of Fiscal Impact:


No fiscal impact. Mutual release of all claims that the parties had as of May 2, 2021 on account of, or in any way growing out of, the Dispute Letter.

C. Department Fiscal Review: _____ GE

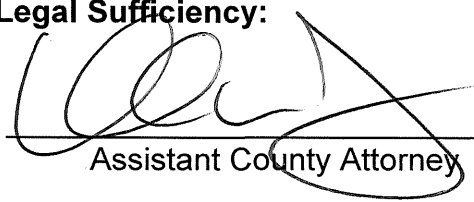
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 8/12/21
 OFMB ~~7/7~~ 8-11-21 BR 8/11

 8/13/21
 Contract Development and Control

B. Legal Sufficiency:

 8/14/21
 Assistant County Attorney

C. Other Department Review:

Department Director

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

Summary, Continued from Page 1:

The key terms of the Settlement Agreement/Amendment No. 2 include a mutual release of all claims that the parties had as of May 2, 2021 on account of, or in any way growing out of, the Dispute Letter. This includes, but is not limited to, any damages that FPL may have had in relation to the reclaimed water not meeting quality requirements. In addition, FPL agrees to waive certain claims related to additional potable water credits that FPL asserts that they are owed under Section 9.3 of the Agreement, and the County agrees to waive certain claims for additional potable water charges that the County asserts that FPL owes under the Potable Water Supply Agreement dated September 22, 2015 between the County and FPL (R2015-1344) (Potable Water Supply Agreement). To date, the County has authorized \$1,907,974.89 in credits under Section 9.3 of the Agreement. FPL's additional potential claims for potable water credits are approximately \$3.4 million, while the County's claims under the Potable Water Supply Agreement are approximately \$2.8 million.

In addition, the Settlement Agreement/Amendment No. 2 amends the agreement by: (1) reducing the number of water quality parameters from 37 to 7; (2) increasing the acceptable limits of Ammonia from 1 mg/L to 3.5 mg/L and Nitrate from 10 mg/L to 15 mg/L; (3) implementing a seven (7) day rolling average as the period for determining compliance with water quality parameters; (4) adding a pro rata credit of 50% of operation and maintenance fees for each day that the RWP is unable to meet FPL's reclaimed water quantity demands; (5) adding language that the County will include FPL in dispute resolution procedures with the ECR regarding the quality or quantity of reclaimed water supply delivered pursuant to the ECR Interlocal; and (6) adding language that the County will consider assigning any claims that the County may have against the ECR to FPL, where so requested by FPL. Finally, the Settlement Agreement/Amendment No. 2 provides additional clarification and examples relating to any future credits which may be owed under the Agreement.

SETTLEMENT AGREEMENT AND AMENDMENT NO. 2 TO RECLAIMED WATER AGREEMENT

This SETTLEMENT AGREEMENT AND AMENDMENT NO. 2 TO RECLAIMED WATER AGREEMENT (this “**Settlement Agreement/Amendment No. 2**”), is dated as of _____, 2021 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (“**County**”), and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (“**FPL**”), sometimes referenced jointly herein as the “**Parties**,” or singularly as a “**Party**.”

WITNESSETH:

WHEREAS, County and FPL entered into that certain Reclaimed Water Agreement dated May 20, 2008 (County Resolution No. R2008-0906) (the “**Agreement**”) relating to construction of a Reclaimed Water Project (“RWP”) adjacent to the East Central Regional Water Reclamation Facility (“ECR”), including a reclaimed water pipeline from the RWP to FPL’s West County Energy Center (“**WCEC**”) and the supply of 22 million gallons per day (“MGD”) annual average daily flow and 27 MGD peak usage of reclaimed water for cooling and other purposes in connection with the operation of the WCEC Units 1, 2 and 3; and

WHEREAS, County and FPL entered into that certain Amendment No. 1 to the Agreement dated January 24, 2012 (County Resolution No. R2012-0212) (“**Amendment No. 1**”) in order to reallocate and delineate operation and maintenance obligations to be carried out by the Parties with respect to certain RWP Facilities, as well as to make other amendments and clarifications which were identified during the construction, commissioning, and operation of the RWP; and

