



Florida Power & Light Company, 215 S. Monroe St., Suite 810, Tallahassee, FL 32301

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CLERK

March 25, 2009

090150

VIA HAND DELIVERY

Ms. Ann Cole, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center, Room 110
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Florida Power & Light Company's Petition for Approval of a Modification to an Existing Negotiated Renewable Energy Contract with The Solid Waste Authority of Palm Beach County

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and seven (7) copies of FPL's Petition for Approval of a Modification to an Existing Negotiated Renewable Energy Contract with The Solid Waste Authority of Palm Beach County, together with a CD containing the electronic version of same.

Please contact me if you or your Staff have any questions regarding this filing.

Sincerely,

Carla G. Pettus
Carla G. Pettus
Authorized House Counsel No. 53011

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's)
Petition for Approval of a Modification to)
An Existing Negotiated Renewable Energy)
Contract with The Solid Waste Authority of)
Palm Beach County)

Docket No. 090150

Dated: March 25, 2009

PETITION

Pursuant to Sections 366.04 and 366.91, Florida Statutes, and Rules 25-17.0836, 25-17.240 and 28-106.201, Florida Administrative Code, Florida Power & Light Company ("FPL" or the "Company"), petitions this Commission for approval of a modification to an existing negotiated renewable energy contract for FPL's purchase of firm capacity and energy, as well as a right of first refusal with respect to defined Green Attributes, from the Solid Waste Authority of Palm Beach County (the "Modified Contract"). The Solid Waste Authority of Palm Beach County ("SWA") would produce the electricity for sale under the contract from a refurbished renewable energy facility using municipal solid waste as a fuel in the state of Florida. FPL requests that the Commission enter a finding that the Modified Contract will be considered prudent for capacity and energy clause recovery purposes. A true and correct copy of the Modified Contract is attached as Exhibit A and a red-lined version of the Modified Contract is attached as Exhibit B to this Petition. In support of this Petition FPL states as follows:

1. FPL is a public utility subject to the jurisdiction of the Commission pursuant to Chapter 366, F.S. FPL's General Offices are located at 9250 West Flagler Street, Miami, FL 33174. The Commission has jurisdiction pursuant to Section 366.91, F.S., to establish rates at which a public utility shall purchase capacity and/or energy from renewable energy facilities, and

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FPL invokes that jurisdiction in filing this Petition. FPL has a substantial interest in the rates it pays renewable energy facilities for capacity and energy.

2. Pleadings, motions, notices, orders or other documents required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

R. Wade Litchfield
Vice President of Regulatory
Affairs & Chief Regulatory Counsel
Florida Power & Light
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Juno Beach, Florida 33408-0420
(561) 691-7101
(561) 691-7135 (telecopier)

Carla Pettus
Senior Attorney
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3. FPL has an existing contract for the purchase of firm capacity and energy from SWA which was executed in January 1987 (“Original Contract”). The Original Contract deliveries of capacity and energy began on April 1, 1992. It provided for 47.5 MW of firm capacity to FPL. As a municipal solid waste facility it constituted and still constitutes to be a “Renewable Generating Facility” within the meaning of Section 366.91 (2) (a), F.S. and Rule 25-17.210 (1), F.A.C.

4. In Order No. 17753, Docket No. 870173-EI, the Commission approved the Original Contract between FPL and SWA for cost recovery purposes. The Commission found that while the Original Contract was not a standard offer contract as defined in Rule 25-17.083, F.A.C., the parties have negotiated an agreement whereby capacity payments are based on a sliding scale, an incentive is given for on-peak production, and energy payments are less than 100% of avoided energy costs. *Id.* Further, the Commission found that negotiations produced a longer commitment of capacity by SWA, extending through the year 2010, than would otherwise have been provided under a standard offer contract. *Id.* The Commission concluded that the

contract met the requirements of Rule 25-17.082(2) (a)-(c), F.A.C., and that it was reasonably likely that the purchase of firm energy and capacity pursuant to the contract would permit deferral of construction of additional generating capacity in peninsular Florida as required by Rule 25-17.083(2)(a), F.A.C. Id. Because energy payments and capacity payments under the contract at a 70% capacity factor were less than those under the standard offer, Rule 25-17.083(2) (b), F.A.C. was satisfied. Based on the fact no early capacity payments were required under the contract, the Commission determined that Rule 25-17.083(2) (c) was not applicable.

5. The Original Contract expires on March 31, 2010. FPL and SWA have reached agreement on the modifications to the terms and conditions of the Original Contract which is herein referred to as the Modified Contract. By this petition, FPL seeks approval of the modifications to the Original Contract.

6. For the reasons explained below, the purchase of firm capacity and energy from SWA's refurbished facility pursuant to the rates, terms and other conditions of the Modified Contract can reasonably be expected to contribute towards the deferral or avoidance of capacity-related costs by FPL, as well as provide fuel diversity, and energy security at a cost to FPL's customers which is not expected to exceed full avoided costs, giving consideration to the characteristics of the capacity and energy (including renewable characteristics) to be delivered under the Contract. See Rule 25-17.240(2), F.A.C.

7. The Contract is expected to result in "a cost to the utility's ratepayers which does not exceed full avoided costs, giving consideration to the characteristics of the capacity and energy to be delivered by the renewable generating facility under the contract," as required pursuant to Rule 25-17.240(2), F.A.C. From April 1, 2010 until completion of refurbishment, SWA will be paid as-available energy payments. After refurbishment, SWA will be paid a coal

based capacity payment and the lower of as-available energy or coal based energy payments. Capacity payments are based on the cost of a 2012 Glades County coal unit. Energy payments will be 100% of the lower of the cost of St. Johns River Power Plant energy at a 10.5 heat rate or the as-available energy cost. The term of the Modified Contract extends for 20 years following the Commercial Operation Date, provided however that in no event shall the Modified Contract extend beyond June 1, 2034. A comparison of projected payments to SWA versus what the payments would be under FPL's current Standard Offer Contract with a 2014 CC avoided unit is attached as Exhibit C to this Petition.

8. The refurbished facility's proposed Committed Capacity of at least 40 MW and not greater than 55 MW of firm capacity can be expected to avoid some firm capacity purchases that would otherwise be needed during periods of higher than expected system demand and/or electric generating constraints. Capacity payments use a formulary approach unchanged from the Original Contract. In order to receive full capacity payments the SWA facility has to operate above an 85 % capacity billing factor based on a 12 month rolling average. Accordingly, the purchase of firm capacity and energy from the renewable generating facility "can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs." Rule 25-17.240(2), F.A.C. In addition, the use of municipal solid waste for its primary fuel will enhance FPL's fuel diversity and help enhance energy security. Id. The use of coal based pricing will also provide FPL's customers with economic benefits due to fuel cost diversification compared to pricing based upon natural gas or other fuels.

9. The proposed Modified Contract provides FPL a right of first refusal option to purchase SWA's Green Attributes associated with the renewable energy produced by the facility. FPL's right of first refusal to purchase the Green Attributes of SWA's electrical production

benefits FPL's customers by encouraging refurbishment of an existing renewable generation facility in Florida that will serve FPL's customers. Such right of first refusal to the Green Attributes may also benefit FPL's customers in the future, for example by being used to satisfy a future requirement to purchase Green Attributes under a Florida or federal renewable portfolio standard (RPS).

10. Exhibit B is a red-lined version of the Original Contract with the modified portions highlighted. The modifications to the Original Contract are a material change and include such changes, inter alia, as: (a) extension of the agreement to the earlier of 20 years after completion of refurbishment or 2034; (b) provisions for the facility to be refurbished; (c) revised energy and capacity payments; and (d) the right of first refusal to all of SWA's renewable attributes under various scenarios.

11. While the existing Original Contract is viable and would continue to be enforceable until the expiration of the original terms, the Modified Contract provides savings and benefits to FPL's customers by preserving and extending the life of an existing renewable resource in the State; preserving a contractual arrangement with a Renewable Generating Facility that is not expected to exceed full avoided costs; and obtaining an additional benefit of the right of first refusal to the Green Attributes associated with the facility.

12. The in-service date of the facility will not be changed due to the Modified Contract. The Modified Contract takes into consideration the refurbishment of the facility and provides for terms of payment until the facility is refurbished. If refurbishment is not completed by June 1, 2014, FPL has the option to terminate the agreement.

13. As shown in Exhibit C a comparison of the contract payments to SWA under the Modified Contract versus what the payments would be under FPL's Standard Offer Contract

indicate that the Modified Contract would provide Net Present Value (NPV) savings of \$72 million to FPL's customers.

14. FPL is not aware of any disputed issues of fact. This petition is not in response to a prior agency decision.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission grant this Petition and (i) approve the proposed Modified Contract between FPL and SWA in the form attached hereto as Attachment A; and (ii) enter a finding that the Modified Contract is prudent for capacity and energy clause recovery purposes.

Dated: March 25, 2009.

Respectfully submitted,

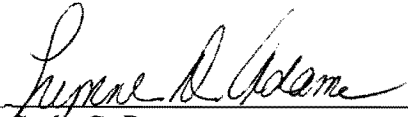
By: 
Carla G. Pettus
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EXHIBIT A

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

**RESTATED AND AMENDED AGREEMENT FOR THE
PURCHASE OF FIRM CAPACITY AND ENERGY
BETWEEN THE SOLID
WASTE AUTHORITY OF PALM BEACH COUNTY AND FLORIDA POWER &
LIGHT COMPANY**

THIS RESTATED AND AMENDED AGREEMENT ("Amended Agreement") is made and entered this ____ day of _____, 2009 , by and between THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY (the "Authority"), a special taxing district created by the Florida Legislature under the Palm Beach County Solid Waste Act, Chapter 2001-331, Laws of Florida, with its principal offices at 7501 North Jog Road , West Palm Beach, Florida 33412 , and FLORIDA POWER & LIGHT COMPANY ("FPL"), a utility corporation organized and existing under the laws of the State of Florida having its principal place of business in Juno Beach, Florida. The Authority and FPL shall collectively herein be called the "Parties" and each be individually identified herein from time to time as a "Party".

WITNESSETH:

WHEREAS, the Authority has built and owns a facility (the "Facility") which is a "qualifying small power production facility" as that term is defined in Section 3(17)(c) of the Federal Power Act and used in Section 210 of the Public Utility Regulatory Policies Act of 1978; is a qualifying facility pursuant to 25-17.080, Florida Administrative Code; and, which is a producer of "renewable energy" as that term is defined in Section 366.91 of Florida Statutes; and,

WHEREAS, the Authority desires to sell, and FPL desires to purchase, electricity generated by the Facility consistent with Florida Public Service Commission ("FPSC") Rules 25-17.80 through 25-17.87, inclusive, of Order No. 12443 in Docket No. 820406-EU; and,

WHEREAS, the Parties desire to restate and amend the Original Agreement, as defined herein, in order to, among other things, extend the term and to allow the Authority to refurbish and retrofit the Facility; and,

WHEREAS, in the event a conflict arises among terms or conditions contained herein

due to the restatement and amendment process, it is the Parties' intent that this Amended Agreement be interpreted in a manner that best advances the intent that the Authority will sell and FPL will purchase electric energy and capacity produced by the Refurbished Facility in accordance with terms and conditions set forth herein relating to the Refurbished Facility; and,

WHEREAS, the Parties intend that this Amended Agreement will not affect in any way the Original Agreement now in effect between the Parties relating to the Facility.

NOW, THEREFORE, for mutual consideration, the Parties agree as follows

1. **DEFINITIONS** - As used in this Amended Agreement and in Appendices A and B hereto, the following terms shall have the following meanings:
 - 1.1 **After-Tax Basis** - shall mean, with respect to any payment to be received by either Party, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Party so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all taxes required to be paid by such Party in respect of the receipt or accrual of the base payment and the additional payment (taking into account the net present value of any reduction in such taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable tax rates applicable to the Party for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of taxes for federal income tax purposes.
 - 1.2 **Annual Capacity Factor** - the sum of the 12 consecutive Monthly Capacity Factors, including the month to be calculated, divided by 12. Commencing with the first Monthly Billing Period in which Capacity payments are to be made after the Period of Refurbishment, the 12 month Annual Capacity Factor shall be carried forward as if the date of expiration of the Original Agreement and the first day of the Monthly Billing Period following the Commercial Operation Date under this Amended Agreement were consecutive days. Thereafter, the calculation of the Annual Capacity Factor shall therefore continue; provided, however, that if the Monthly Capacity Factor is less than

55% during the first two months immediately following the Commercial Operation Date, SWA shall not be entitled to any capacity payment for such month or months.

- 1.3 **As-Available Avoided Energy Costs** - costs computed pursuant to FPSC Rule 25-17.825(2) set forth in FPSC Order No. 12443, issued September 2, 1983, as it may subsequently be amended from time to time or any successor or substitute calculation, formula or methodology relating thereto approved by the Florida Public Service Commission. FPL's Southeastern/Eastern operating area shall be the designated avoided cost pricing area for purposes of this Amended Agreement.
- 1.4 **Base Capacity Credit** - the amounts thereof set forth in Appendix B.
- 1.5 **Capacity** - electric power in megawatts ("MW") generated by the Facility and delivered to FPL's system.
- 1.6 **Capacity Factor** - the Annual Capacity Factor unless the On-Peak Annual Capacity Factor is five percentage points or more lower than the Annual Capacity Factor, in which case the Capacity Factor shall be the mean average of the On-Peak Annual Capacity Factor and the Annual Capacity Factor.
- 1.7 **Commercial Operation Date** - the first day of the Monthly Billing Period immediately following successful completion and operation of the Refurbished Facility as determined by the Authority.
- 1.8 **Committed Capacity** - the maximum Capacity in any one hour which the Authority contractually commits to sell to FPL pursuant to the terms of this Amended Agreement, all as specified from time to time pursuant to Section 4.3.
- 1.9 **Energy** - electrical energy in megawatt-hours ("MWH") generated by the Facility and delivered to FPL's system at a 138,000 voltage level.
- 1.10 **Event of Default** - any of those occurrences specified in Section 12.
- 1.11 **Facility** – one electrical generator located on the Site and designed to produce a maximum of 62.5 MW of electrical power at an 85% minimum power factor.

- 1.12 **FERC** - Federal Energy Regulatory Commission.
- 1.13 **Force Majeure** - an event or circumstance that was not reasonably foreseeable by a Party, was beyond its reasonable control, and was not caused by its negligence or lack of due diligence; such events or circumstances include, but are not limited to, acts of civil or military authority (including courts, governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions, fires, hurricanes, floods, failure of contractors or suppliers, strikes, lockouts or other labor disputes or difficulties.
- 1.14 **FPSC** - Florida Public Service Commission.
- 1.15 **Green Attributes** – includes any and all environmental attributes including, but not limited to, any credits, benefits, emissions reductions, offsets, allowances, renewable energy certificates, “green tags” or other tradable environmental interests, of any description, howsoever entitled, attributable to the generation of electricity from the Facility, and its displacement of conventional electricity generation provided, however, that Green Attributes shall not be deemed to include any investment tax credits, production tax credits or similar such tax credits (collectively “Green Attributes”).
- 1.16 **Monthly Billing Period** - the period corresponding to the appropriate monthly billing cycle for regular retail service customers as determined by the applicable monthly meter reading schedule for the Facility's location.
- 1.17 **Monthly Billing Statement** - a monthly summary prepared by FPL in accordance with Section 7.0.
- 1.18 **Monthly Capacity Factor** - the total Energy during the Monthly Billing Period for which the calculation is made, divided by the product of (a) the Committed Capacity during the Monthly Billing Period and (b) the sum of the hours during the Monthly Billing Period. For purposes of calculating the Monthly Capacity Factor, the following factors shall be considered when applicable: (i) hourly Energy deliveries shall not exceed those which could be produced by the Committed Capacity plus 10% during On-Peak

Hours, with the exception of those hours when FPL (as delineated in Section 8.3) requests the Authority to produce in excess of its Committed Capacity, and (ii) during each hour of any of the following periods-- (A) Scheduled Maintenance Period as delineated in Section 1.26, (B) period of Force Majeure as delineated in Section 13.4 and/or (C) periods that FPL did not accept Energy for delivery or receive Energy pursuant to the provisions of Sections 4.4 and/or 4.5-- the hourly Energy to be used in the calculation shall be the product of the last prior Capacity Factor and the Committed Capacity.

