

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
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>(\$1,062,304)</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	<u>(\$1,062,304)</u>	<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 4000 Dept 720 Unit 4200 RSC 6999

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:

C. Department Fiscal Review:

George M. Burtas

III. REVIEW COMMENTS

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

*Reviewed
10/11/22*
Suzanne Mante 10/11/22
OFMB

Araceli S. Sanchez 10/16/22
Contract Development and Control

B. Legal Sufficiency:

[Signature] 10/17/22
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:

Pursuant to Section 3.8 of the Reclaimed Interlocal, the ECR Board is required to use commercially reasonable efforts to deliver the treated wastewater to the County at all times at the quality achieved during Fiscal Year 2007. The County contends that the ECR has failed to meet its obligation under Section 3.8 of the Reclaimed Interlocal during the period of January 1, 2016 through May 1, 2021, which has caused the County to incur damages under the FPL Agreement; and the ECR Board has disputed the County's contention but recognizes that the County has incurred damages under the FPL Agreement due to ECR quality issues. The key terms of the Settlement Agreement include the ECR's payment of \$1,062,303.54 to the County no later than December 31, 2022 and a mutual release of all claims up to the Effective Date of this Settlement Agreement. The County, as a member of the ECR Board, will be responsible for its 2022-23 fiscal year flow share of the payment.

INTERLOCAL AGREEMENT REGARDING SETTLEMENT OF RECLAIMED WATER DISPUTE

ECR NO. 05932

THIS INTERLOCAL AGREEMENT REGARDING SETTLEMENT OF RECLAIMED WATER DISPUTE ("Settlement Agreement") is made and entered into this _____ day of _____, 2022, by and among the **EAST CENTRAL REGIONAL WASTEWATER TREATMENT FACILITIES OPERATION BOARD**, a legal entity created under the terms of Chapter 163, Fla. Stat., through its agent, the City of West Palm Beach (hereinafter "ECR"), and **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County")(the ECR and County may individually be referred to as a "Party", or collectively as "Parties").

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969, provides a method for governmental entities to cooperate with each other on a basis of mutual advantage to provide services and facilities in a manner that will accord best with the factors influencing the needs and development of local communities; and

WHEREAS, the ECR was organized and operates pursuant to that certain Interlocal Agreement among Palm Beach County, City of West Palm Beach, the Town of Palm Beach, the City of Riviera Beach and the City of Lake Worth, dated September 9, 1992 ("Interlocal Agreement"); and

WHEREAS, pursuant to Section 7 of the Interlocal Agreement, each of the Members of the ECR has the right to expand the Facilities, as that term is defined in the Interlocal Agreement, subject to, among other conditions, the execution and delivery of an agreement between the ECR and the entity or entities participating in the expansion; and

WHEREAS, the ECR, Palm Beach County, and West Palm Beach entered into that Interlocal Agreement Among the East Central Regional Wastewater Treatment Facilities 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 R2008 0907), as amended ("Reclaimed Interlocal") regarding the County's construction of a Reclaimed Water Facility at the ECR to provide service to Florida Power & Light ("FPL"); and

WHEREAS, the County and FPL entered into a Reclaimed Water Agreement dated May 20, 2008 (County Resolution No. R2008-0906), as amended by Amendment No. 1 to Reclaimed Water Agreement dated January 24, 2012 (County Resolution No. R2012-0212), and by Settlement Agreement and Amendment No. 2 to Reclaimed Water Agreement dated August 17, 2021 (County Resolution R2021-1149) ("FPL Reclaimed Agreement") in which the County agreed to provide FPL with Reclaimed Water from the Reclaimed Water Facility; and to which FPL Reclaimed Agreement the ECR is not a party; and

WHEREAS, pursuant to Section 3.8 of the Reclaimed Interlocal, the ECR is required to use commercially reasonable efforts to deliver the Secondary Treated Effluent Allocation to the County at all times at the quality achieved during Fiscal Year 2007; and

WHEREAS, the County contends that the ECR has failed to meet its obligation under Section 3.8 of the Reclaimed Interlocal during the period of January 1, 2016 through May 1, 2021, which has caused the County to incur damages under the FPL Reclaimed Agreement; and

WHEREAS, the ECR has disputed the County's contention but recognizes that the County has incurred damages under the FPL Reclaimed Agreement due to ECR effluent quality issues; and

WHEREAS, the ECR agrees to pay \$1,062,303.54 to County to settle all disputes related to the County's allegation that the ECR failed to meet its obligations under Section 3.8 of the Reclaimed Interlocal; and

WHEREAS, the Parties wish to enter into this Settlement Agreement to settle all disputes related to the Reclaimed Interlocal, as more fully set forth herein.