WHEREAS, on September 26, 2016, FPL provided the County with a notice of dispute regarding a failure of the County to deliver Reclaimed Water in accordance with certain supply and quality requirements under the Agreement (“**Dispute Letter**”)(a copy of the Dispute Letter is attached hereto as **Attachment 1** and incorporated herein); and

WHEREAS, the Parties have negotiated in good faith and have reached a resolution to the issues set forth in the Dispute Letter, as well as other issues, which resolution includes certain agreed upon settlement provisions and modifications to the Agreement, and wish to memorialize this resolution in this Settlement Agreement/Amendment No. 2.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

* * *

Section 1 – Recitals. The Parties agree that all the “WHEREAS” clauses in the preceding paragraphs are incorporated as material parts of this Settlement Agreement/Amendment No. 2.

Section 2 – Defined Terms. Any capitalized term used in this Settlement Agreement/Amendment No. 2 and not defined herein shall have the meaning ascribed such capitalized term in the

Agreement. The following definitions and references are given the purpose of interpreting the terms used in this Settlement Agreement/Amendment No. 2 and the Agreement:

“Claims” means all claims, demands, obligations, actions, causes of action, liens, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Parties had as of May 2, 2021, on account of, or in any way growing out of, the provisions of the Dispute Letter, whether known or unknown, foreseen or unforeseen, including, but not limited to, any claims by FPL related to chemicals, labor and maintenance related to additional chemical treatment and contract lab testing, reclaim water strainer cleaning, maintenance costs including cooling tower cleaning, condenser hydrolazing, UIC well acidization, costs of additional Potable Water usage, volumetric credits for Reclaimed Water, any claims by FPL for any Potable Water Credits under this Agreement prior to May 2, 2021, any claims by FPL related to charges for Potable Water consumption under the Potable Water Supply Agreement prior to May 2, 2021, and any claims by the County related to charges for Potable Water consumption under the Potable Water Supply Agreement prior to May 2, 2021.

“Fiscal Year” means the period beginning October 1 and ending September 30 of each calendar year.

“FPL Daily Reclaimed Water Demand” means FPL’s demand for Reclaimed Water from the Reclaimed Water Project on any given calendar day, up to 22 MGD annual average daily flow and 27 MGD peak usage. The FPL Daily Reclaimed Water Demand shall be calculated by taking the WCEC average daily Reclaimed Water usage during the 7 days prior to the date of the start of a Reclaimed Water delivery interruption for which a credit is due under Section 8.1(i) of this Agreement.

“Potable Water Supply Agreement” shall mean that Potable Water Supply Agreement dated September 22, 2015 between the County and FPL (the “Potable Water Supply Agreement”) (County Resolution No. R2015-1344).

Section 3 – Terms of Settlement.

3.1 **Mutual Release of Claims:** The Parties do hereby remise, release, and forever discharge, and by these presents, do for their heirs, affiliates, agents, partnerships, servants, employees, representatives, parents, attorneys, predecessors, successors, and any other related or affiliated entities, remise, release, and forever discharge each of the other Parties and their respective past, present, and future insurers, reinsurers, agents, consultants, lawyers, employees, successors, officers, directors, and any and all other persons, firms, or corporations with whom any of the former have been, are now, or hereafter may be affiliated, together with any and all other persons, firms or corporations, of and from any Claims arising out of the Dispute Letter. FPL agrees to dismiss the Dispute Letter and reserves right to initiate a new dispute for matters occurring after May 2, 2021.

3.2 **No Admission of Liability:** The Parties acknowledge that this Settlement Agreement/Amendment No. 2 is not, and shall not be construed as, an admission by either Party

(or any person or entity acting on its behalf) of any liability or any act of wrongdoing concerning, pertaining, or relating to the Dispute Letter. Rather, each Party expressly denies liability or any act of wrongdoing.