- 1.19 **Monthly Capacity Payment** - monthly payments for Capacity calculated in accordance with Appendix B.
- 1.20 **On-Peak Annual Capacity Factor** - the Annual Capacity Factor calculated only with respect to On-Peak Hours during the 12 consecutive Monthly Billing Periods preceding the date of calculation or, during the first year in which Capacity payments are to be made, such shorter period as described in the definition of Annual Capacity Factor above.
- 1.21 **On-Peak Hours** - those hours occurring Monday through Friday, except the holidays noted below, April 1 through October 31, from 12 noon to 9:00 P.M., and November 1 through March 31, from 6:00 A.M. to 10:00 A.M. and 6:00 P.M. to 10:00 P.M. Holidays include only New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 1.22 **Operation and Maintenance Credit** - the amounts thereof set forth in Appendix B.
- 1.23 **Original Agreement** - the Agreement For The Purchase of Firm Capacity and Energy Between The Palm Beach County Solid Waste Authority and Florida Power & Light Company that was executed by the Authority on December 11, 1986 and by FPL on January 2, 1987.
- 1.24 **Period of Refurbishment** -- the period starting at 12:01 AM on April 1, 2010 and ending on the Commercial Operation date of the Refurbished Facility as determined by the Authority, acting in a commercially reasonable manner, unless otherwise agreed by the

Parties or excused by Force Majeure (i.e., the period during which the Facility will be retrofitted and refurbished).

- 1.25 **Refurbished Facility** – the Facility after it has undergone retrofitting and refurbishment will consist of one electrical generator designed to produce a maximum of 62.5 MW of electrical power at an 85% minimum power factor,
- 1.26 **Scheduled Maintenance Period** - any period of time during which the Authority plans, in coordination with FPL as provided in Section 8.2 hereof and with FPL's written concurrence, to subject the Facility to a scheduled complete or partial reduction in Capacity for routine or periodic maintenance; provided, however, for purposes of calculating Annual Capacity Factor and On-Peak Annual Capacity Factor, up to two Scheduled Maintenance Periods, of a duration not to exceed a total of 28 days in any calendar year, shall be excludable from the computation so as not to reduce either Annual Capacity Factor or On-Peak Annual Capacity Factor.
- 1.27 **Site** - an area of some one thousand three hundred eighty (1380) acres (generally designated as Site #7) owned by the Authority in Palm Beach County, Florida that is located north of a line approximately 610 feet south of 45th Street, south of the Beeline Highway, west of the Florida Turnpike and east of the West Palm Beach Water Catchment Area, and including a 610 foot wide parcel of land south of 45th street that extends from the Florida Turnpike on the west to Haverhill Road on the east, all as described in Appendix A.
- 1.28 **Tax Credits** – Any credit against local, state or federal taxation, including but not limited to such credits as investment tax credits, production tax credits or similar such tax credits.
- 1.29 **Unit Energy Cost** - the cost, in dollars per megawatt-hour (\$/MWH), shall be equal to the product of (a) the average monthly inventory charge out cost of coal burned at the St. Johns River Power Park expressed in dollars per million Btu and (b) an average annual heat rate factor of 10.5 million Btu per MWH. The charge out cost of coal shall be priced by using the monthly weighted moving average unit cost of coal stock removed from FERC Account 151 for the St. Johns River Power Park. FERC Account 151 shall be that

account maintained by FPL as a result of the FERC's Uniform System of Accounts for Class A and B Public Utilities and Licensees, as such System of Accounts may be modified from time to time.

2. FACILITY

- 2.1 The Authority shall own the Facility located on the Site.
- 2.2 The Authority shall, throughout the Term of this Amended Agreement, maintain the status of the Facility as: (i) a "qualifying small power production facility" pursuant to FERC or FPSC regulations; (ii) an "exempt wholesale generator" pursuant to Federal law; or, (ii) a producer of "renewable energy" pursuant to Florida law.

3. TERM

- 3.1 This Amended Agreement shall become effective when the conditions precedent described in Section 11.0 have taken place.
- 3.2 The initial term of this Amended Agreement shall commence at 12:01 AM on the day immediately following expiration of the Original Agreement (currently April 1, 2010) and shall extend through April 1, 2032 ("Term"), unless extended in writing by mutual agreement of the Parties except that if the Commercial Operation Date occurs after April 1, 2012, then, upon at the sole option of the Authority by written notice to FPL no later than 60 days following the Commercial Operation Date, the initial term shall be extended through the 240th month following the Commercial Operation Date; provided, however, in no event shall the Amended Agreement extend beyond June 1, 2034 without the prior written agreement of both Parties.
- 3.3 Notwithstanding the foregoing, FPL may terminate this Amended Agreement on or before August 30, 2014, if the Authority fails to achieve the Commercial Operation Date on or before June 1, 2014, provided, however, such Commercial Operation Date of June 1, 2014, and the corresponding termination date may, in FPL's sole discretion (which shall not be unreasonably exercised), be extended at the request of the Authority for a period to be specified by FPL, upon the Authority's showing of good cause for requiring

such an extension, such good cause to consist of a showing that: (i) Force Majeure has directly caused such additional time to be required to complete the refurbishment and/or retrofitment of the Refurbished Facility, (ii) the Authority is pursuing such completion with due diligence, and (iii) it is reasonable to expect such completion and the initial delivery of energy to occur within the additional time requested. In the event of a termination pursuant to this Section 3.3, the Authority shall reimburse FPL for all costs, including interest at the rate of 10.5% per annum, which FPL has reasonably incurred following the execution of this Amended Agreement in preparation to receive Energy and Capacity; provided, however, such costs shall not exceed \$85,000.

4. SALE OF ENERGY AND CAPACITY BY THE AUTHORITY

- 4.1 During the Period of Refurbishment FPL will purchase Energy (but not Capacity) in accordance with the terms and conditions specified in this Amended Agreement. Commencing on the Commercial Operation Date, the Authority shall sell to FPL and FPL shall purchase from the Authority all of the Energy and Capacity in excess of the Authority's internal consumption of energy and capacity, except, in each case, to the extent that the Authority is not obligated to sell or FPL is not obligated to purchase such Energy and Capacity under the terms of this Amended Agreement.
- 4.2 The initial Committed Capacity of the Refurbished Facility shall be at least 40 MW and not greater than 55 MW as specified by the Authority in written notice to FPL prior to or upon the Commercial Operation Date. After the earlier of June 1, 2014 or the Commercial Operation Date, the Authority may annually increase but not decrease the Committed Capacity by giving FPL one year's advance written notice and then by an amount not to exceed 10% per increase of the then-current Committed Capacity, up to a maximum Committed Capacity of 60 MW.
- 4.3 FPL shall not be obligated to purchase, and may require curtailed or reduced deliveries of, Energy (i) to the extent necessary to operate and maintain any part of FPL's system, or (ii) if FPL determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to FPL's customers. FPL shall give the Authority prior notice, if practicable, of its intent to refuse, curtail or reduce

FPL's acceptance of Energy pursuant to this Section, and will act to minimize the frequency and duration of such occurrences.

- 4.4 FPL shall not be required to accept or purchase Energy during any period in which, due to operational circumstances, acceptance of such Energy, without taking into account the cost thereof, would result in FPL's incurring costs greater than those which it would incur by generating an equal additional amount of energy with its own resources. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous rating and the purchase of additional Energy would require taking a base load unit off-line and replacing the remaining load served by that unit with peaking type generation. FPL shall give the Authority as much prior notice as practicable of its intent not to accept Energy pursuant to this Section.

5. DELIVERY OF ENERGY AND CAPACITY

- 5.1 FPL and the Authority are Parties to an Interconnection Agreement for the Facility that is in compliance with FPSC Rule 25- 17.87, adopted in Order No. 12443 in Docket 820406-EU.
- 5.2 If not previously installed, FPL shall install metering facilities reasonably necessary for the purpose of measuring or otherwise determining Energy and Capacity deliveries by the Authority to FPL. Pursuant to the Interconnection Agreement required by Section 5.1, the Authority shall be responsible for the reasonable costs incurred by FPL in installing, maintaining and upgrading such metering facilities.
- 5.3 FPL will provide and install, at its own expense, the initial metering required to measure sales of retail electric service to the Facility.
- 5.4 The delivery of Energy and Capacity from the Facility pursuant to this Amended Agreement shall initially be on a net output basis; that is, the internal electrical requirements of the Facility, and the needs of the Authority at the Site as determined by the Authority, shall be provided by the Facility itself and any excess will be made available for purchase by FPL. The Authority shall, at its sole option, have the ability to

make a one-time change in the billing methodology from net output to simultaneous purchase and sales; provided, however, that only those portions of the Authority's electrical load resulting from other than turbine-generator or boiler auxiliaries (such as the solid waste processing facilities, landfill gas extraction/compression, recycling operations and administrative offices) would be served by FPL under a simultaneous purchase and sales arrangement. The Authority may exercise such option at any time subsequent to three consecutive monthly billing periods in which the Annual Capacity Factor is less than 70%. The Authority shall notify FPL in writing of its desire to exercise such option, which shall become effective to the extent possible, coincident with the next Fuel and Purchased Power Recovery Factor billing period, provided metering and other necessary equipment are in place to allow proper accounting of the simultaneous purchase and sales transaction.

- 5.5 FPL shall provide electric service to the Facility and to other equipment on the Site, upon request of the Authority, under applicable rate schedules on file with the FPSC. Any security deposit required for such electric service shall be in accordance with the provisions contained in FPL's Rate Schedule QS-1, or QS-2 or other applicable rate schedule approved by the Florida Public Service Commission as they may be subsequently amended from time to time.

6. PAYMENT FOR ENERGY AND CAPACITY

- 6.1 Beginning April 1, 1992 until commencement of the Period of Refurbishment, FPL shall pay the Authority for each MWH of Energy at a rate equal to 90% of the lesser of an hour-by-hour comparison of (a) the fuel component of FPL's As-Available Avoided Energy Cost and (b) the Unit Energy Cost.
- 6.2 Beginning on April 1, 1992 until commencement of the Period of Refurbishment, FPL shall notify the Authority as soon as practicable of any foreseeable hourly period(s) when the rate to be paid for Energy is projected to be less than 85% of the Unit Energy Cost and shall provide the Authority with an estimate of the reduced energy rate during such period(s). The Authority shall have the option to discontinue Energy and Capacity deliveries to FPL during such period(s), unless FPL makes a request to the Authority

pursuant to Section 8.3. The Authority shall provide FPL at least three hours' advance notice of its intent to discontinue deliveries during such period(s).

- 6.3 During the Period of Refurbishment, FPL shall pay the Authority for each MWH of Energy at a rate equal to 100% of FPL's As-Available Avoided Energy Costs.
- 6.4 Beginning on the Commercial Operation Date, FPL shall pay the Authority for each MWH of Energy at a rate equal to 100% of the lesser of an hour-by-hour comparison of (a) the fuel component of FPL's As-Available Avoided Energy Cost and (b) the Unit Energy Cost.
- 6.5 Calculation of payments for Energy to the Authority shall be based on the sum, over all hours of the Monthly Billing Period, of the product of each hour's applicable rate as set forth in Section 6.1, 6.2, 6.3, or 6.4 times the purchases of Energy by FPL for that hour.
- 6.6 Beginning on the Commercial Operation Date FPL shall pay the Authority the Monthly Capacity Payments at rates set forth in Appendix B.
- 6.7 If, at the end, of any Monthly Billing Period during the Term of this Amended Agreement, the Facility has not operated at an Annual Capacity Factor and Annual On-Peak Capacity Factor of at least 55%, based on the Committed Capacity, FPL shall not be obligated to pay for Capacity during such Monthly Billing Period. Suspension of payments pursuant to this Section shall not relieve the Authority of any of its obligations under this Amended Agreement.

7. BILLING AND PAYMENT

- 7.1 On a monthly basis, FPL shall prepare a Monthly Billing Statement summarizing the quantities of Energy and Capacity received by FPL for the preceding Monthly Billing Period and any payments, calculated in accordance with Section 6.0, due the Authority arising from such receipts. The Monthly Billing Statement, to be provided by FPL to the

Authority in both written and electronic form, shall contain at least the following information:

- 7.1.1 The number of hours in the current Monthly Billing Period;
 - 7.1.2 The current Committed Capacity;
 - 7.1.3 The Energy received by FPL during each hour in the Monthly Billing Period;
 - 7.1.4 The total Energy received by FPL in excess of that which could be produced by the Committed Capacity and which FPL did not request;
 - 7.1.5 The Energy received in each hour by FPL in response to any request(s) by FPL pursuant to Sections 4.5 or 8.3;
 - 7.1.6 The Energy received by FPL during all hours and the On-Peak Hours;
 - 7.1.7 The Monthly Capacity Factor, the Annual Capacity Factor and the On-Peak Annual Capacity Factor for the Monthly Billing Period;
 - 7.1.8 The rate paid by FPL for Energy during each hour in the Monthly Billing Period;
 - 7.1.9 The calculated payment for Energy during the Monthly Billing Period;
 - 7.1.10 The As-Available Avoided Energy Cost during each hour in the Monthly Billing Period
 - 7.1.11 The Monthly Capacity Payment during the Monthly Billing Period; and
 - 7.1.12 Such other information, data or calculations as FPL or the Authority deems reasonably necessary to adequately calculate payment amounts.
- 7.2 Not later than the 20th business day following the monthly meter reading date, FPL shall mail to the Authority the Monthly Billing Statement. Any payment due shall be made by wire transfer, automated clearing house, or as otherwise requested by the Authority

unless, in either event, an unreasonable administrative burden or unreasonable cost is thereby imposed upon FPL; if either of the latter is imposed, FPL shall mail the payment(s) with the Monthly Billing Statement(s). Payments not made by the 20th business day following the monthly meter reading date shall be delinquent and shall thereafter include interest calculated at the rate of 10.5% per annum.