NOW THEREFORE, in consideration of the recitals, covenants, agreements and promises herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties covenant and agree as follows:

SECTION 1. ACKNOWLEDGMENTS.

1.1 The Parties acknowledge and agree that the preceding premises of this Settlement Agreement are true and correct and are incorporated herein by reference.

1.2 Each of the Parties hereto hereby represents and warrants that it has all requisite power and authority to enter into this Settlement Agreement and to carry out its obligations hereunder.

SECTION 2. DEFINITIONS. The Parties agree that in construing this Settlement Agreement the following terms shall have the meanings indicated:

2.1 "County" has the meaning set forth in the preamble to this Settlement Agreement.

2.2 "ECR" has the meaning set forth in the preamble to this Settlement Agreement.

2.3 "ECR Property" means that certain real property upon which the ECR treatment plant facilities are located.

2.4 "Facilities" has the meaning ascribed to this term in the Interlocal Agreement.

2.5 "Fiscal Year 2007" means October 1, 2006 through September 30, 2007.

2.6 "FPL" has the meaning set forth in the Recitals.

2.7 "FPL Reclaimed Agreement" has the meaning set forth in the Recitals.

2.8 "Interlocal Agreement" has the meaning set forth in the Recitals.

2.9 "Members" means the entities that make up the ECR, consisting of Palm Beach County, City of West Palm Beach, the Town of Palm Beach, the City of Riviera Beach and the City of Lake Worth.

2.10 "Parties" has the meaning set forth in the preamble to this Settlement Agreement.

2.11 "Party" has the meaning set forth in the preamble to this Settlement Agreement.

2.12 "Reclaimed Interlocal" has the meaning set forth in the Recitals.

2.13 "Reclaimed Water" means Secondary Treated Effluent that has been further treated in the Reclaimed Water Facility.

2.14 "Reclaimed Water Facility" means the facilities constructed on ECR Property by the County pursuant to the Reclaimed Interlocal.

2.15 "Settlement Agreement" means this agreement between the ECR and the COUNTY.

2.16 "Secondary Treated Effluent" has the meaning set forth in the Reclaimed Interlocal

All other capitalized terms in this Settlement Agreement shall have the meaning ascribed to them in the Interlocal Agreement unless otherwise defined in this Section or elsewhere in this Settlement Agreement.

SECTION 3. TERMS OF SETTLEMENT.

3.1 **Payment to Palm Beach County:** The ECR shall pay to the County, no later than December 31, 2022, the amount of \$1,062,303.54 ("settlement payment") to settle all known claims (as more fully defined in Section 3.3 below) related to the Reclaimed Interlocal.

3.2 **Allocation.** The ECR has included the settlement payment in the approved ECR fiscal year 2022-23 operations budget, and as such, it will be included in the ECR monthly Wastewater Flow Charge Formula for fiscal year 2022-23 based on estimated flows from the members, which are invoiced to the Members pursuant to Section 5 of the Interlocal Agreement, subject to true-up after the end of fiscal year 2022-23 based on actual Member flows during fiscal year 2022-23. However, such allocation among the Members does not excuse the ECR's obligation to pay the County the settlement payment as set forth herein.

3.3 **Mutual Release of Claims:** The Parties do hereby remise, release, and forever discharge each other of and from any and all known claims relating to the Reclaimed Interlocal accruing prior to the date of this Agreement.