3.3 Attorney's Fees and Costs: Each Party shall bear their own costs, attorney's fees, expert fees, and expenses to date.

3.4 ECR Effluent Pump Electrical Meters: The County agrees that within 30 days of execution of this Settlement Agreement/Amendment No. 2 it will formally make a request to the ECR Board that the ECR allow the meter for electricity for the effluent pumps at the ECR to be replaced by FPL with an FPL direct internal billing meter, and support such request at the ECR Board and as otherwise necessary to implement such replacement.

3.5 Amendment of Agreement: As part of this settlement, the Parties have agreed to modify the Agreement as set forth in Section 4 below.

Section 4 – Modifications to Agreement.

A. Section 8 of the Agreement shall be amended by the addition of the following new Section 8.1(i):

- (i) Prior to Amendment No. 1, Section 8.1(c) of the Agreement provided for a pro rata reduction in the Monthly Base Fee for each day that the Reclaimed Water Project was not available to tender an annual average daily flow of twenty-two (22) MGD at the Delivery Point. In Amendment No. 1, the Monthly Base Fee in Section 8.1(c) and the Monthly Commodity Fee in Section 8.1(d) were replaced with the Monthly O&M Fee in Section 8.1(h), and no provision was made for the application of the pro rata reduction, although FPL retained sole and absolute discretion to choose to discontinue the Monthly O&M Fee and return to the prior billing method. In lieu of discontinuing the Monthly O&M Fee and returning to the prior billing method, the parties wish to enact the following credit procedure:

FPL shall be entitled to a pro rata credit of 50% of the Average Daily O&M Fee for each day that the Reclaimed Water Project is unable to meet the FPL Daily Reclaimed Water Demand, up to 22 MGD. The Average Daily O&M Fee shall be calculated by dividing the Monthly O&M Fee by the number of days in said month. This provision shall only apply to failures to provide the FPL Daily Reclaimed Water Demand at the Delivery Point, and shall not apply to the delivery of Reclaimed Water which meets the FPL Daily Reclaimed Water Demand, but fails to meet the Quality Requirements. An example of the calculation of this pro rata credit is set forth in Paragraph 1 of *Exhibit L* which is attached hereto and

incorporated herein.

B. Section 9 of the Agreement is hereby amended as follows:

(i) Section 9.2 is deleted in its entirety and replaced with the following:

The County shall carry out continuous monitoring and periodic testing no less than monthly by grab sample with respect to the quality of: (a) all Reclaimed Water that has been treated and produced by the Reclaimed Water Project, and (b) all water provided by the County to FPL at the Delivery Point, in accordance with the specific water quality requirements set forth in Rule 62-610, F.A.C., and the terms of this Agreement. The County shall monitor and analyze separately the quality of the Reclaimed Water on a continuous basis for constituents using the methods identified in Exhibit I. The results of all testing and continuous monitoring activities shall be transmitted by the County to FPL on a real-time basis, and the County shall provide FPL with the results of all grab samples on a monthly basis. Monthly grab samples shall not be used to determine an event of noncompliance with the parameters set forth in *Exhibit I* for which a credit is due to FPL under Section 9.3 of this Agreement. Further, the County shall promptly notify FPL in the event that the Reclaimed Water does not satisfy the Quality Requirements at the Reclaimed Water Project location or at the Delivery Point.

(ii) Section 9.3 is deleted in its entirety and replaced with the following:

9.3 If, due to a failure by the County to comply with the terms and conditions of this Agreement, any of the Quality Requirements are not satisfied at the Delivery Point or the Base Service or Supplemental Service to FPL is interrupted (in whole or in part) due to a failure to comply with the Quality Requirements, the County shall promptly: (a) notify FPL and upon FPL's direction, cease delivering the Reclaimed Water to its holding tank and divert the Reclaimed Water to the ECR Wastewater facility's UIC wells, and (b) implement (or cause to be implemented) corrective measures to ensure that the Reclaimed Water satisfies the requisite Quality Requirements. Prior to January 1, 2023, testing for compliance with the terms of this Agreement may be conducted at either the Delivery Point or the RWP. The County will undertake all commercially reasonable efforts to cause the installation of the required metering equipment at the Delivery Point prior to January 1, 2023. Thereafter, all testing for compliance with the terms of this Agreement shall be conducted at the Delivery Point.