- 7.3 Within 30 days of its receipt of a Monthly Billing Statement, the Authority shall review its contents and advise FPL in writing of any errors or misstatements contained therein. Failure of the Authority to discover any errors or misstatements within three years plus the then-current Monthly Billing Period shall extinguish the Authority's right to any billing adjustment(s).
- 7.4 If any errors or misstatements should arise in connection with any portion of any Monthly Billing Statement, the Parties agree to proceed in good faith to expeditiously settle any such items. Adjustments in prior months' invoices shall be added to, or credited against, the next Monthly Billing Statement.
- 7.5 FPL will provide the Authority with such information pertaining to rates, payments and delivery of Energy and Capacity as the Authority may reasonably request. FPL may comply with the Authority's request for information by providing the Authority access to relevant materials at FPL's business offices during normal business hours. The Authority shall pay all expenses reasonably incurred by FPL in complying with requests for information made pursuant to this Section 7.5.
- 7.6 The Authority shall be billed monthly an amount equal to the taxes, assessments or other impositions (excluding state and federal income taxes except as may be required by a material change in applicable tax law), if any, for which FPL is liable as a result of its purchases of Energy and Capacity from the Authority. In the event of any such material change in tax law(s), the Parties will enter into negotiations in an attempt to formulate an appropriate amendment to this Amended Agreement.

8. OPERATION AND MAINTENANCE OF THE FACILITY

- 8.1 During the Term of this Amended Agreement, the Authority agrees to:

- 8.1.1 Provide FPL, prior to October 1 of each calendar year, a projection of the amount of Energy and Capacity for each month of the following calendar year, including the time, duration and magnitude of any Scheduled Maintenance Period or reductions in Capacity;
 - 8.1.2 Promptly update the projection of yearly Energy and Capacity production as and when any change(s) may be determined necessary;
 - 8.1.3 Provide FPL, on a weekly basis, a projection of the amount of Energy and Capacity for each day of the following week. Such estimate shall be furnished by 3:00 p.m. on the Thursday prior to the week for which such schedule is required, unless otherwise agreed in writing by the Parties, and shall be updated on a daily basis by 3:00 p.m. of the day preceding that to which the estimate is to apply; and
 - 8.1.4 Comply with reasonable requirements of FPL regarding day-to-day or hour-by-hour communications between the Parties relative to the performance of this Amended Agreement.
- 8.2 The Authority shall coordinate its annual projection of Scheduled Maintenance Periods or reductions in Capacity as contemplated in Section 8.1 with FPL's system requirements.
- 8.3 FPL may, from time to time, request that the Authority produce Energy and Capacity up to and in excess of the Committed Capacity in order to meet FPL's system requirements. The Authority will use its best efforts to respond within 3 hours with Energy and Capacity to meet such request by FPL up to the Committed Capacity unless the Authority cannot do so because of engineering or operational circumstances at the Facility. If the Authority cannot, in such instances, deliver to FPL Energy or Capacity in amounts up to the Authority's Committed Capacity, then the Authority shall, within 30 days, notify FPL in writing of the engineering or operational circumstances which prevented the Authority from complying with FPL's request. FPL's requests shall be made orally with as much notice as is practicable.

8.4 During the Term of this Amended Agreement, the Authority shall operate and maintain the Facility in accordance with industry standards so as to reasonably ensure compliance with its obligations hereunder.

8.5 FPL may, from time to time during regular business hours and with reasonable written notice, have access to inspect the operation and maintenance of the Facility, provided that FPL's inspections do not unreasonably interfere with the Authority's operation or maintenance of the Facility.

9. INSURANCE

The Authority shall procure a policy of liability insurance on a standard "Insurance Services Office" comprehensive commercial general liability form. Said policy shall cover generally all liabilities which might arise under, or in the performance or nonperformance of, this Amended Agreement. As a minimum, said policy shall contain endorsements providing coverage, including but not limited to products liability/completed operations coverage, for FPL, its parent, its subsidiaries or affiliated entities and each of their respective officers, directors, employees, agents and contractors (hereinafter in this Section 9 and in Section 10 collectively called the "Company"). The policy shall include coverage for interruption or curtailment of power supply; provided, however, the Authority shall not be liable to FPL for damages due to lost sales of electricity, and insurance coverage for such lost sales is not required.

The Company shall be designated as an additional named insured, and the policy shall be endorsed to be primary to any insurance which may be maintained by or on behalf of the Company. The policy shall be in a minimum limit of Ten Million Dollars (\$10,000,000) per occurrence, combined single limit, for bodily injury (including death) or property damage; provided however, in the event that such insurance becomes totally unavailable, such unavailability shall not constitute an Event of Default under this Amended Agreement, but FPL and the Authority shall enter into negotiations to develop substitute protection for the Company which FPL deems adequate. Any premium assessment or deductible shall be for the account of the Authority and not the Company.

In the event that the policy is on a "claims made" basis, the retroactive date of the policy shall be the effective date of this Amended Agreement or such other date as to protect the interest of the Company. Furthermore, if the policy is on a "claims made" basis, the Authority's providing of such coverage shall survive the termination of this Amended Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort (currently, five, years); if coverage is on an "occurrence" basis, such insurance shall be maintained by the Authority during the entire Term of this Amended Agreement. The policy shall not be cancelled or materially altered without at least 30 days' written notice to FPL.

10. LIMITATIONS OF LIABILITY

10.1 The Authority shall indemnify, protect, defend and hold the Company (as defined in Section 9) free and unharmed, on an After-Tax Basis, from and against any and all claims, losses, liabilities, and expenses whatsoever which the Company may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Authority in performing its obligations pursuant to this Amended Agreement or the Authority's failure to abide by the provisions of this Amended Agreement. FPL shall indemnify, protect, defend and hold, on an After-Tax Basis, the Authority free and unharmed from and against any and all claims, losses, liabilities and expenses whatsoever which the Authority may hereafter incur, suffer or be required to pay by reason of negligence on the part of FPL in performing its obligations pursuant to this Amended Agreement or FPL's failure to abide by the provisions of this Amended Agreement.

10.2 TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AMENDED AGREEMENT,

OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AMENDED AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AMENDED AGREEMENT BUT SUCH SURVIVAL SHALL APPLY ONLY TO THOSE CAUSES OF ACTION, IF ANY, ARISING PRIOR TO TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AMENDED AGREEMENT. NOTHING CONTAINED IN THIS AMENDED AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

11. CONDITION PRECEDENT TO AMENDED AGREEMENT

The following shall be conditions precedent to the effectiveness of this Amended Agreement:

- 11.1 The FPSC's prior approval, without change or condition, including FPSC findings that (a) this Amended Agreement is reasonable, prudent and in the best interest of FPL's ratepayers, (b) FPL may recover from its ratepayers all payments for Energy and Capacity, and (c) FPL shall not be required to resell the Energy and Capacity to another electric utility so long as their retention is in the best interest of FPL's ratepayers. Toward this end, FPL shall submit this Amended Agreement to the FPSC and seek the FPSC's approval of the obligations and duties imposed by this Amended Agreement, and the Authority shall use its best efforts to support FPL's request for FPSC approval.

11.2 The FPSC's issuance of an order (a) certifying that the Facility is a qualifying facility pursuant to 25-17.080, Florida Administrative Code, and (b) such order has become a final order that is non-appealable by any person.

12. DEFAULT

12.1 Except as expressly provided elsewhere in this Agreement, if, after April 1, 1992, the Authority ceases delivery of Energy for 12 consecutive months due to an event of Force Majeure, FPL may, in its sole discretion, deem such nondelivery of Energy to constitute an Event of Default; provided, however, if the event of Force Majeure causing such nondelivery of Energy cannot be remedied by the Authority within 12 months, FPL may, for an additional period not to exceed 12 months, waive its entitlement to declare such nondelivery of Energy to constitute an Event of Default so long as the Authority (i) is diligently pursuing corrective action and (ii) is providing to FPL, in writing, monthly status reports as to the nature and progress of the necessary corrective action. However, if the Authority requests such waiver, it shall not be unreasonably withheld.

12.2 Except as provided above in Section 12.1, the following shall constitute Events of Default regardless of events of Force Majeure described in Section 13.0:

12.2.1 After April 1, 1992, the Authority ceases delivery of Energy for 12 consecutive months, or

12.2.2 After April 1, 1992, the Authority fails, for any 24 consecutive months, to maintain an Annual Capacity Factor of 55%;

12.2.3 The Authority becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings; or

12.2.4 The Authority or FPL shall default in the due and punctual performance of any other material covenants, conditions, agreements and provisions contained herein on its part to be performed, and such default shall not be cured as soon as possible, but not more than thirty (30) days after written notice from the other Party specifying such default; provided, however, if it is

not feasible to correct such default within thirty (30) days after written notice of such default has been delivered to the defaulting Party by the other, but it is and remains feasible to correct such default within one year after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date within such one-year period when a cure could be effected so long as (i) corrective action by the defaulting Party is instituted within ten days of the date of such notice, (ii) such corrective action is diligently pursued, and (iii) the defaulting Party provides to the other Party monthly, written reports as to the nature and progress of such corrective action, and provided further that, after FPL gives any written notice of default and until such default is cured, if curable, FPL may suspend the making of Monthly Capacity Payments; conversely, after the Authority gives any written notice of default and until such default is cured, if curable, the Authority shall be free to sell, to other electric utilities, energy and capacity produced by the Facility; or

12.2.5 The Authority fails to give proper assurance of adequate performance as specified under this Amended Agreement within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance.

12.3 Upon the occurrence of any of the foregoing Events of Default, the nondefaulting Party may, by written notice to the defaulting Party, (i) declare permanently terminated all of the nondefaulting Party's obligations under this Amended Agreement, or (ii) apply to any payment, due from it to the defaulting Party, any payment(s) otherwise due from the defaulting Party. Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Amended Agreement.

13. FORCE MAJEURE

13.1 Except as otherwise provided in this Amended Agreement, either Party shall be excused from performance when its nonperformance was caused directly or indirectly by Force Majeure.

- 13.2 In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall promptly notify the other in writing of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the Force Majeure.
- 13.3 The Party suffering an occurrence of Force Majeure shall, with all reasonable dispatch, remedy the cause(s) preventing its performance of this Amended Agreement; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and it shall not be required to settle such labor disputes by acceding to demands which such Party deems to be unfavorable; and, provided further, the Authority shall not be obligated to reconstruct the Facility if the Facility is substantially destroyed or otherwise rendered nonusable, unless sufficient insurance proceeds or reserve funds are available to the Authority for such purpose and in an amount approximating the cost of such reconstruction.
- 13.4 Under the circumstances set forth below, Energy which is not delivered to FPL due to events of Force Majeure shall not be reflected in the computation of Annual Capacity Factor, Capacity Factor, Monthly Capacity Factor and On-Peak Annual Capacity Factor so as to reduce any of them. For purposes of this Section 13.4, the term "Force Majeure" shall be defined as set forth in Section 1.13 hereof, except that "strikes, lockouts or other labor disputes or difficulties" shall be excluded from the definition.

The Authority shall have the right, exercisable on one occasion during each sixty-month period of this Amended Agreement, to elect that periods of Force Majeure (as defined above) not be reflected in the computation of Annual Capacity Factor, Capacity Factor, Monthly Capacity Factor and On-Peak Annual Capacity Factor so as to reduce any of them. In no instance, however, shall any exercise of such election entitle the Authority to more than thirty consecutive days of non-reduction of the Facility's Annual Capacity Factor, Capacity Factor, Monthly Capacity Factor and On-Peak Annual Capacity Factor

and such election shall not occur until the 31st day subsequent to the 1st day of such event. This election may result in a billing adjustment for the previous month(s).

Upon proper notice of cure of Force Majeure, the calculation of the Annual Capacity Factor and the On-Peak Capacity Factor shall assume that the periods preceding and subsequent to the Force Majeure occurrence shall constitute consecutive months. For example, for the first Billing Period following proper notice, the Annual Capacity Factor computation will be as follows: The sum of the 11 consecutive Monthly Capacity Factors preceding the Force Majeure occurrence and the Monthly Capacity Factor for the first Billing Period after the cure of the Force Majeure shall be divided by 12.

14. NOTICES

14.1 Notices required to be in writing under this Amended Agreement shall be delivered in person or sent by certified mail, return receipt requested, as specified below:

To the Authority:

The Solid Waste Authority of Palm Beach County
7501 North Jog Road
West Palm Beach, Florida 33412
Attention: Executive Director
(561) 640-4000

To FPL:

Florida Power & Light Company
Post Office Box 029100
Miami, Florida 33102
or
9250 West Flagler Street
Miami, Florida 33174
Attention: Manager of Purchased Power
Mail Stop RAP/GO
(305) 552-4910

14.2 Notices shall be effective upon receipt.

14.3 Either Party, at any time, by written notice may designate any different person(s) or different address (es) for receipt of notices and correspondence.

15. OWNERSHIP AND OFFERING FOR SALE OF GREEN ATTRIBUTES

- 15.1 The Authority retains any and all rights to, and is the exclusive owner of, any and all Green Attributes; provided, however, that the sale of any or all Green Attributes by the Authority, if any, shall be in accordance with this Section 15.
- 15.2 The Authority acknowledges that FPL has advised it, but the Authority has not confirmed, that at the time of execution of this Amended Agreement, it is FPL's opinion that FPL is not subject to any federal, state or local laws, rules or regulations that require FPL to purchase Green Attributes but that in the future FPL may become subject to a requirement to purchase Green Attributes. During the Term of this Amended Agreement, until such time, if ever, FPL desires to purchase the Authority's Green Attributes, the Authority agrees to limit the term of any sale, exchange or other disposition ("Transfer") of the Authority's Green Attributes, to a period of twenty four (24) months duration, subject to one (1) year renewals upon three (3) months' notice. For purposes of Sections 15.2 and 15.3, the term Green Attributes, when referring to the Authority's attributes, shall mean only those prospective attributes yet to be produced by the Authority during the Term of this Amended Agreement. If at any time during the Term of this Amended Agreement, FPL becomes obligated to purchase Green Attributes as the result of a reasonable interpretation of applicable federal, state or local laws, rules or regulations, and provides the Authority with written notice of such obligation, the Authority agrees that after the date of such notice from FPL it will first offer such prospective Green Attributes to FPL pursuant to the terms and conditions set forth in Section 15.3 below prior to agreeing to renew an existing Green Attributes Transfer and/or prior to entering into a new Green Attributes Transfer.
- 15.3 The following provisions shall apply to any proposed Transfer of Green Attributes by the Authority:
- 15.3.1 If the Authority receives an unsolicited bona fide offer or offers for Transfer of any or all of its Green Attributes, and desires to pursue such offer:

(1) The Authority will on or before five (5) business days from the date of receipt of such offer, provide by written notice to FPL an option to purchase such Green Attributes on the same price, terms and conditions as those contained in the bona fide offer received by the Authority;

(2) FPL shall exercise such option to purchase the Green Attributes, if at all, as soon as is commercially reasonable but within thirty (30) days of receiving written notification by the Authority of the bona fide offer (the "Option Period"). In the event the Authority is required to respond to a bona fide offer in less than thirty (30) days, the Authority shall i) provide written notice of the response date ("Response Date") as soon as practicable and ii) afford FPL a minimum of five (5) business days to determine whether or not to exercise its option to purchase the Green Attributes ("Minimum Determination Period"). After FPL has been afforded the Minimum Determination Period, FPL shall exercise its option, if at all, no later than 72 hours prior to the Response Date (the "Abbreviated Option Period"). If, after the Minimum Determination Period has elapsed, less than 72 hours remain prior to the Response Date, FPL shall exercise its option, if at all, within the first 24 hours after the lapse of the Minimum Determination Period. If the Response Date occurs during the Minimum Determination Period, and FPL has not had sufficient time to determine whether or not to exercise its option, upon notification of the Authority of such fact by FPL, the Authority may not sell the Green Attributes pursuant to the subject bona fide offer without FPL's consent, which consent may be withheld for any reason in FPL's sole discretion. FPL's option shall automatically expire upon the expiration of the Option Period or Abbreviated Option Period, as applicable, and any claim FPL may have had to purchase Green Attributes pursuant to such bona fide offer shall be extinguished in full; and,

(3) If FPL advises the Authority that it will not exercise such option, or the Option Period expires, the Authority will not Transfer the subject Green

Attributes to any party at a price less than that offered to FPL pursuant to the bona fide offer or at terms that are more advantageous to the buyer of such Green Attributes than those contained in the bona fide offer, without first offering FPL an option to purchase at such more advantageous terms pursuant to the procedures of subsection (2) above.