3.3 **No Admission of Liability:** The Parties acknowledge that this Settlement Agreement 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 subject matter herein. Rather, each Party expressly denies liability or any act of wrongdoing. The Parties acknowledge that the City of West Palm Beach is not a party to this Settlement Agreement, and this Settlement Agreement does not affect the City of West Beach in its capacity as a party to the Reclaimed Interlocal, and only addresses the claim by County against the ECR for the ECR's obligations under the Reclaimed Interlocal, as set forth in this Settlement Agreement.

3.4 **Attorney's Fees and Costs:** Each Party shall bear their own costs, attorney's fees, expert fees, and expenses to date. However, this section shall not bar either Party from seeking costs, attorney's fees, expert fees, and expenses for any claims accruing on or after May 2, 2021.

3.5 **Certain Provisions of Section 3.10 Inapplicable:** Both Parties agree that the second and third sentence of Section 3.10 of the Reclaimed Interlocal are inapplicable to this Settlement Agreement, as those provisions relate only to Offsite Reclaimed Water Facilities, as defined therein.

SECTION 4.

4.1 **Future Claims.** The parties recognize that the circumstances from which the County's claim arose may reoccur until improvements at the ECR Facility are completed. Each Party agrees that the County may raise a similar future claim for the ECR Board's consideration, only if each of the following have occurred:

- a) The quality of the Secondary Treated Effluent delivered to the Reclaimed Water Facility does not meet the quality requirements of the Reclaimed Interlocal and;
- b) The County provided FPL with a Potable Water Credit, as that term is defined in Section 9.3 of the FPL Reclaimed Agreement. A copy of the Settlement Agreement and Amendment No. 2 to Reclaimed Water Agreement dated August 17, 2021, (County Resolution R2021-1149) which contains the current definition of Potable Water Credit, is attached hereto and incorporated herein as **Exhibit "A"**.

4.2 **Limitation of Liability.** The County agrees that any future claims against the ECR based on the payment of a Potable Water Credit to FPL shall be limited to the variable operating cost for supplying the Potable Water to FPL, as determined by the County using generally accepted rate-making principles. Nothing herein shall preclude the County from seeking additional damages not related to a Potable Water Credit should FPL seek such damages from the County. Pursuant to the FPL Reclaimed Agreement, the Potable Water Credit shall not exceed 3.2 Million Gallons/Day.

SECTION 5. EFFECTIVE DATE. This Settlement Agreement shall be effective once approved by the ECR and the County and filed with the Clerk of the County Court pursuant to 163.01(11), Florida Statutes (the "Effective Date").

SECTION 6. DISPUTE RESOLUTION. Disputes under this Settlement Agreement may be resolved by the County's Authorized Representative and ECR's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and either party believes that the issue is of sufficient merit, the Parties shall select a mediator mutually acceptable to all Parties to conduct a non-binding mediation of the issues involved and make a recommendation to the Parties. The Parties agree to be responsible for their respective costs and fees incurred during the mediation and that each party shall pay the mediator's fees and costs in equal amounts.

SECTION 7. MISCELLANEOUS PROVISIONS.

7.1 This Settlement Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Settlement Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior contemporaneous representatives or agreements, whether oral or written.

7.2 This Settlement Agreement may be amended only by written agreement of the Parties

7.3 If any term or provision of this Settlement Agreement or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable for the remainder of this Settlement Agreement, then the Application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Settlement Agreement shall be deemed valid and enforceable to the extent permitted by law.

7.4. Any notice, request, demand, consent approval or other communication required or permitted by this Settlement Agreement shall be given or made in writing and shall be served (as elected by the party giving such notice) by one of the following methods: (i) hand delivery to the other party; (ii) delivery by commercial overnight courier service; or (iii) mailed by registered or certified mail (postage prepaid), return receipt requested.