During the Term and throughout the pendency of any Reclaimed Water delivery interruption at the Delivery Point due to a failure to meet the Quality Requirements (an "Interruption"), the County shall provide FPL, at no charge, up to three point two (3.2) MGD of Potable Water from the

County's Potable Water System (the "Potable Water Credit"). The Potable Water Credit shall be subject to the following criteria:

- (a) The Potable Water Credit shall be reduced by the Baseline Potable Water Usage at the WCEC. The Baseline Potable Water Usage shall be the most recent true-up calculation of the Average Annual Daily Flow ("AADF") as calculated pursuant to Section 8 and Exhibit "E" of the Potable Water Supply Agreement. Except for the County's 2021 Fiscal Year, said calculation shall be performed each April for the prior Fiscal Year by dividing the total annual Potable Water usage by the total number of days that the Reclaimed Water met all Quality Requirements. For the County's 2021 Fiscal Year, the Baseline Potable Water Calculation shall be 750,000 gallons per day. The total annual Potable Water usage calculation shall not include Potable Water usage during any period when the Reclaimed Water fails to meet the Quality Requirements. An example of the calculation of the Potable Water Credit is set forth in Paragraph 2 of *Exhibit L*.
- (b) Noncompliance shall be based upon the criteria and timeframes set forth in *Exhibit I* and in this Section 9.3. Ammonia Level Potable Water Credits shall be based upon the criteria and timeframes set forth in *Exhibit I*, except that the first 30 days of noncompliance for Ammonia Level exceedances in each County Fiscal Year shall not be subject to a credit, regardless of whether any other parameter exceeds the limits set forth in *Exhibit I*. The eligibility parameters for Potable Water Credits are set forth in Paragraph 3 of *Exhibit L*.
- (c) For each event of noncompliance with the parameters set forth in *Exhibit I*, the accuracy of the applicable continuous monitoring meter may be verified by the County by calibration. If the County elects to perform the meter verification, the County shall perform the calibration in accordance with industry standards, and the County shall provide notice to FPL of the time and location of the calibration. Such calibration must occur within 24 hours of the initial event of noncompliance with the parameters set forth in *Exhibit I*, or the County will be deemed to have waived the option to verify the meter, and FPL shall be entitled to receive a Potable Water Credit for the period of noncompliance subject to the terms of this Agreement. The results of the meter calibration shall be applied as follows:

if the meter is within industry standard deviation, the meter shall be deemed to be accurate, and FPL shall be entitled to receive a Potable Water Credit based on the meter reading for the period of non-compliance subject to the terms of this Agreement. If the meter is determined to be inaccurate outside of industry standard deviation, any FPL Potable Water Credit due shall be increased or decreased to account for the deviation percentage greater than industry standard.

In the event an interruption is caused due to a condition other than a failure of the County to satisfy the Quality Requirements, or if the failure of the County is caused by a Force Majeure, the County shall provide such potable Water to FPL at the rate set forth in the Potable Water Supply Agreement.

C. Section 10.2 of the Agreement is deleted in its entirety and replaced with the language set forth below. It is the Parties intention that all references to reimbursements for sales to third-party customers in the Agreement shall be in accordance with this new Section 10.2:

10.2 In the event that the County utilizes the Reclaimed Water Project to deliver Reclaimed Water to third-party customers, the County shall provide to FPL all proceeds, payments, or other funds received from such third-party customers. The County shall not retain the 25% PBC Admin Fee, as set forth in Exhibit H-1 of Amendment No. 1, from the payments, proceeds, or other funds received from such third-party customers. County will provide FPL with a monthly report documenting the monthly reclaimed water production volume at the RWP, the monthly delivery volumes to all RWP customers, monthly credit forecasts for third party user credits, and a copy of all bills sent to third-party customers during the reporting period.