15.3.2 If the Authority in its discretion requests in writing that FPL enter into negotiations for the Transfer of Green Attributes as the Authority may identify, FPL shall provide written notice to the Authority as to whether or not it will enter into such negotiations within thirty (30) days of the Authority's request.

(1) If FPL notifies the Authority that it will not enter into such negotiations, or if thirty (30) days have passed since the Authority's request with no written response from FPL, and no negotiations have taken place, then, for a period of ninety (90) days thereafter, any provision to the contrary in this Amended Agreement notwithstanding, the Authority shall be completely unencumbered in its efforts or right to Transfer any or all of its Green Attributes that were previously offered to FPL to an entity other than FPL, and FPL shall have no claim to such Green Attributes during such period.

(2) If FPL notifies the Authority that it will enter into such negotiations, such negotiations shall commence within fifteen (15) business days and the Parties shall diligently pursue mutually agreeable prices, terms and conditions. If FPL fails to commence negotiations within said fifteen (15) business days, then the provisions of Section 15.3.2(1) shall apply.

(i) If after a period thirty (30) days from commencement of negotiations, either Party determines that continued negotiations are not likely to result in a mutually acceptable agreement for the Transfer of Green Attributes, either Party may terminate such negotiations upon five (5) days written notice to the other Party.

(ii) for a period of ninety (90) days following termination of negotiations, the Authority shall be free to seek or solicit offers for the Transfer of its Green Attributes that were previously offered to FPL, and to enter into one or more agreements for the Transfer of Green Attributes with an entity other than FPL at no better price or terms and conditions as offered to FPL, provided, however, that if the Authority relies on a request for Proposals (“RFP”) to solicit offers FPL may participate on an equal basis with other interested entities.

15.4 In the event that the Authority uses an RFP or other offering process to solicit offers for the Transfer of Green Attributes (Bids), FPL shall be provided with a copy of the RFP or other offering material and FPL may or may not elect to be a participant in the process.

- (a) If FPL elects to participate in the RFP or other offering process but does not submit the winning Bid, then the Authority will provide FPL with an option to purchase such Green Attributes at the same price, terms and conditions as those contained in the winning Bid, as long as such Bid is a bona fide offer. FPL must exercise such option to purchase the Green Attributes, if at all, within ten (10) business days of receiving written notification by the Authority of the price, terms and conditions of the winning Bid. For purposes of this subsection, the term “winning Bid” means, among other things, that the Bid, in the sole judgment and absolute discretion of the Authority is in the best interests of the Authority.

- (b) In the event FPL elects not to participate in the RFP process or fails to exercise its option to purchase the Green Attributes within the ten (10) business day period set forth above, then FPL’s option to purchase such Green Attributes shall expire and the Authority shall be under no further obligation to offer to Transfer to FPL any of the Green Attributes that were subject to the RFP.

15.5 In the event the Authority elects to respond to an RFP or similar process initiated by a third-party seeking to purchase attributes for which the Authority's Green Attributes would qualify ("Alternate Process"), then the Authority shall provide FPL with an option to purchase the Green Attributes at the same price, terms and conditions offered, if at all, by the Authority in such Alternate Process. The Authority shall provide written notice to FPL of such Alternative Process as soon as reasonably possible after the Authority first learns of the Alternative Process and the date by which the Authority's responsible order must be timely submitted as prescribed by the third-party. FPL must exercise its option to purchase the Green Attributes subject to the Alternate Process, if at all, in writing at least 72 hours prior to the date by which the Authority's responsive offer must be submitted, provided however, FPL shall have been afforded the Minimum Determination Period. In the event FPL is afforded the Minimum Determination Period and fails to exercise its option to purchase the Green Attributes on or before the time period set forth above, then the Authority shall be under no obligation to offer to Transfer to FPL the Green Attributes that were subject to the Alternate Process. The Authority agrees that it will not Transfer Green Attributes that were subject to the Alternate Process to any party at a price less than or under terms more favorable than that offered to FPL.

15.6 If during the Term of this Amended Agreement an applicable index or indices used to establish the fair market value of the Authority's Green Attributes come into existence, become a standard in the industry and are acceptable to both Parties, such index or indices may be used to establish pricing, terms and conditions of a Transfer in lieu of the provisions of this Section 15.3, 15.4 or 15.5.

15.7 Unless required to be filed as a public record with the FPSC annually, as part of FPL's Ten-Year Site Plans or otherwise, FPL shall annually provide to the Authority during the anniversary month of this Amended Agreement its best estimate of Green Attribute requirements for the following twenty-four (24) months.

16. MISCELLANEOUS

- 16.1 The Authority hereby agrees to seek, obtain and maintain any and all governmental permits, certifications or other authorizations which are required by law as prerequisites to engaging in the activities envisioned by this Amended Agreement.
- 16.2 FPL agrees to comply with Florida law, including rules and regulations of the Florida Department of Revenue, as may from time to time be in effect, to the extent reasonably necessary to ensure that payments received by the Authority hereunder will not be subject to the gross receipts tax described in Section 203.01, Florida Statutes.
- 16.3 The Authority retains all rights to any and all Tax Credits associated with the Facility and associated with the electricity produced by the Facility, regardless of whether the Authority sells all or a portion of such electricity or consumes all or a portion of such electricity in one or more Authority operations.
- 16.4 Notwithstanding anything to the contrary in this Amended Agreement, if FPL, at any time during the Term of this Amended Agreement, fails to obtain or is denied the authorization of the FPSC, or the authorization of any other legislative, administrative, judicial or regulatory body which now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover from its customers all of the payments required to be made to the Authority under the terms of this Amended Agreement or any subsequent amendment hereto, FPL may, at its sole option, adjust the payments made under this Amended Agreement to the amount(s) which FPL is authorized to recover from its customers. In the event that FPL so adjusts the payments to which the Authority is entitled under this Amended Agreement, then, without limiting or otherwise affecting any other remedies which the Authority may have hereunder or by law, the Authority may, at its sole option, terminate this Amended Agreement upon ninety (90) days' written notice to FPL. If such determination of disallowance is ultimately reversed and such payments previously disallowed are found to be recoverable, FPL shall pay all withheld payments, with interest at the rate of 10.5% per annum. The Authority acknowledges that any amounts initially received by FPL from its ratepayers, but for which recovery is subsequently disallowed and charged back to FPL, may be offset or credited, with interest at the rate of

10.5% per annum, against subsequent payments to be made by FPL to the Authority under this Amended Agreement.

If, at any time, FPL receives notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its customers of all payments required to be made under the terms of this Amended Agreement or any subsequent amendment to this Amended Agreement, then FPL shall, within 30 days of such action, give written notice thereof to the Authority. FPL shall use its best efforts to defend and uphold the validity of this Amended Agreement and its right to recover from its customers a payments required to be made by FPL hereunder, and will cooperate in any effort by the Authority to intervene in any proceeding challenging, or to otherwise be allowed to defend, the validity of this Amended Agreement and the right of FPL to recover from its customers all payments to be made by it hereunder.

The Parties do not intend this Section 16.4 to grant any rights or remedies to any third party (ies) or to any legislative, administrative, judicial or regulatory body; and this Section 16.4 shall not operate to release any person from any claim or cause of action which the Authority may have relating to, or to preclude the Authority from asserting, the validity or enforceability of any obligation undertaken by FPL under this Amended Agreement.

- 16.5 With the exception of mandates imposed by any regulatory authority having jurisdiction over FPL or the Authority, neither FPL nor the Authority may assign any of its obligations under this Amended Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however that as to the Authority the reference to regulatory authority in this subsection shall specifically exclude Palm Beach County and the Solid Waste Authority of Palm Beach County.
- 16.6 This Amended Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in interest and legal representatives. This Amended Agreement constitutes the entire agreement and understandings between the Parties with respect to the subject matter hereof, and

supersedes all prior agreements and understandings relating to this subject matter. No modification or waiver of any term of this Amended Agreement, or any amendment of this Amended Agreement, shall be effective unless it is in writing and signed by the Parties.

- 16.7 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Amended Agreement, or with respect to any other matters arising in the connection with this Amended Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter.
- 16.8 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Amended Agreement or to exercise any rights under this Amended Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- 16.9 Nothing contained in this Amended Agreement shall be construed to create an association, trust, partnership or joint venture between the Parties. No payment by FPL to the Authority for Energy or Capacity shall be construed as payment by FPL for the acquisition of any ownership or property interest in the Facility. Each Party shall be individually and severally liable for its own obligations under this Amended Agreement.
- 16.10 The Authority shall conform to the requirements, where applicable, of the Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 relative to Equal Employment Opportunity. The applicable implementing Rules and Regulations of the Office of Federal Contracts Compliance are incorporated herein by this reference.
- 16.11 Section headings, titles and indexes appearing in this Amended Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- 16.12 This Amended Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.

16.13 EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AMENDED AGREEMENT.

16.14 In the event of a conflict between the provision of this Amended Agreement and the Original Agreement, this Amended Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Agreement to be executed by their respective duly authorized officers.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

Assistant Secretary

Name:
Title:
Date:

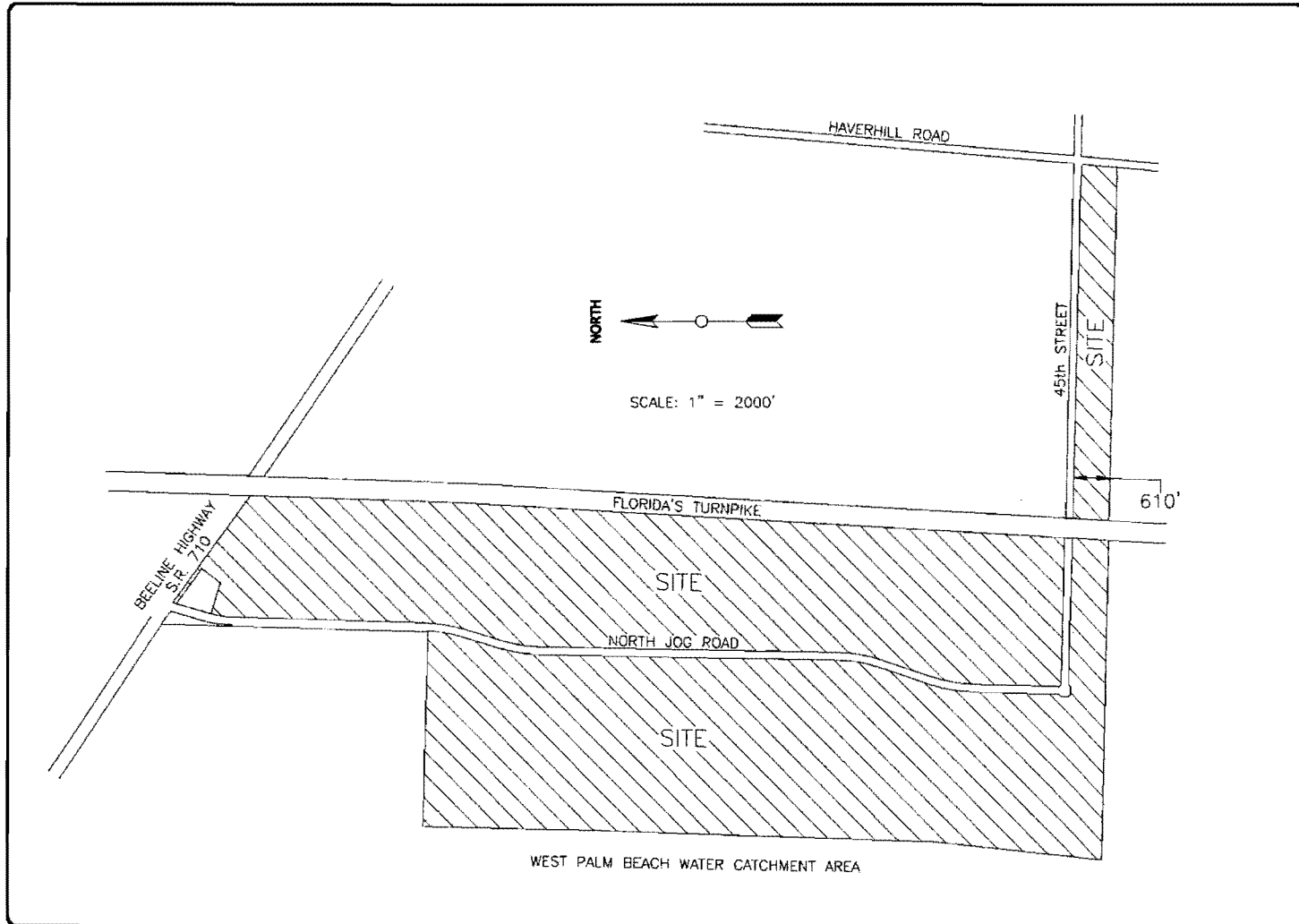
ATTEST:

THE SOLID WASTE AUTHORITY OF
PALM BEACH COUNTY

Clerk to the Authority

Name:
Title:
Date:

APPENDIX A
DESCRIPTION OF THE SITE



SOLID WASTE AUTHORITY OF PALM BEACH COUNTY 7501 North Jog Road West Palm Beach, Florida 33412 Phone: (561)640-4000 FAX: (561)683-4067		NORTH COUNTY RESOURCE RECOVERY		DESCRIPTION OF THE SITE		SHEET 1
		FACILITY SITE		DWN: B. HEADBERG CHK:	DSN: SCALE: AS SHOWN	
		Date	Revision Description	APN:	DATE: MAR 2009	

APPENDIX B

CALCULATION OF FIRM CAPACITY PAYMENT

Monthly Capacity Payments for each Monthly Billing Period shall be computed according to the following:

- A. In the event that the Capacity Factor is less than 55%, then the Monthly Capacity Payments shall not be due. That is:

$$\text{MCP} = 0$$

- B. In the event that the CF is greater than 85%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (\text{BCC} + \text{OMC}) \times \text{CC}$$

- C. In the event that the CF is equal to or between 55% and 85%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(\text{BCC} + \text{OMC}) \times (.02 \times (\text{CF} - 55)) \times \text{CC}]$$

Where:

MCP = Monthly Capacity Payment in dollars.
BCC = Base Capacity Credit in \$/MW-Month.
OMC = Operation and Maintenance Credit in \$/MW-Month.
CF = Capacity Factor in percent.
CC = Committed Capacity in MW.