For purposes of notice the addresses are:

COUNTY: Palm Beach County Water Utilities
Department Director
8100 Forest Hill Boulevard
West Palm Beach, FL 33416

With a copy to: Palm Beach County Attorney
301 N. Olive Ave., Ste. 601
West Palm Beach, FL 33401

ECR: East Central Regional Wastewater
Treatment Facility Operations Board
Attn: Executive Manager
4375 Easley Drive
West Palm Beach, FL 33409
Telephone: (561) 835-7400
Fax: (561) 835-7420

With a copy to: Greenberg Traurig, P.A.
Attn: Phillip Gildan
777 So. Flagler Drive
Suite 300 East
West Palm Beach, FL 33401
Fax: (561) 838-8867

Notice given in accordance with the provision of this paragraph shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

7.5. The Authorized Representative for the ECR is the ECR Executive Manager. The Authorized Representative for the County is the County Water Utilities Department Director. Each party retains the right to substitute a new or additional Project Manager/Authorized Representative at any time and from time to time by written notice to the other.

7.6 Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Settlement Agreement.

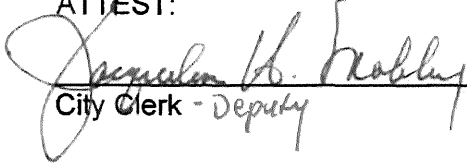
7.7 The failure of a party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Settlement Agreement shall not be affected by any previous waiver of course or dealing.

7.8 No party shall be considered the author of this Settlement Agreement since the Parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Settlement Agreement shall not be strictly construed against one party as opposed to any other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Settlement Agreement and the same shall remain in full force and effect.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed the day, month and year aforesaid.

ATTEST:

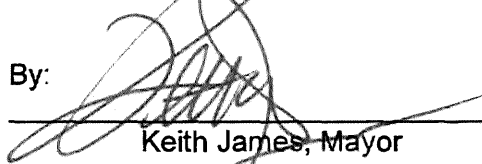


City Clerk - Deputy

CITY ATTORNEY'S OFFICE
Approved as to form and legality

By: 

**EAST CENTRAL REGIONAL
WASTEWATER TREATMENT FACILITIES
OPERATION BOARD**
By its agent: CITY OF WEST PALM BEACH

By: 

Keith James, Mayor

Dated: 7/26, 2022

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

By: _____
Deputy Clerk

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

By: _____
Robert S. Weinroth, Mayor


APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: 

County Attorney

Date: _____

APPROVED AS TO TERMS AND
CONDITIONS:

By: 

Department Director
KB

EXHIBIT A
Settlement Agreement and Amendment No. 2 to Reclaimed Water Agreement dated
August 17, 2021 (County Resolution R2021-1149)

R2021 1149

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 ~~AUG 17 2021~~ 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

R2021 1149 AUG 17 2021
PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: [Signature]
Title: Deputy Clerk



By: [Signature]
Dave Kerner, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: [Signature]
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: [Signature]
Director of Water Utilities

FLORIDA POWER & LIGHT COMPANY

By: [Signature]
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

Florida Power & Light Company

700 Universe Boulevard, Juno Beach, FL 33408

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:

Ms. Shannon Larocque-Baas
Palm Beach County Water Utilities
Assistant County Administrator
8100 Forest Hill Boulevard
West Palm Beach, FL 33416

Michael Jones
Assistant Palm Beach County Attorney
301 No. Olive Ave., Ste 601
West Palm Beach, FL 33401

Florida Power & Light Company

700 Universe Boulevard, Juno Beach, FL 33408

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: $[50\% \times (\text{Monthly O\&M Fee}/\text{days in the month})] \times [(\text{FPL Daily Reclaimed Water Demand}-\text{Reclaimed Water Delivered})/\text{FPL Daily Reclaimed Water Demand}] = \text{Credit}$

Example:

Monthly O&M Fee = \$250,000

Days in Month = 30

Reclaimed Water Delivered = 5MG

FPL Daily Reclaimed Water Demand= 15MG

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

- 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

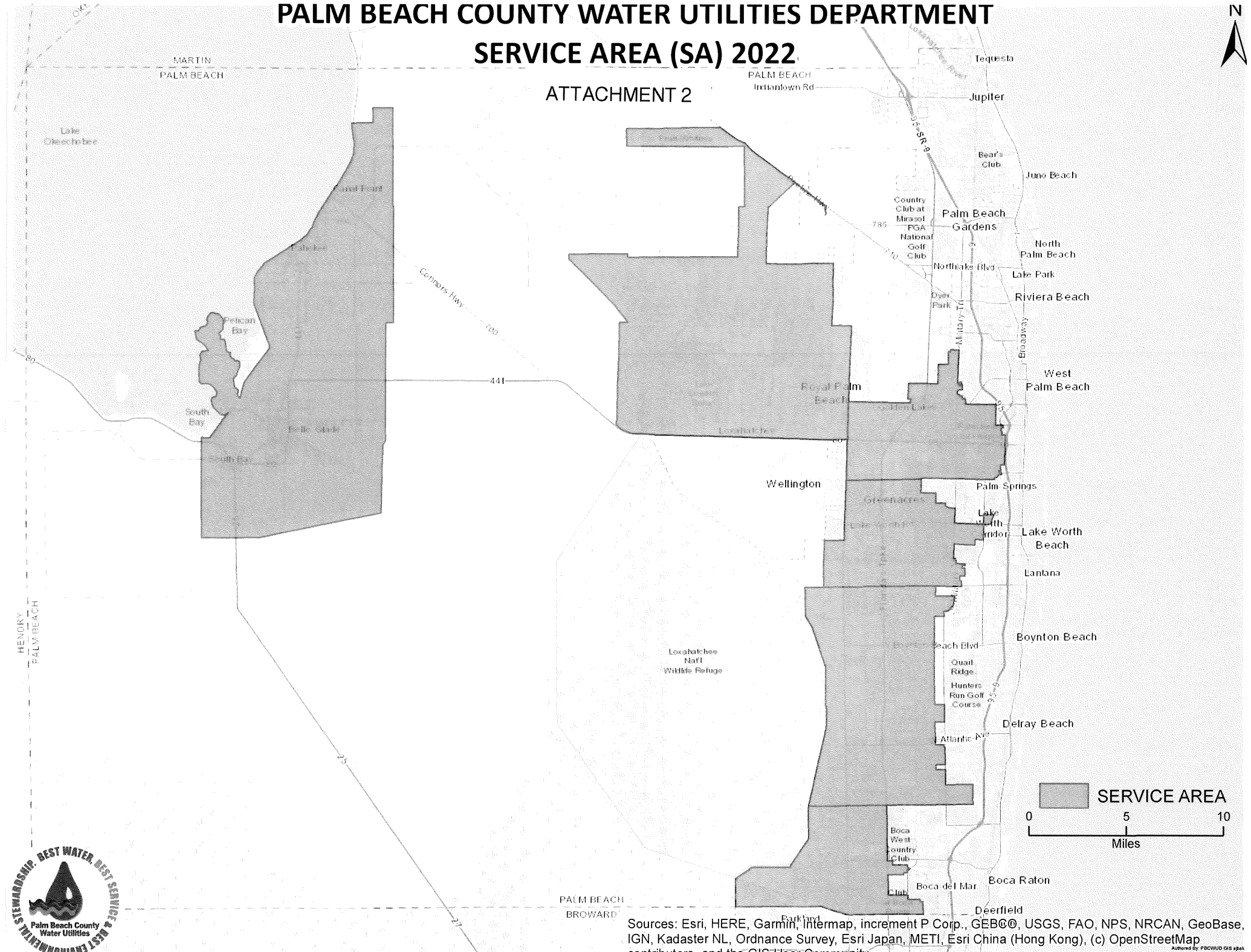
Parameters	FPL Requirements	Compliance Monitoring*
Ammonia	<3.5 mg/l	7-Day Rolling Average
Nitrate, as N	<15 mg/l	7-Day Rolling Average
pH - Field	6 - 8.5	7-Day Rolling Average
Phosphorus, Total as P	<1.67 mg/l	7-Day Rolling Average
Total Chlorine Residual	>1 mg/l	7-Day Rolling Average
Total Suspended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

PALM BEACH COUNTY WATER UTILITIES DEPARTMENT

SERVICE AREA (SA) 2022

ATTACHMENT 2



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEB©, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Authored by: PBC/UID GIS team
 Date: 02/09/2022