D. The following paragraphs are added to Section 16.13 of the Agreement:

Pursuant to Section 6.5 of the Interlocal Agreement Among the East Central Regional Wastewater Treatment Operation Board, City of West Palm Beach, and Palm Beach County Related to Construction, Operation, and Maintenance of Reclaimed Water Facilities dated May 20, 2008 (County Resolution No. R2008-0907)(the "ECR Interlocal"), the parties thereto may appoint additional Authorized Representatives at any time by written notice to the other party. The County will name the then current WCEC Plant Manager as an additional Authorized Representative in any dispute resolution process between the County and the ECR (as initiated under Section 5 of the ECR Interlocal) regarding the quality or quantity of Reclaimed Water supply delivered pursuant to the ECR Interlocal. FPL shall only act as an additional Authorized Representative of the County and

shall have no independent rights in relation to the dispute resolution. County shall consult with FPL prior to making any final decision regarding the dispute resolution process. Notwithstanding the prior sentence, County shall retain the sole and absolute authority to make any final decision independently as to the dispute resolution process.

If the County has initiated a claim or there is a legal basis to initiate a claim against the ECR under the ECR Interlocal for performance under the ECR Interlocal by the ECR which impacts the County's performance under the Agreement, the County shall, at FPL's request, consider and assess the assignment of said claim to FPL. The decision to assign is within the sole discretion of the County and, if the County decides to assign, will be subject to a County approval process. Any such assignment will be contingent upon the negotiation and execution of a written assignment agreement between the County and FPL.

E. Exhibit I is hereby deleted in its entirety and replaced with Revised Exhibit I, which is attached hereto as **Attachment 3** and incorporated herein. Any reference in the Agreement to Exhibit I is hereby replaced with a reference to Revised Exhibit I.

F. Exhibit L, which is attached hereto and incorporated herein as **Attachment 2**, is hereby added into the Agreement.

G. The modifications to the Agreement set forth in this Settlement Agreement/Amendment No. 2 are executed in connection with the Agreement, and once executed by the Parties, shall be deemed to be incorporated into and made a part of the Agreement as fully as if the terms of this Settlement Agreement/Amendment No. 2 had actually been set forth in the Agreement. Wherever the terms of this Settlement Agreement/Amendment No. 2 and the terms of the Agreement are in conflict, the terms of this Settlement Agreement/Amendment No. 2 shall govern and control.

Section 5 – Authorized and Binding Agreement.

(A) The execution, delivery, and performance of this Settlement Agreement/Amendment No. 2 has been duly authorized by all requisite corporate action required by or on behalf of FPL, and this Settlement Agreement/Amendment No. 2 constitutes the legal, valid and binding obligation of FPL, enforceable against FPL in accordance with its terms.

(B) The execution, delivery, and performance of this Settlement Agreement/Amendment No. 2 has been duly authorized by all requisite corporate action required by or on behalf of County, and this Settlement Agreement/Amendment No. 2 constitutes the legal, valid and binding obligation of County, enforceable against County in accordance with its terms.

Section 6 – Severability. If any one or more of the provisions of this Settlement Agreement/Amendment No. 2 should be ruled illegal, wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction under present or future laws, then: (i) the validity and enforceability of all provisions of this Settlement Agreement/Amendment No.

2 not ruled to be invalid or unenforceable shall be unaffected and remain in full force and effect; (ii) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held illegal, wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein.

Section 7 – Entire Agreement. This Settlement Agreement/Amendment No. 2 contains the entire understanding of the Parties with respect to any modifications or amendments to the Agreement contemplated by the Parties through and as of the date hereof, and supersedes all prior agreements, arrangements, discussions, undertakings and commitments with respect to any such modifications or amendments (whether written or oral) with respect thereto. There are no other oral understandings, terms or conditions with respect to the subject matter of this Settlement Agreement/Amendment No. 2, and neither Party has relied upon any representation, express or implied, not contained in this Settlement Agreement/Amendment No. 2 or the Agreement.