The Base Capacity Credit and Operation and Maintenance Credit shall be derived from the following schedule:

Year ^{1/}	BCC \$/MW-MO	OMC \$/MW-MO
1989	0	0
1990	0	0
1991	0	0
1992	14,730	4,310
1993	15,520	4,550
1994	16,360	4,800
1995	17,240	5,050
1996	18,170	5,330
1997	19,160	5,620
1998	20,190	5,930
1999	21,280	6,240
2000	22,430	6,580
2001	23,640	6,940
2002	24,920	7,310
2003	26,260	7,710
2004	27,680	8,130
2005	29,180	8,560
2006	30,750	9,030
2007	32,410	9,520
2008	34,160	10,030
2009 ^{2/} -	36,000	10,570
2010 ^{3/}	0	0
2011 ^{3/}	0	0
2012 ^{5/}	22,200	2,870
2013	22,980	2,970
2014	23,780	3,060
2015	24,610	3,160

2016	25,470	3,260
2017	26,370	3,370
2018	27,290	3,480
2019	28,240	3,590
2020	29,230	3,710
2021	30,260	3,840
2022	31,310	3,960
2023	32,410	4,100
2024	33,550	4,230
2025	34,720	4,380
2026	35,930	4,530
2027	37,190	4,690
2028	38,490	4,850
2029	39,840	5,010
2030	41,240	5,190
2031 ^{4/}	42,680	5,370

^{1/} Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations commencing on the Monthly Billing Period of April through March of the following year for years 1989 through 2010. In 2012, Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations commencing on the Monthly Billing Period of April through May of the following year. Starting in 2013 Base Capacity Credit and Operation and Maintenance Credit for the Monthly Capacity Payment are applicable to calculations commencing on the Monthly Billing Period of June through May of the following year.

^{2/} Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations through the Monthly Billing Period of March, 2010.

^{3/} Base Capacity Credit and Operation and Maintenance Credit shall be equal to zero during the Period of Refurbishment.

^{4/} Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations through the Monthly Billing Period of April, 2032, assuming the Commercial Operation Date will occur on April 1, 2012.

^{5/} If the Commercial Operation Date occurs after April 1, 2012, the Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payments shall be recalculated and the above payment schedule revised to reflect the actual Commercial Operation Date and the remaining Term, including any extension pursuant to section 3 of this Amended Agreement.

EXHIBIT B

RESTATED AND AMENDED AGREEMENT FOR THE
PURCHASE OF FIRM CAPACITY
AND CAPACITY AND ENERGY
BETWEEN THE PALM BEACH COUNTY SOLID
WASTE AUTHORITY OF PALM BEACH COUNTY AND FLORIDA POWER &
LIGHT COMPANY

THIS RESTATED AND AMENDED AGREEMENT ("Amended Agreement") is made and entered this 2nd ____ day of January, 1987, _____, 2009, by and between THE ~~PALM BEACH COUNTY~~ SOLID WASTE AUTHORITY OF PALM BEACH COUNTY (the "Authority"), a special taxing district created by the Florida Legislature under the Palm Beach County Solid Waste Act, Chapter ~~75-473, 2001-331~~, Laws of Florida, ~~Special Acts of 1975~~, as ~~amended and supplemented~~, with its principal offices at ~~5114 Okeechobee Boulevard, Suite 2C7501 North Jog Road~~, West Palm Beach, Florida ~~33417, 33412~~, and FLORIDA POWER & LIGHT COMPANY ("FPL"), a utility corporation organized and existing under the laws of the State of Florida having its principal place of business in ~~Miami~~ Juno Beach, Florida. The Authority and FPL shall collectively herein be called the "Parties" and each be individually identified herein from time to time as a "Party".

WITNESSETH:

WHEREAS, the Authority ~~will build~~ has built and ~~owns~~ owns a facility (the "Facility") which is ~~or will be~~ a "qualifying small power production facility" as that term is defined in Section 3(17)(c) of the Federal Power Act and used in Section 210 of the Public Utility Regulatory Policies Act of 1978; ~~and is a qualifying facility pursuant to 25-17.080, Florida Administrative Code; and, which is a producer of "renewable energy" as that term is defined in Section 366.91 of Florida Statutes; and,~~

WHEREAS, the Authority desires to sell, and FPL desires to purchase, electricity ~~to be~~ generated by the Facility consistent with Florida Public Service Commission ("FPSC") Rules 25-17.80 through 25-17.87, inclusive, of Order No. 12443 in Docket No. 820406-EU; and,

WHEREAS, the Parties desire to restate and amend the Original Agreement, as defined herein, in order to, among other things, extend the term and to allow the Authority to refurbish and retrofit the Facility; and,

WHEREAS, in the event a conflict arises among terms or conditions contained herein due to the restatement and amendment process, it is the Parties' intent that this Amended Agreement be interpreted in a manner that best advances the intent that the Authority will sell and FPL will purchase electric energy and capacity produced by the Refurbished Facility in accordance with terms and conditions set forth herein relating to the Refurbished Facility; and,

WHEREAS, the Parties intend that this Amended Agreement will not affect in any way the Original Agreement now in effect between the Parties relating to the Facility.

NOW, THEREFORE, for mutual consideration, the Parties agree as follows

1. ~~1.0~~ **DEFINITIONS** - As used in this Amended Agreement and in Appendices A and B hereto, the following terms shall have the following meanings:
 - 1.1 **After-Tax Basis** - shall mean, with respect to any payment to be received by either Party, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Party so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all taxes required to be paid by such Party in respect of the receipt or accrual of the base payment and the additional payment (taking into account the net present value of any reduction in such taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable tax rates applicable to the Party for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of taxes for federal income tax purposes.
 - 1.2 ~~1.1~~ **Annual Capacity Factor** - the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, including the month to be calculated, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing ~~Commencing~~ with the first Monthly Billing Period in which Capacity payments are to be made after the

Period of Refurbishment, the calculation of the 12 month Annual Capacity Factor shall be performed as follows: (a) during carried forward as if the date of expiration of the Original Agreement and the first day of the Monthly Billing Period, following the Commercial Operation Date under this Amended Agreement were consecutive days. Thereafter, the calculation of the Annual Capacity Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month average Annual Capacity Factor. therefore continue; provided, however, that if the Monthly Capacity Factor is less than 55% during the first two months immediately following the Commercial Operation Date, SWA shall not be entitled to any capacity payment for such month or months.

1.3 ~~1.2.~~ **As-Available Avoided Energy Costs** - costs computed pursuant to FPSC Rule 25-17.825(2) set forth in FPSC Order No. 12443, issued September 2, 1983, as it may subsequently be amended from time to time or any successor or substitute calculation, formula or methodology relating thereto approved by the Florida Public Service Commission. FPL's Southeastern/Eastern operating area shall be the designated avoided cost pricing area for purposes of this Amended Agreement.

1.4 ~~1.3.~~ **Base Capacity Credit** - the amounts thereof set forth in Appendix B.

1.5 ~~1.4.~~ **Capacity** - electric power in megawatts ("MW") generated by the Facility and delivered to FPL's system.

1.6 ~~1.5.~~ **Capacity Factor** - the Annual Capacity Factor unless the On-Peak Annual Capacity Factor is five percentage points or more lower than the Annual Capacity Factor, in which case the Capacity Factor shall be the mean average of the On-Peak Annual Capacity Factor and the Annual Capacity Factor.

- 1.7 ~~1.6.~~ **Commercial Operation Date** - the first day of the Monthly Billing Period immediately following successful completion and operation of the Refurbished Facility as determined by the Authority.
- 1.8 ~~1.7.~~ **Committed Capacity** - the maximum Capacity in any one hour which the Authority contractually commits to sell to FPL pursuant to the terms of this Amended Agreement, all as specified from time to time pursuant to Section ~~4.2.4.3.~~
- 1.9 ~~1.8.~~ **Energy** - electrical energy in megawatt-hours ("MWH") generated by the Facility and delivered to FPL's system at a 138,000 voltage level.
- 1.10 ~~1.9.~~ **Event of Default** - any of those occurrences specified in Section 12.
- 1.11 ~~1.10.~~ **Facility** ~~two electrical generators located near West Palm Beach, Florida, at a one thousand three hundred twenty (1320) acre site North of 45th Street and West of the Florida Turnpike and each~~ one electrical generator located on the Site and designed to produce a maximum of ~~61.2~~62.5 MW of electrical power at an 85% minimum power factor.
- 1.12 ~~1.11.~~ **FERC** - Federal Energy Regulatory Commission.
- 1.13 ~~1.12.~~ **Force Majeure** - an event or circumstance that was not reasonably foreseeable by a Party, was beyond its reasonable control, and was not caused by its negligence or lack of due diligence; such events or circumstances include, but are not limited to, acts of civil or military authority (including courts, governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions, fires, hurricanes, floods, failure of contractors or suppliers, strikes, lockouts or other labor disputes or difficulties.
- 1.14 ~~1.13.~~ **FPSC** - Florida Public Service Commission.
- 1.15 **Green Attributes** – includes any and all environmental attributes including, but not limited to, any credits, benefits, emissions reductions, offsets, allowances, renewable energy certificates, “green tags” or other tradable environmental interests, of any

description, howsoever entitled, attributable to the generation of electricity from the Facility, and its displacement of conventional electricity generation provided, however, that Green Attributes shall not be deemed to include any investment tax credits, production tax credits or similar such tax credits (collectively "Green Attributes").

1.16 ~~4.14.~~ **Monthly Billing Period** - the period corresponding to the appropriate monthly billing cycle for regular retail service customers as determined by the applicable monthly meter reading schedule for the Facility's location.

1.17 ~~4.15.~~ **Monthly Billing Statement** - a monthly summary prepared by FPL in accordance with Section 7.0.

1.18 ~~4.16.~~ **Monthly Capacity Factor** - the total Energy during the Monthly Billing Period for which the calculation is made, divided by the product of (a) the Committed Capacity during the Monthly Billing Period and (b) the sum of the hours during the Monthly Billing Period. For purposes of calculating the Monthly Capacity Factor, the following factors shall be considered when applicable: (i) hourly Energy deliveries shall not exceed those which could be produced by the Committed Capacity plus 10% during On-Peak Hours, with the exception of those hours when FPL (as delineated in Section 8.3) requests the Authority to produce in excess of its Committed Capacity, and (ii) during each hour of any of the following periods-- (A) Scheduled Maintenance Period as delineated in Section ~~4.21,~~1.26, (B) period of Force Majeure as delineated in Section 13.4 and/or (C) periods that FPL did not accept Energy for delivery or receive Energy pursuant to the provisions of Sections ~~4.34.4~~ and/or ~~4.44.5~~-- the hourly Energy to be used in the calculation shall be the product of the last prior Capacity Factor and the Committed Capacity.

1.19 ~~4.17.~~ **Monthly Capacity Payment** - monthly payments for Capacity calculated in accordance with Appendix B.

1.20 ~~4.18.~~ **On-Peak Annual Capacity Factor** - the Annual Capacity Factor calculated only with respect to On-Peak Hours during the 12 consecutive Monthly Billing Periods preceding the date of calculation or, during the first year in which Capacity payments are

to be made, such shorter period as described in the definition of Annual Capacity Factor above.

1.21 ~~1.19.~~ **On-Peak Hours** - those hours occurring Monday through Friday, except the holidays noted below, April 1 through October 31, from 12 noon to 9:00 P.M., and November 1 through March 31, from 6:00 A.M. to 10:00 A.M. and 6:00 P.M. to 10:00 P.M. Holidays include only New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

1.22 ~~1.20.~~ **Operation and Maintenance Credit** - the amounts thereof set forth in Appendix B.

1.23 **Original Agreement** - the Agreement For The Purchase of Firm Capacity and Energy Between The Palm Beach County Solid Waste Authority and Florida Power & Light Company that was executed by the Authority on December 11, 1986 and by FPL on January 2, 1987.

1.24 **Period of Refurbishment** – the period starting at 12:01 AM on April 1, 2010 and ending on the Commercial Operation date of the Refurbished Facility as determined by the Authority, acting in a commercially reasonable manner, unless otherwise agreed by the Parties or excused by Force Majeure (i.e., the period during which the Facility will be retrofitted and refurbished).

1.25 **Refurbished Facility** – the Facility after it has undergone retrofitting and refurbishment will consist of one electrical generator designed to produce a maximum of 62.5 MW of electrical power at an 85% minimum power factor.

1.26 ~~1.21.~~ **Scheduled Maintenance Period** - any period of time during which the Authority plans, in coordination with FPL as provided in Section 8.2 hereof and with FPL's written concurrence, to subject the Facility to a scheduled complete or partial reduction in Capacity for routine or periodic maintenance; provided, however, for purposes of calculating Annual Capacity Factor and On-Peak Annual Capacity Factor, ~~only a single~~ up to two ~~Scheduled Maintenance Period~~ Periods, of a duration not to exceed ~~four consecutive weeks~~ a total of 28 days in any calendar year, shall be excludable from the

computation so as not to reduce either Annual Capacity Factor or On-Peak Annual Capacity Factor.

1.27 Site - an area of some one thousand three hundred eighty (1380) acres (generally designated as Site #7) owned by the Authority in Palm Beach County, Florida that is located north of a line approximately 610 feet south of 45th Street, south of the Beeline Highway, west of the Florida Turnpike and east of the West Palm Beach Water Catchment Area, and including a 610 foot wide parcel of land south of 45th street that extends from the Florida Turnpike on the west to Haverhill Road on the east, all as described in Appendix A.

1.28 Tax Credits – Any credit against local, state or federal taxation, including but not limited to such credits as investment tax credits, production tax credits or similar such tax credits.

1.29 ~~1.22.~~ Unit Energy Cost - the cost, in dollars per megawatt-hour (\$/MWH), shall be equal to the product of (a) the average monthly inventory charge out cost of coal burned at the St. Johns River Power Park expressed in dollars per million Btu and (b) an average annual heat rate factor of 10.5 million Btu per MWH. The charge out cost of coal shall be priced by using the monthly weighted moving average unit cost of coal stock removed from FERC Account 151 for the St. Johns River Power Park. FERC Account 151 shall be that account maintained by FPL as a result of the FERC's Uniform System of Accounts for Class A and B Public Utilities and Licensees, as such System of Accounts may be modified from time to time.

2. ~~2.0~~ FACILITY

2.1 ~~2.1.~~ The Authority shall own the Facility ~~on lands more particularly described in Appendix A~~ located on the Site.

2.2 ~~2.2.~~ The Authority shall, throughout the ~~term~~ Term of this Amended Agreement, maintain the status of the Facility as: (i) a "qualifying small power production facility" pursuant to FERC or FPSC regulations; (ii) an "exempt wholesale generator" pursuant to Federal law; or, (ii) a producer of "renewable energy" pursuant to Florida law.

3. 3.0 TERM

3.1 ~~3.1~~—This Amended Agreement shall become effective when the ~~condition~~conditions precedent described in Section 11.0 ~~has~~have taken place.

~~3.2~~—The initial term of this Agreement shall extend until March 31, 2010.

3.2 The initial term of this Amended Agreement shall commence at 12:01 AM on the day immediately following expiration of the Original Agreement (currently April 1, 2010) and shall extend through April 1, 2032 (“Term”), unless extended in writing by mutual agreement of the Parties except that if the Commercial Operation Date occurs after April 1, 2012, then, upon at the sole option of the Authority by written notice to FPL no later than 60 days following the Commercial Operation Date, the initial term shall be extended through the 240th month following the Commercial Operation Date; provided, however, in no event shall the Amended Agreement extend beyond June 1, 2034 without the prior written agreement of both Parties.

~~3.3~~—3.3 Notwithstanding the foregoing, FPL may terminate this Amended Agreement on or before ~~June~~August 30, 1992, 2014, if the Authority fails to ~~commence delivery of Energy pursuant to the terms of this Agreement~~achieve the Commercial Operation Date on or before ~~April~~June 1, 1992, 2014, provided, however, such ~~delivery date of April 1, 1992,~~Commercial Operation Date of June 1, 2014, and ~~the~~ corresponding termination date may, in FPL's sole discretion (which shall not be unreasonably exercised), be extended at the request of the Authority for a period to be specified by FPL, upon the Authority's showing of good cause for requiring such an extension, such good cause to consist of a showing that: (i) Force Majeure has directly caused such additional time to be required to complete ~~construction~~the refurbishment and/or retrofitment of the Refurbished Facility, (ii) the Authority is pursuing such completion with due diligence, and (iii) it is reasonable to expect such completion and the initial delivery of energy to occur within the additional time requested. In the event of a termination pursuant to this Section 3.3, the Authority shall reimburse FPL for all costs, including interest at the rate of 10.5% per annum, which FPL has reasonably incurred following the execution of this Amended

Agreement in preparation to receive Energy and Capacity; provided, however, such costs shall not exceed \$~~50,000~~85,000.

4. 4.0 SALE OF ENERGY AND CAPACITY BY THE AUTHORITY

4.1 ~~4.1. Upon proper notice as specified in Section 5.6 and during startup and testing of the Facility when it is in parallel operation with FPL's system,~~During the Period of Refurbishment FPL will purchase Energy (but not Capacity) in accordance with the terms and conditions specified in this Amended Agreement. Commencing on the Commercial Operation Date, the Authority shall sell to FPL and FPL shall purchase from the Authority all of the Energy and Capacity in excess of the Authority's internal consumption of energy and capacity, except, in each case, to the extent that the Authority is not obligated to sell or FPL is not obligated to purchase such Energy and Capacity under the terms of this Amended Agreement.

4.2 ~~4.2. The Authority shall designate the initial Committed Capacity and provide FPL written notice of such designation on or before April 1, 1990. The initial Committed Capacity of the Refurbished Facility shall be at least 40 MW and not greater than 55 MW. After April 1, 1990, as specified by the Authority in written notice to FPL prior to or upon the Commercial Operation Date. After the earlier of June 1, 2014 or the Commercial Operation Date, the Authority may annually increase but not decrease the Committed Capacity by giving FPL one year's advance written notice and then by an amount not to exceed 10% per increase of the then-current Committed Capacity, up to a maximum Committed Capacity of 55~~60 MW.

~~In addition, prior to April 1, 1992, the Authority shall be entitled to a one time option to increase (but not decrease) the Committed Capacity by up to 25 MW by providing FPL written notice at least three years before such increase shall actually occur; however, such option shall be exercisable by the Authority only if the electric generating capacity of the Facility is to be expanded by April 1, 1995. Once the Authority has elected to exercise any or all of the above options, they shall be irrevocable. All designations of Committed Capacity shall be to the nearest one-half (0.5) MW unit of~~

~~Capacity and shall be effective on the first day of the subsequent Monthly Billing Period after the actual increase occurs.~~

4.3 ~~4.3.~~ FPL shall not be obligated to purchase, and may require curtailed or reduced deliveries of, Energy (i) to the extent necessary to operate and maintain any part of FPL's system, or (ii) if FPL determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to FPL's customers. FPL shall give the Authority prior notice, if practicable, of its intent to refuse, curtail or reduce FPL's acceptance of Energy pursuant to this Section, and will act to minimize the frequency and duration of such occurrences.

4.4 ~~4.4.~~ FPL shall not be required to accept or purchase Energy during any period in which, due to operational circumstances, acceptance of such Energy, without taking into account the cost thereof, would result in FPL's incurring costs greater than those which it would incur by generating an equal additional amount of energy with its own resources. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous rating and the purchase of additional Energy would require taking a base load unit off-line and replacing the remaining load served by that unit with peaking type generation. FPL shall give the Authority as much prior notice as practicable of its intent not to accept Energy pursuant to this Section.

5. **5.0 DELIVERY OF ENERGY AND CAPACITY**

5.1 ~~5.1. Prior to any delivery of Energy and Capacity, FPL and the Authority shall enter into~~ are Parties to an Interconnection Agreement for the Facility that is in compliance with FPSC Rule 25- 17.87, adopted in Order No. 12443 in Docket 820406-EU.

5.2 ~~5.2. If not previously installed,~~ FPL shall install metering facilities reasonably necessary for the purpose of measuring or otherwise determining Energy and Capacity deliveries by the Authority to FPL. Pursuant to the Interconnection Agreement required by Section 5.1, the Authority shall be responsible for the reasonable costs incurred by FPL in installing, maintaining and upgrading such metering facilities.

5.3 ~~5.3.~~ FPL will provide and install, at its own expense, the initial metering required to measure sales of retail electric service to the Facility.

~~5.4.~~ 5.4 The delivery of Energy and Capacity from the Facility pursuant to this Amended Agreement shall initially be on a net output basis; that is, the internal electrical requirements of the Facility, and the needs of the Authority at the ~~Facility site~~ Site as determined by the Authority, shall be provided by the Facility itself and any excess will be made available for purchase by FPL. The Authority shall, at its sole option, have the ability to make a one-time change in the billing methodology from net output to simultaneous purchase and sales; provided, however, that only those portions of the Authority's electrical load resulting from other than turbine-generator or boiler auxiliaries (such as the solid waste processing facilities, landfill gas extraction/compression, recycling operations and administrative offices) would be served by FPL under a simultaneous purchase and sales arrangement. The Authority may exercise such option at any time subsequent to three consecutive monthly billing periods in which the Annual Capacity Factor is less than 70%. The Authority shall notify FPL in writing of its desire to exercise such option, which shall become effective to the extent possible, coincident with the next Fuel and Purchased Power Recovery Factor billing period, provided metering and other necessary equipment are in place to allow proper accounting of the simultaneous purchase and sales transaction.

~~5.5.~~ 5.5 FPL shall provide electric service to the Facility and to other equipment on the Site, upon request of the Authority, under applicable rate schedules on file with the FPSC. Any security deposit required for such electric service shall be in accordance with the provisions contained in FPL's Rate Schedule ~~COG-2, as it~~ QS-1, or QS-2 or other applicable rate schedule approved by the Florida Public Service Commission as they may be subsequently amended from time to time.

~~5.6.~~ 5.6. ~~The Authority shall give FPL at least three months' written notice before initial deliveries of Energy, which deliveries shall not occur before January 1, 1989.~~

~~5.7. Prior to the Authority's exercising any Section 4.2 option resulting from an increase in the installed electric generating capacity of the Facility, the Authority shall be in compliance with the provisions of the Interconnection Agreement.~~

6. 6.0 PAYMENT FOR ENERGY AND CAPACITY

~~6.1. Prior to April 1, 1992, FPL shall pay the Authority for each MWH of Energy at a rate equal to 95% of FPL's As Available Avoided Energy Costs.~~

6.1 ~~6.2.~~ Beginning April 1, 1992, 1992 until commencement of the Period of Refurbishment, FPL shall pay the Authority for each MWH of Energy at a rate equal to 90% of the lesser of an hour-by-hour comparison of (a) the fuel component of FPL's As-Available Avoided Energy Cost and (b) the Unit Energy Cost.

6.2 ~~6.3.~~ Beginning on April 1, 1992, 1992 until commencement of the Period of Refurbishment, FPL shall notify the Authority as soon as practicable of any foreseeable hourly period(s) when the rate to be paid for Energy is projected to be less than 85% of the Unit Energy Cost and shall provide the Authority with an estimate of the reduced energy rate during such period(s). The Authority shall have the option to discontinue Energy and Capacity deliveries to FPL during such period(s), unless FPL makes a request to the Authority pursuant to Section 8.3. The Authority shall provide FPL at least three hours' advance notice of its intent to discontinue deliveries during such period(s).

6.3 During the Period of Refurbishment, FPL shall pay the Authority for each MWH of Energy at a rate equal to 100% of FPL's As-Available Avoided Energy Costs.

6.4 Beginning on the Commercial Operation Date, FPL shall pay the Authority for each MWH of Energy at a rate equal to 100% of the lesser of an hour-by-hour comparison of (a) the fuel component of FPL's As-Available Avoided Energy Cost and (b) the Unit Energy Cost.

6.5 ~~6.4.~~ Calculation of payments for Energy to the Authority shall be based on the sum, over all hours of the Monthly Billing Period, of the product of each hour's applicable rate as

set forth in Section ~~6.1 or~~ 6.1, 6.2, 6.3, or 6.4 times the purchases of Energy by FPL for that hour.

6.6 ~~6.5.~~ Beginning on the Commercial Operation Date FPL shall pay the Authority the Monthly Capacity Payments at rates set forth in Appendix B.

6.7 ~~6.6.~~ If, at the end, of any Monthly Billing Period during the ~~term~~ Term of this Amended Agreement, the Facility has not operated at an Annual Capacity Factor and Annual On-Peak Capacity Factor of at least 55%, based on the Committed Capacity, FPL shall not be obligated to pay for Capacity during such Monthly Billing Period. Suspension of payments pursuant to this Section shall not relieve the Authority of any of its obligations under this Amended Agreement.

7. ~~7.0.~~ **BILLING AND PAYMENT**

7.1 ~~7.1.~~ On a monthly basis, FPL shall prepare a Monthly Billing Statement summarizing the quantities of Energy and Capacity received by FPL for the preceding Monthly Billing Period and any payments, calculated in accordance with Section 6.0, due the Authority arising from such receipts. The Monthly Billing Statement, to be provided by FPL to the Authority in both written and electronic form, shall contain at least the following information:

7.1.1 ~~(a)~~ The number of hours in the current Monthly Billing Period;

7.1.2 ~~(b)~~ The current Committed Capacity;

7.1.3 ~~(c)~~ The Energy received by FPL during each hour in the Monthly Billing Period;

7.1.4 ~~(d)~~ The total Energy received by FPL in excess of that which could be produced by the Committed Capacity and which FPL did not request;

- 7.1.5 ~~(e)~~ The Energy received in each hour by FPL in response to any request(s) by FPL pursuant to Sections ~~4.3~~ 4.5 or 8.3;
- 7.1.6 ~~(f)~~ The Energy received by FPL during all hours and the On-Peak Hours;
- 7.1.7 ~~(g)~~ The Monthly Capacity Factor, the Annual Capacity Factor and the On-Peak Annual Capacity Factor for the Monthly Billing Period;
- 7.1.8 ~~(h)~~ The rate paid by FPL for Energy during each hour in the Monthly Billing Period;
- 7.1.9 ~~(i)~~ The calculated payment for Energy during the Monthly Billing Period;
- 7.1.10 The As-Available Avoided Energy Cost during each hour in the Monthly Billing Period
- 7.1.11 ~~(j)~~ The Monthly Capacity Payment during the Monthly Billing Period; and
- 7.1.12 ~~(k)~~ Such other information, data or calculations as FPL or the Authority deems reasonably necessary to adequately calculate payment amounts.

7.2 ~~7.2~~ Not later than the 20th business day following the monthly meter reading date, FPL shall mail to the Authority the Monthly Billing Statement. Any payment due shall be made by wire transfer, automated clearing house, or as otherwise requested by the Authority unless, in either event, an unreasonable administrative burden or unreasonable cost is thereby imposed upon FPL; if either of the latter is imposed, FPL shall mail the payment(s) with the Monthly Billing Statement(s). Payments not made by the 20th business day following the monthly meter reading date shall be delinquent and shall thereafter include interest calculated at the rate of 10.5% per annum.

7.3 ~~7.3~~ Within 30 days of its receipt of a Monthly Billing Statement, the Authority shall review its contents and advise FPL in writing of any errors or misstatements contained therein. Failure of the Authority to discover any errors or misstatements within three years plus the then-current Monthly Billing Period shall extinguish the Authority's right to any billing adjustment(s).

7.4 ~~7.4~~–If any errors or misstatements should arise in connection with any portion of any Monthly Billing Statement, the Parties agree to proceed in good faith to expeditiously settle any such items. Adjustments in prior months' invoices shall be added to, or credited against, the next Monthly Billing Statement.

7.5 ~~7.5~~–FPL will provide the Authority with such information pertaining to rates, payments and delivery of Energy and Capacity as the Authority may reasonably request. FPL may comply with the Authority's request for information by providing the Authority access to relevant materials at FPL's business offices during normal business hours. The Authority shall pay all expenses reasonably incurred by FPL in complying with requests for information made pursuant to this Section 7.5.

7.6 ~~7.6~~–The Authority shall be billed monthly an amount equal to the taxes, assessments or other impositions (excluding state and federal income taxes except as may be required by a material change in applicable tax law), if any, for which FPL is liable as a result of its purchases of Energy and Capacity from the Authority. In the event of any such material change in tax law(s), the Parties will enter into negotiations in an attempt to formulate an appropriate amendment to this Amended Agreement.

8. ~~8.0~~ OPERATION AND MAINTENANCE OF THE FACILITY

8.1 ~~8.1~~–During the ~~term~~ Term of this Amended Agreement, the Authority agrees to:

8.1.1 ~~(a)~~–Provide FPL, prior to October 1 of each calendar year, a projection of the amount of Energy and Capacity for each month of the following calendar year, including the time, duration and magnitude of any Scheduled Maintenance Period or reductions in Capacity;

8.1.2 ~~(b)~~–Promptly update the projection of yearly Energy and Capacity production as and when any change(s) may be determined necessary;

8.1.3 ~~(c)~~–Provide FPL, on a weekly basis, a projection of the amount of Energy and Capacity for each day of the following week. Such estimate shall be furnished by 3:00 p.m. on the Thursday prior to the week for which such schedule is

required, unless otherwise agreed in writing by the Parties, and shall be updated on a daily basis by 3:00 p.m. of the day preceding that to which the estimate is to apply; and

8.1.4 ~~(d)~~ Comply with reasonable requirements of FPL regarding day-to-day or hour-by-hour communications between the Parties relative to the performance of this Amended Agreement.

8.2 ~~8.2~~ The Authority shall coordinate its annual projection of Scheduled Maintenance Periods or reductions in Capacity as contemplated in Section 8.1~~(a)~~ with FPL's system requirements.

8.3 ~~8.3~~ FPL may, from time to time, request that the Authority produce Energy and Capacity up to and in excess of the Committed Capacity in order to meet FPL's system requirements. The Authority will use its best efforts to respond within 3 hours with Energy and Capacity to meet such request by FPL up to the Committed Capacity unless the Authority cannot do so because of engineering or operational circumstances at the Facility. If the Authority cannot, in such instances, deliver to FPL Energy or Capacity in amounts up to the Authority's Committed Capacity, then the Authority shall, within 30 days, notify FPL in writing of the engineering or operational circumstances which prevented the Authority from complying with FPL's request. FPL's requests shall be made orally with as much notice as is practicable.