Section 8 – Counterparts. The Parties acknowledge and agree that this Settlement Agreement/Amendment No. 2 may be executed in multiple counterparts, and transmitted via telecopy or .pdf e-mail file, and all such counterparts (whether transmitted via telecopy, .pdf e-mail file or otherwise), when executed and taken together, shall constitute integral parts of one and the same amendment between the Parties.

Section 9 – The Agreement Remains in Effect. Except as expressly modified by this Settlement Agreement/Amendment No. 2, all of the terms, conditions, covenants, representations, agreements and understandings contained in the Agreement shall remain unchanged and in full force and effect, and the same are hereby expressly ratified and confirmed by the Parties.

* * *

Remainder of page intentionally left blank.

(Signatures of the Parties appear on the following page).

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Settlement Agreement/Amendment No. 2, effective on the date first written above.

ATTEST:

**JOSEPH ABRUZZO, CLERK OF
THE CIRCUIT COURT AND
COMPTROLLER, PALM BEACH
COUNTY**

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY COMMISSIONERS**

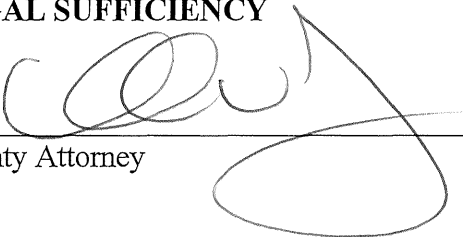
By: _____
Title: Deputy Clerk

By: _____
Dave Kerner, Mayor

(SEAL)

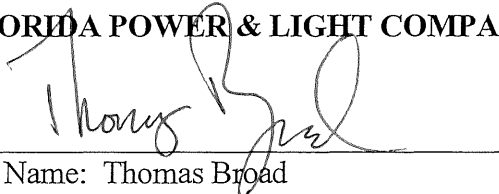
**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By:  _____
County Attorney

By:  _____
Director of Water Utilities

FLORIDA POWER & LIGHT COMPANY

By:  _____
Name: Thomas Broad
Title: VP Power Generation
Florida Power and Light

**ATTACHMENT 1
DISPUTE LETTER**



Scott A. Goorland
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 304-5633
(561) 691-7135 (Facsimile)
scott.goorland@fpl.com

VIA UPS

September 26, 2016

Jim Stiles
Palm Beach County Water Utilities
Department Director
8100 Forest Hill Boulevard
West Palm Beach, FL 33416

Re: **Notice of Dispute**

Dear Mr. Stiles:

This notice of Dispute (the "*Notice*") is delivered pursuant to Section 16.13 of the Reclaimed Water Agreement (the "*Agreement*"), dated May 20, 2008, by and between Florida Power & Light Company ("*FPL*") and Palm Beach County (the "*County*"). Capitalized terms used herein and not otherwise defined have the meaning set forth in the Agreement.

Subject to certain daily flow limitations, the Agreement requires the County to provide to FPL, for its West County Energy Center ("*WCEC*"), from the East Central Regional Wastewater Treatment Facility ("*ECR*"), (a) 18 MGD of Reclaimed Water related to WCEC Units 1 and 2; and (b) 9 MGD of Reclaimed Water related to WCEC Unit 3 (the "*Supply Requirements*") (see, Section 7, Water Supply). All Reclaimed Water provided by the County to FPL must satisfy the Quality Requirements (see, Section 9 and Exhibit 1).

From 2008 to 2010, FPL and the County worked cooperatively to provide for the supply of Reclaimed Water in accordance with the Agreement. Commencing in the fall of 2015, and continuing through the present, a series of events at the ECR occurred that resulted in a failure by the County (the "*Failure*") to deliver Reclaimed Water in a manner consistent with the Supply Requirements and the Quality Requirements under the Agreement (see, Section 7, Water Supply, and Section 9, Water Quality, Restrictions). As a direct result of the Failure, FPL has incurred significant costs, and expended significant resources in attempting to meet WCEC's water supply and water quality needs. Furthermore, FPL is concerned that the Failure has, and continues to, adversely impact operations at WCEC as well as the additional costs and expenses incurred by FPL in remedying the Failure. Therefore, pursuant to Section 16.13 of the Agreement, FPL formally provides this Notice, and is referring the Failure to the Oversight Committee.