8.4 ~~8.4~~ During the ~~term~~ Term of this Amended Agreement, the Authority shall operate and maintain the Facility in accordance with industry standards so as to reasonably ensure compliance with its obligations hereunder.

8.5 ~~8.5~~ FPL may, from time to time during regular business hours and with reasonable written notice, have access to inspect the operation and maintenance of the Facility, provided that FPL's inspections do not unreasonably interfere with the Authority's operation or maintenance of the Facility.

9. 9.0 INSURANCE

The Authority shall procure a policy of liability insurance on a standard "Insurance Services Office" comprehensive commercial general liability form. Said policy shall cover generally all liabilities which might arise under, or in the performance or nonperformance of, this Amended Agreement. As a minimum, said policy shall contain endorsements providing coverage, including but not limited to products liability/completed operations coverage, for FPL, its parent, its subsidiaries or affiliated entities and each of their respective officers, directors, employees, agents and contractors (hereinafter in this Section 9 and in Section 10 collectively called the "Company"). The policy shall include coverage for interruption or curtailment of power supply; provided, however, the Authority shall not be liable to FPL for damages due to lost sales of electricity, and insurance coverage for such lost sales is not required.

The Company shall be designated as an additional named insured, and the policy shall be endorsed to be primary to any insurance which may be maintained by or on behalf of the Company. The policy shall be in a minimum limit of Ten Million Dollars (\$10,000,000) per occurrence, combined single limit, for bodily injury (including death) or property damage; provided however, in the event that such insurance becomes totally unavailable, such unavailability shall not constitute an Event of Default under this Amended Agreement, but FPL and the Authority shall enter into negotiations to develop substitute protection for the Company which FPL deems adequate. Any premium assessment or deductible shall be for the account of the Authority and not the Company.

In the event that the policy is on a "claims made" basis, the retroactive date of the policy shall be the effective date of this Amended Agreement or such other date as to protect the interest of the Company. Furthermore, if the policy is on a "claims made" basis, the Authority's providing of such coverage shall survive the termination of this Amended Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort (currently, five, years); if coverage is on an "occurrence" basis, such insurance shall be maintained by the Authority during the entire ~~term~~Term of this Amended Agreement. The policy shall not be cancelled or materially altered without at least 30 days' written notice to FPL.

~~The Authority shall provide to FPL evidence of such liability insurance coverage on FPL Form 1364-23, without modification; said Form is attached hereto as Appendix C. A copy of the policy will be made available to FPL upon reasonable request. In the case of any conflict between the language of Appendix C and the language of this Agreement, the language of this Agreement shall prevail.~~

10. ~~10.0~~ LIMITATIONS OF LIABILITY

10.1 The Authority shall indemnify, protect, defend and hold the Company (as defined in Section 9) free and unharmed, on an After-Tax Basis, from and against any and all claims, losses, liabilities, and expenses whatsoever which the Company may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Authority in performing its obligations pursuant to this Amended Agreement or the Authority's failure to abide by the provisions of this Amended Agreement. FPL shall indemnify, protect, defend and hold, on an After-Tax Basis, the Authority free and unharmed from and against any and all claims, losses, liabilities and expenses whatsoever which the Authority may hereafter incur, suffer or be required to pay by reason of negligence on the part of FPL in performing its obligations pursuant to this Amended Agreement or FPL's failure to abide by the provisions of this Amended Agreement.

10.2 TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AMENDED AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AMENDED AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR

ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AMENDED AGREEMENT BUT SUCH SURVIVAL SHALL APPLY ONLY TO THOSE CAUSES OF ACTION, IF ANY, ARISING PRIOR TO TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AMENDED AGREEMENT. NOTHING CONTAINED IN THIS AMENDED AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

11. ~~11.0~~ CONDITION PRECEDENT TO AMENDED AGREEMENT

The following shall be conditions precedent to the effectiveness of this Amended Agreement:

11.1 ~~The following shall be a condition precedent to the effectiveness of this Agreement:~~ The FPSC's prior approval, without change or condition, including FPSC findings that (a) this Amended Agreement is reasonable, prudent and in the best interest of FPL's ratepayers, (b) FPL may recover from its ratepayers all payments for Energy and Capacity, and (c) FPL shall not be required to resell the Energy and Capacity to another electric utility so long as their retention is in the best interest of FPL's ratepayers. Toward this end, FPL shall submit this Amended Agreement to the FPSC and seek the FPSC's approval of the obligations and duties imposed by this Amended Agreement, and the Authority shall use its best efforts to support FPL's request for FPSC approval.

11.2 The FPSC's issuance of an order (a) certifying that the Facility is a qualifying facility pursuant to 25-17.080, Florida Administrative Code, and (b) such order has become a final order that is non-appealable by any person.

12. ~~12.0~~ DEFAULT

12.1 ~~12.1.~~ Except as expressly provided elsewhere in this Agreement, if, after April 1, 1992, the Authority ceases delivery of Energy for 12 consecutive months due to an event of Force Majeure, FPL may, in its sole discretion, deem such nondelivery of Energy to constitute an Event of Default; provided, however, if the event of Force Majeure causing such nondelivery of Energy cannot be remedied by the Authority within 12 months, FPL may, for an additional period not to exceed 12 months, waive its entitlement to declare such nondelivery of Energy to constitute an Event of Default so long as the Authority (i) is diligently pursuing corrective action and (ii) is providing to FPL, in writing, monthly status reports as to the nature and progress of the necessary corrective action. However, if the Authority requests such waiver, it shall not be unreasonably withheld.

12.2 ~~12.2.~~ Except as provided above in Section 12.1, the following shall constitute Events of Default regardless of events of Force Majeure described in Section 13.0:

12.2.1 ~~(a)~~ After April 1, 1992, the Authority ceases delivery of Energy for 12 consecutive months, or

12.2.2 ~~(b)~~ After April 1, 1992, the Authority fails, for any 24 consecutive months, to maintain an Annual Capacity Factor of 55%;

12.2.3 ~~(c)~~ The Authority becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings; or

12.2.4 ~~(d)~~ The Authority or FPL shall default in the due and punctual performance of any other material covenants, conditions, agreements and provisions contained herein on its part to be performed, and such default shall not be cured as soon as possible, but not more than thirty (30) days after written notice from the other Party specifying such default; provided, however, if it is not feasible to correct such default within thirty (30) days after written notice of such default has been delivered to the defaulting Party by the other, but it is and remains feasible to correct such default within one year after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date within such one-year period when a cure could be effected so

long as (i) corrective action by the defaulting Party is instituted within ten days of the date of such notice, (ii) such corrective action is diligently pursued, and (iii) the defaulting Party provides to the other Party monthly, written reports as to the nature and progress of such corrective action, and provided further that, after FPL gives any written notice of default and until such default is cured, if curable, FPL may suspend the making of Monthly Capacity Payments; conversely, after the Authority gives any written notice of default and until such default is cured, if curable, the Authority shall be free to sell, to other electric utilities, energy and capacity produced by the Facility; or

12.2.5 ~~(e)~~ The Authority fails to give proper assurance of adequate performance as specified under this Amended Agreement within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance.

12.3 ~~12.3~~ Upon the occurrence of any of the foregoing Events of Default, the nondefaulting Party may, by written notice to the defaulting Party, (i) declare permanently terminated all of the nondefaulting Party's obligations under this Amended Agreement, or (ii) apply to any payment, due from it to the defaulting Party, any payment(s) otherwise due from the defaulting Party. Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Amended Agreement.

13. ~~13.0~~ **FORCE MAJEURE**

13.1 ~~13.1~~ Except as otherwise provided in this Amended Agreement, either Party shall be excused from performance when its nonperformance was caused directly or indirectly by Force Majeure.

13.2 ~~13.2~~ In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering an occurrence of Force Majeure shall promptly notify the other in writing of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any date(s) may be affected thereby. The suspension of

performance shall be of no greater scope and of no greater duration than the Force Majeure.

13.3 ~~13.3.~~ The Party suffering an occurrence of Force Majeure shall, with all reasonable dispatch, remedy the cause(s) preventing its performance of this Amended Agreement; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and it shall not be required to settle such labor disputes by acceding to demands which such Party deems to be unfavorable; and, provided further, the Authority shall not be obligated to reconstruct the Facility if the Facility is substantially destroyed or otherwise rendered nonusable, unless sufficient insurance proceeds or reserve funds are available to the Authority for such purpose and in an amount approximating the cost of such reconstruction.

13.4 ~~13.4.~~ Under the circumstances set forth below, Energy which is not delivered to FPL due to events of Force Majeure shall not be reflected in the computation of Annual Capacity Factor, Capacity Factor, Monthly Capacity Factor and On-Peak Annual Capacity Factor so as to reduce any of them. For purposes of this Section 13.4, the term "Force Majeure" shall be defined as set forth in Section ~~4.121.13~~ 121.13 hereof, except that "strikes, lockouts or other labor disputes or difficulties" shall be excluded from the definition.

The Authority shall have the right, exercisable on one occasion during each sixty-month period of this Amended Agreement, to elect that periods of Force Majeure (as defined above) not be reflected in the computation of Annual Capacity Factor, Capacity Factor, Monthly Capacity Factor and On-Peak Annual Capacity Factor so as to reduce any of them. In no instance, however, shall any exercise of such election entitle the Authority to more than thirty consecutive days of non-reduction of the Facility's Annual Capacity Factor, Capacity Factor, Monthly Capacity Factor and On-Peak Annual Capacity Factor and such election shall not occur until the 31st day subsequent to the 1st day of such event. This election may result in a billing adjustment for the previous month(s).

Upon proper notice of cure of Force Majeure, the calculation of the Annual Capacity Factor and the On-Peak Capacity Factor shall assume that the periods preceding and

subsequent to the Force Majeure occurrence shall constitute consecutive months. For example, for the first Billing Period following proper notice, the Annual Capacity Factor computation will be as follows: The sum of the 11 consecutive Monthly Capacity Factors preceding the Force Majeure occurrence and the Monthly Capacity Factor for the first Billing Period after the cure of the Force Majeure shall be divided by 12.

14. ~~14.0~~ **NOTICES**

14.1 ~~14.1~~ Notices required to be in writing under this Amended Agreement shall be delivered in person or sent by certified mail, return receipt requested, as specified below:

To the Authority:

~~The Palm Beach County Solid Waste Authority of Palm Beach County~~
~~5114 Okeechobee Boulevard, Suite 2C~~
~~7501 North Jog Road~~
~~West Palm Beach, Florida 3341733412~~
~~Attention: Executive Director~~
~~(305) 471-5770~~
~~(561) 640-4000~~

To FPL:

Florida Power & Light Company
Post Office Box 029100
Miami, Florida 33102
or
~~9250 West Flagler Street~~
~~Miami, Florida 33174~~
~~Attention: Cogeneration and Small Power Production Manager of~~
~~Purchased Power~~
~~Mail Stop RAP/GO~~
~~(305) 552-35334910~~

14.2 ~~14.2~~ Notices shall be effective upon receipt.

14.3 ~~14.3~~ Either Party, at any time, by written notice may designate any different person(s) or different address (es) for receipt of notices and correspondence.

15. **OWNERSHIP AND OFFERING FOR SALE OF GREEN ATTRIBUTES**

15.1 The Authority retains any and all rights to, and is the exclusive owner of, any and all Green Attributes; provided, however, that the sale of any or all Green Attributes by the Authority, if any, shall be in accordance with this Section 15.

15.2 The Authority acknowledges that FPL has advised it, but the Authority has not confirmed, that at the time of execution of this Amended Agreement, it is FPL's opinion that FPL is not subject to any federal, state or local laws, rules or regulations that require FPL to purchase Green Attributes but that in the future FPL may become subject to a requirement to purchase Green Attributes. During the Term of this Amended Agreement, until such time, if ever, FPL desires to purchase the Authority's Green Attributes, the Authority agrees to limit the term of any sale, exchange or other disposition ("Transfer") of the Authority's Green Attributes, to a period of twenty four (24) months duration, subject to one (1) year renewals upon three (3) months' notice. For purposes of Sections 15.2 and 15.3, the term Green Attributes, when referring to the Authority's attributes, shall mean only those prospective attributes yet to be produced by the Authority during the Term of this Amended Agreement. If at any time during the Term of this Amended Agreement, FPL becomes obligated to purchase Green Attributes as the result of a reasonable interpretation of applicable federal, state or local laws, rules or regulations, and provides the Authority with written notice of such obligation, the Authority agrees that after the date of such notice from FPL it will first offer such prospective Green Attributes to FPL pursuant to the terms and conditions set forth in Section 15.3 below prior to agreeing to renew an existing Green Attributes Transfer and/or prior to entering into a new Green Attributes Transfer.

15.3 The following provisions shall apply to any proposed Transfer of Green Attributes by the Authority:

15.3.1 If the Authority receives an unsolicited bona fide offer or offers for Transfer of any or all of its Green Attributes, and desires to pursue such offer:

(1) The Authority will on or before five (5) business days from the date of receipt of such offer, provide by written notice to FPL an option to purchase such Green Attributes on the same price, terms and conditions as those contained in the bona fide offer received by the Authority;

(2) FPL shall exercise such option to purchase the Green Attributes, if at all, as soon as is commercially reasonable but within thirty (30) days of receiving written notification by the Authority of the bona fide offer (the "Option Period"). In the event the Authority is required to respond to a bona fide offer in less than thirty (30) days, the Authority shall i) provide written notice of the response date ("Response Date") as soon as practicable and ii) afford FPL a minimum of five (5) business days to determine whether or not to exercise its option to purchase the Green Attributes ("Minimum Determination Period"). After FPL has been afforded the Minimum Determination Period, FPL shall exercise its option, if at all, no later than 72 hours prior to the Response Date (the "Abbreviated Option Period"). If, after the Minimum Determination Period has elapsed, less than 72 hours remain prior to the Response Date, FPL shall exercise its option, if at all, within the first 24 hours after the lapse of the Minimum Determination Period. If the Response Date occurs during the Minimum Determination Period, and FPL has not had sufficient time to determine whether or not to exercise its option, upon notification of the Authority of such fact by FPL, the Authority may not sell the Green Attributes pursuant to the subject bona fide offer without FPL's consent, which consent may be withheld for any reason in FPL's sole discretion. FPL's option shall automatically expire upon the expiration of the Option Period or Abbreviated Option Period, as applicable, and any claim FPL may have had to purchase Green Attributes pursuant to such bona fide offer shall be extinguished in full; and,

(3) If FPL advises the Authority that it will not exercise such option, or the Option Period expires, the Authority will not Transfer the subject Green Attributes to any party at a price less than that offered to FPL pursuant to the bona fide offer or at terms that are more advantageous to the buyer of such Green Attributes than those contained in the bona fide offer, without first offering FPL an option to purchase at such more advantageous terms pursuant to the procedures of subsection (2) above.

15.3.2 If the Authority in its discretion requests in writing that FPL enter into negotiations for the Transfer of Green Attributes as the Authority may identify, FPL shall provide written notice to the Authority as to whether or not it will enter into such negotiations within thirty (30) days of the Authority's request.

(1) If FPL notifies the Authority that it will not enter into such negotiations, or if thirty (30) days have passed since the Authority's request with no written response from FPL, and no negotiations have taken place, then, for a period of ninety (90) days thereafter, any provision to the contrary in this Amended Agreement notwithstanding, the Authority shall be completely unencumbered in its efforts or right to Transfer any or all of its Green Attributes that were previously offered to FPL to an entity other than FPL, and FPL shall have no claim to such Green Attributes during such period.