Florida Power & Light Company

700 Universe Boulevard, Juno Beach, FL 33408

The County has failed to meet the requirements of the Agreement. Specifically:

- 1) From October 1 to November 7 of 2015, the Reclaimed Water delivered from the ECR failed to meet the Quality Requirements. During this period, the Reclaimed Water exceeded water quality parameters for ammonia, total suspended solids, and phosphorous. WCEC used potable water makeup to supply the necessary shortages in excess of approximately 20MM gallons.
- 2) From January 14, 2016 to January 16, 2016, the Reclaimed Water delivered from the ECR failed to meet the Supply Requirements. WCEC procured potable water makeup to supply the necessary shortages of approximately 4MM gallons.
- 3) From January 28, 2016 to January 31, 2016, the Reclaimed Water delivered from the ECR failed to meet the Supply Requirements. WCEC procured potable water makeup to supply the necessary shortages of 7.9MM gallons. Significantly, WCEC was forced to curtail energy production due to the unexpected Reclaimed Water shortfall.
- 4) From February 9, 2016 to February 25, 2016, the Reclaimed Water delivered from the ECR failed to meet the Supply Requirements. WCEC procured potable water makeup to supply the necessary shortages of 7.8MM gallons. Significantly, WCEC was forced to curtail energy production due to the unexpected water shortfall.
- 5) On March 8, 2016, the Reclaimed Water delivered from the ECR failed to meet the Quality Requirements.
- 6) On March 13, 2016, for 8 hours, Reclaimed Water delivered from the ECR failed to meet the Quality Requirements.
- 7) From June 21, 2016 to the present, the Reclaimed Water delivered from the ECR failed to meet the Supply Requirements and the Quality Requirements. The Reclaimed Water exceeded Quality Requirements for ammonia, total dissolved and suspended solids, turbidity and phosphorous. To date, WCEC has procured potable water to supply the necessary shortages of approximately 180MM gallons. Additionally, WCEC was forced to curtail energy production due to the unexpected water shortages.

In addition to the operational concerns, FPL has incurred significant costs and expenses related to generation curtailments, purchases of potable water, purchases of chemicals for reclaimed and aquifer water treatment, and more, directly as a result of the County's Failure.

FPL has attempted to amicably resolve its concerns regarding the County's Failure. On February 22, 2016, FPL provided the County with a letter expressing its concerns regarding the Failure. On May 20, 2016, FPL met with County representatives to outline the service interruptions. On June 30, 2016, FPL representatives presented its concerns at an ECR Regional Board meeting. Additionally, FPL representatives have maintained frequent contact with

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County representatives since these issues began to arise in October 2015. Nevertheless, despite FPL's attempts to address the Failure with the County, to date, significant issues related to the Supply Requirements and Quality Requirements continue. WCEC is an important component of FPL's generation fleet and its reliable operation is necessary in order for FPL to satisfy its demand requirements. FPL cannot risk further curtailment of generation at WCEC, nor should FPL continue to incur costs due to the County's Failure. Additionally, FPL should be reimbursed for its costs and expenses incurred as a result of the County's Failure, including FPL's costs related to procuring up to 3.2 MGD of potable water which was to be provided at no cost to FPL (see, Section 9.3), costs for purchases of chemicals for reclaimed and aquifer water treatment, and all other costs incurred by FPL directly as a result of the County's Failure.

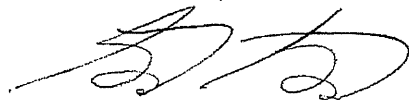
Despite the Failure, FPL desires to maintain its valued and beneficial relationship with the County, and to resolve this Dispute through friendly consultation. Therefore, pursuant to Section 16.13, FPL provides this formal Notice and is referring the Dispute to the Oversight Committee. The Oversight Committee will have fifteen (15) days from the date of delivery of this Notice to meet and resolve the Dispute. In the event the Dispute cannot be resolved within that timeframe, FPL and the County must refer the Dispute to senior management for resolution. If the Dispute is not resolved within ten (10) days of referral to senior management, FPL will consider all options available to it under the Agreement, including the potential to formally notify the County that it is in Default under the Agreement.

Pursuant to Section 6.2(b), the WCEC Plant Manager, Pete Holzapfel, will serve as one member of the Oversight Committee. In addition, FPL notifies the County that Steven Scroggs, FPL Senior Director of Project Development, and Matthew Raffenberg, FPL Environmental Services Director, will also serve on the Oversight Committee, and requests that the County identify the two representatives from the County that will serve.

FPL reiterates that it desires to resolve the Dispute amicably with the County. FPL considers the County to be a long-term, valued partner and FPL looks forward to working together to resolve the Dispute through the Oversight Committee.

If you have any questions regarding this Notice, please do not hesitate to contact me directly at (561) 304-5633.

Respectfully submitted,



Scott A. Goorland
Senior Attorney

cc:

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ATTACHMENT 2

**EXHIBIT L
CREDIT CALCULATIONS/SCENARIOS**

- 1. Pro rata credit of 50% of Average Daily O&M Fee per Section 8.1(i) of the Agreement:**

Formula: [50% x (Monthly O&M Fee/days in the month)] x [(FPL Daily Reclaimed Water Demand-Reclaimed Water Delivered)/FPL Daily Reclaimed Water Demand] = Credit

Example:

Monthly O&M Fee = \$250,000

Days in Month = 30

Reclaimed Water Delivered = 5MG

FPL Daily Reclaimed Water Demand= 15MG

**[.50 x (\$250,000/30)] x [(15MG-5MG)/15MG] = Credit
4,166.67 x 10/15 = \$2777.78 Credit**

- 2. Potable Water Credit per Section 9.3(a) of the Agreement:**

Formula to be applied for each day a potable water credit is due:

PW Usage - Baseline Potable Water Usage = Potable Water Credit

(The Baseline Potable Water Usage shall be 750,000 gallons per day for Fiscal Year 2021, and for future fiscal years shall be calculated in accordance with Exhibit E of the Potable Water Supply Agreement. Potable Water taken on those days when the Quality Requirements are not met shall be excluded from the calculation).

Example:

2.0 MG PW Usage - .75 MG Baseline Potable Water Usage = 1.25 MG Potable Water Credit

- 3. Eligibility Parameters for Potable Water Credits per Section 9.3(b) of the Agreement:**

Ammonia Exceedance → First 30 days of Ammonia Exceedance in Fiscal Year = No Credit

Ammonia Exceedance → After 30 days of Ammonia Exceedance in Fiscal Year = Credit

Ammonia and other parameter exceedance → First 30 days of Ammonia Exceedance in Fiscal Year = No Credit

Ammonia and other parameter exceedance → After 30 days of Ammonia Exceedance in Fiscal Year = Credit

Other Parameter Exceedance with Ammonia Compliant → Any time = Credit

**ATTACHMENT 3
REVISED EXHIBIT I**

REVISED EXHIBIT I

Parameters	FPL Requirements	Compliance Monitoring*
Ammonia	<3.5 mg/l	7-Day Rolling Average
Nitrate, as N	<15 mg/l	7-Day Rolling Average
pH - Field	6 - 8.5	7-Day Rolling Average
Phosphorus, Total as P	<1.67 mg/l	7-Day Rolling Average
Total Chlorine Residual	>1 mg/l	7-Day Rolling Average
Total Suspended Solids	<5 mg/l	7-Day Rolling Average
Turbidity	<3.0	7-Day Rolling Average

*For the purpose of compliance monitoring, the 7-Day Rolling Average shall be calculated by taking the average of the 7 prior calendar days. Each day's average shall be determined by averaging all samples taken during that day.