(2) If FPL notifies the Authority that it will enter into such negotiations, such negotiations shall commence within fifteen (15) business days and the Parties shall diligently pursue mutually agreeable prices, terms and conditions. If

FPL fails to commence negotiations within said fifteen (15) business days, then the provisions of Section 15.3.2(1) shall apply.

(i) If after a period thirty (30) days from commencement of negotiations, either Party determines that continued negotiations are not likely to result in a mutually acceptable agreement for the Transfer of Green Attributes, either Party may terminate such negotiations upon five (5) days written notice to the other Party.

(ii) for a period of ninety (90) days following termination of negotiations, the Authority shall be free to seek or solicit offers for the Transfer of its Green Attributes that were previously offered to FPL, and to enter into one or more agreements for the Transfer of Green Attributes with an entity other than FPL at no better price or terms and conditions as offered to FPL, provided, however, that if the Authority relies on a request for Proposals (“RFP”) to solicit offers FPL may participate on an equal basis with other interested entities.

15.4 In the event that the Authority uses an RFP or other offering process to solicit offers for the Transfer of Green Attributes (Bids), FPL shall be provided with a copy of the RFP or other offering material and FPL may or may not elect to be a participant in the process.

(a) If FPL elects to participate in the RFP or other offering process but does not submit the winning Bid, then the Authority will provide FPL with an option to purchase such Green Attributes at the same price, terms and conditions as those contained in the winning Bid, as long as such Bid is a bona fide offer. FPL must exercise such option to purchase the Green Attributes, if at all, within ten (10) business days of receiving written notification by the Authority of the price, terms and conditions of the winning Bid. For purposes of this subsection, the term “winning Bid” means, among other things, that the Bid, in the sole judgment and

absolute discretion of the Authority is in the best interests of the Authority.

- (b) In the event FPL elects not to participate in the RFP process or fails to exercise its option to purchase the Green Attributes within the ten (10) business day period set forth above, then FPL's option to purchase such Green Attributes shall expire and the Authority shall be under no further obligation to offer to Transfer to FPL any of the Green Attributes that were subject to the RFP.

15.5 In the event the Authority elects to respond to an RFP or similar process initiated by a third-party seeking to purchase attributes for which the Authority's Green Attributes would qualify ("Alternate Process"), then the Authority shall provide FPL with an option to purchase the Green Attributes at the same price, terms and conditions offered, if at all, by the Authority in such Alternate Process. The Authority shall provide written notice to FPL of such Alternative Process as soon as reasonably possible after the Authority first learns of the Alternative Process and the date by which the Authority's responsible order must be timely submitted as prescribed by the third-party. FPL must exercise its option to purchase the Green Attributes subject to the Alternate Process, if at all, in writing at least 72 hours prior to the date by which the Authority's responsive offer must be submitted, provided however, FPL shall have been afforded the Minimum Determination Period. In the event FPL is afforded the Minimum Determination Period and fails to exercise its option to purchase the Green Attributes on or before the time period set forth above, then the Authority shall be under no obligation to offer to Transfer to FPL the Green Attributes that were subject to the Alternate Process. The Authority agrees that it will not Transfer Green Attributes that were subject to the Alternate Process to any party at a price less than or under terms more favorable than that offered to FPL.

15.6 If during the Term of this Amended Agreement an applicable index or indices used to establish the fair market value of the Authority's Green Attributes come into existence,

become a standard in the industry and are acceptable to both Parties, such index or indices may be used to establish pricing, terms and conditions of a Transfer in lieu of the provisions of this Section 15.3, 15.4 or 15.5.

15.7 Unless required to be filed as a public record with the FPSC annually, as part of FPL's Ten-Year Site Plans or otherwise, FPL shall annually provide to the Authority during the anniversary month of this Amended Agreement its best estimate of Green Attribute requirements for the following twenty-four (24) months.

16. ~~15.0~~ MISCELLANEOUS

16.1 ~~15.1.~~ The Authority hereby agrees to seek, obtain and maintain any and all governmental permits, certifications or other authorizations which are required by law as prerequisites to engaging in the activities envisioned by this Amended Agreement.

16.2 ~~15.2.~~ FPL agrees to comply with Florida law, including rules and regulations of the Florida Department of Revenue, as may from time to time be in effect, to the extent reasonably necessary to ensure that payments received by the Authority hereunder will not be subject to the gross receipts tax described in Section 203.01, Florida Statutes.

16.3 The Authority retains all rights to any and all Tax Credits associated with the Facility and associated with the electricity produced by the Facility, regardless of whether the Authority sells all or a portion of such electricity or consumes all or a portion of such electricity in one or more Authority operations.

16.4 ~~15.3.~~ Notwithstanding anything to the contrary in this Amended Agreement, if FPL, at any time during the ~~term~~ Term of this Amended Agreement, fails to obtain or is denied the authorization of the FPSC, or the authorization of any other legislative, administrative, judicial or regulatory body which now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover from its customers all of the payments required to be made to the Authority under the terms of this Amended Agreement or any subsequent amendment hereto, FPL may, at its sole option, adjust the payments made under ~~the~~ this

Amended Agreement to the amount(s) which FPL is authorized to recover from its customers. In the event that FPL so adjusts the payments to which the Authority is entitled under this Amended Agreement, then, without limiting or otherwise affecting any other remedies which the Authority may have hereunder or by law, the Authority may, at its sole option, terminate this Amended Agreement upon ninety (90) days' written notice to FPL. If such determination of disallowance is ultimately reversed and such payments previously disallowed are found to be recoverable, FPL shall pay all withheld payments, with interest at the rate of 10.5% per annum. The Authority acknowledges that any amounts initially received by FPL from its ratepayers, but for which recovery is subsequently disallowed and charged back to FPL, may be offset or credited, with interest at the rate of 10.5% per annum, against subsequent payments to be made by FPL to the Authority under this Amended Agreement.

If, at any time, FPL receives notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its customers of all payments required to be made under the terms of this Amended Agreement or any subsequent amendment to this Amended Agreement, then FPL shall, within 30 days of such action, give written notice thereof to the Authority. FPL shall use its best efforts to defend and uphold the validity of this Amended Agreement and its right to recover from its customers a payments required to be made by FPL hereunder, and will cooperate in any effort by the Authority to intervene in any proceeding challenging, or to otherwise be allowed to defend, the validity of this Amended Agreement and the right of FPL to recover from its customers all payments to be made by it hereunder.

The Parties do not intend this Section ~~15.3~~16.4 to grant any rights or remedies to any third party (ies) or to any legislative, administrative, judicial or regulatory body; and this Section ~~15.3~~16.4 shall not operate to release any person from any claim or cause of action which the Authority may have relating to, or to preclude the Authority from asserting, the validity or enforceability of any obligation undertaken by FPL under this Amended Agreement.

16.5 ~~15.4.~~ With the exception of mandates imposed by any regulatory authority having jurisdiction over FPL or the Authority, neither FPL nor the Authority may assign any of its obligations under this Amended Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however that as to the Authority the reference to regulatory authority in this subsection shall specifically exclude Palm Beach County and the Solid Waste Authority of Palm Beach County.

16.6 ~~15.5.~~ This Amended Agreement, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in interest and legal representatives. This Amended Agreement constitutes the entire ~~Agreement~~agreement and understandings between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to this subject matter. No modification or waiver of any term of this Amended Agreement, or any amendment of this Amended Agreement, shall be effective unless it is in writing and signed by the Parties.

16.7 ~~15.6.~~ Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Amended Agreement, or with respect to any other matters arising in the connection with this Amended Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter.

16.8 ~~15.7.~~ The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Amended Agreement or to exercise any rights under this Amended Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

16.9 ~~15.8.~~ Nothing contained in this Amended Agreement shall be construed to create an association, trust, partnership or joint venture between the Parties. No payment by FPL to the Authority for Energy or Capacity shall be construed as payment by FPL for the acquisition of any ownership or property interest in the Facility. Each Party shall be individually and severally liable for its own obligations under this Amended Agreement.

16.10 ~~15.9.~~ The Authority shall conform to the requirements, where applicable, of the Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, and the portions of Executive Orders 11701 and 11758 relative to Equal Employment Opportunity. The applicable implementing Rules and Regulations of the Office of Federal Contracts Compliance are incorporated herein by this reference.

16.11 ~~15.10.~~ Section headings, titles and indexes appearing in this Amended Agreement are inserted for convenience only and shall not be construed as interpretations of text.

~~15.11.~~ 16.12 This Amended Agreement and the rights and the obligations of the Parties hereunder shall be construed under, and in accordance with, the laws of the State of Florida.

16.13 EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AMENDED AGREEMENT.

16.14 In the event of a conflict between the provision of this Amended Agreement and the Original Agreement, this Amended Agreement shall prevail.

IN WITNESS WHEREOF, the ~~parties~~Parties hereto have caused this ~~agreement~~Amended Agreement to be executed by their respective duly authorized officers.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

Assistant Secretary

Name: ~~J. C. Collier, Jr.~~
Title: ~~Sr. Vice President~~
January 2, 1987

ATTEST:

FLORIDA POWER & LIGHT COMPANY

Date:

ATTEST:

THE SOLID WASTE AUTHORITY OF
PALM BEACH COUNTY

~~Sandra Bourhan,~~
Clerk to the Authority

Name: ~~Ken Spillias,~~
Title: ~~Chairman, The Palm Beach County~~
~~Solid Waste Authority~~

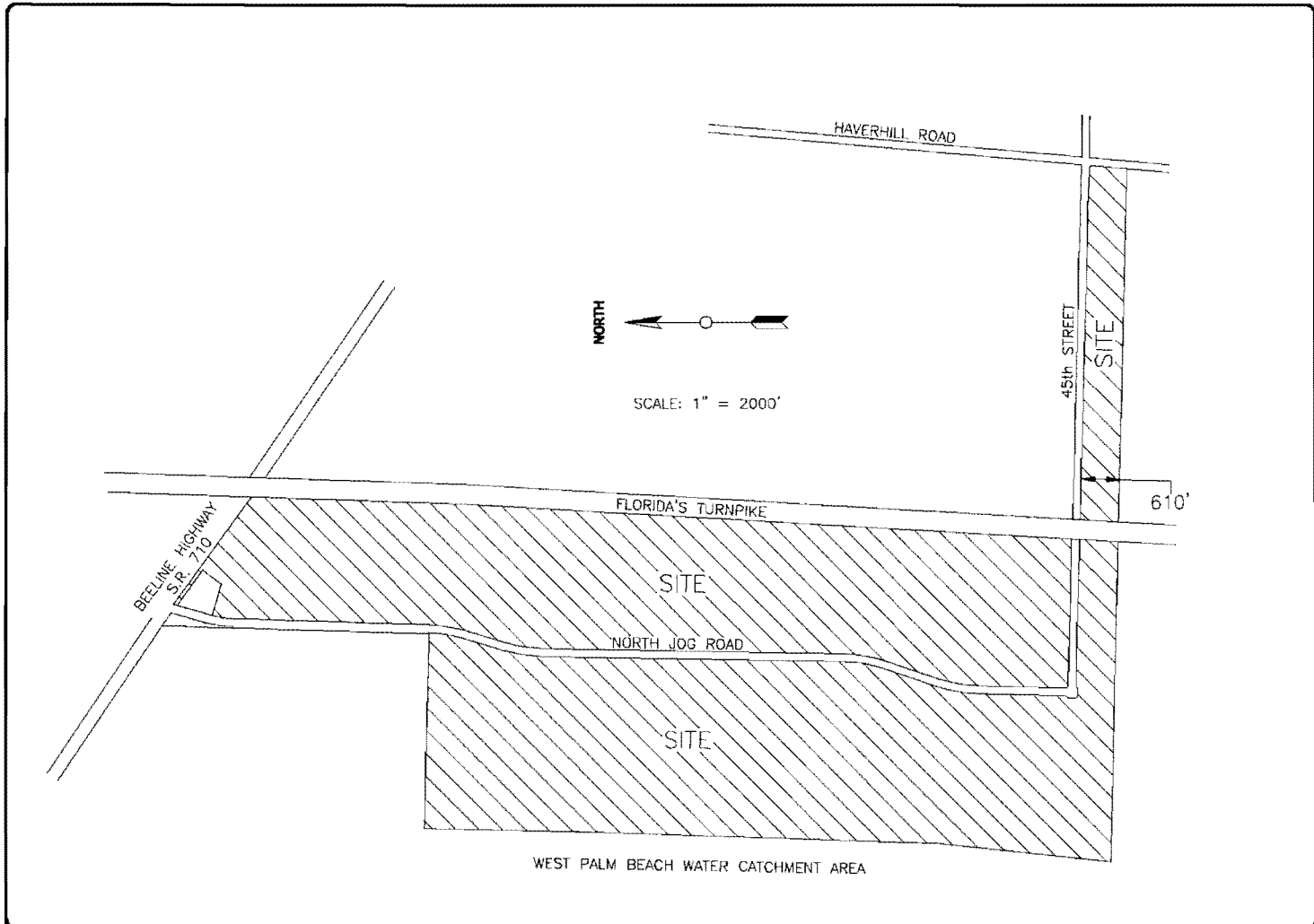
December 11, 1986

Date:


APPENDIX A

DESCRIPTION OF FACILITY LOCATIONTHE SITE

~~The Resource Recovery Facility will be located on a designated Facility site of approximately 20 acres. This site is located within the 1320 acre Authority owned site locally designated as Site #7. The 1320 acre site is north of 45th street, south of the Beeline Highway, West of the Florida Turnpike and East of the West Palm Beach Water Catchment area. The site is located in Palm Beach County, Florida.~~



Appendix B
Page 2 of 2

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY 7501 North Jog Road West Palm Beach, Florida 33412 Phone: (561)840-4000 FAX: (561)683-4067		NORTH COUNTY RESOURCE RECOVERY FACILITY SITE	DESCRIPTION OF THE SITE DWH: B. HEADBERG DSK: CHK: SCALE AS SHOWN APV: DATE: MAR 2009	SHEET 1												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">Date</th> <th style="width: 15%;">Revision</th> <th style="width: 80%;">Description</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		Date	Revision	Description												
Date	Revision	Description														

APPENDIX B

CALCULATION OF FIRM CAPACITY PAYMENT

Monthly Capacity Payments for each Monthly Billing Period shall be computed according to the following:

- A. In the event that the Capacity Factor is less than 55%, then the Monthly Capacity Payments shall not be due.
That is:

$$\text{MCP} = 0$$

- B. In the event that the CF is greater than 85%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = (\text{BCC} + \text{OMC}) \times \text{CC}$$

- C. In the event that the CF is equal to or between 55% and 85%, then the Monthly Capacity Payment shall be calculated from the following formula:

$$\text{MCP} = [(\text{BCC} + \text{OMC}) \times (.02 \times (\text{CF} - 35)) \times \text{CC}]$$

Where:

MCP = Monthly Capacity Payment in dollars.
BCC = Base Capacity Credit in \$/MW-Month.
OMC = Operation and Maintenance Credit in \$/MW-Month.
CF = Capacity Factor in percent.
CC = Committed Capacity in MW.

The Base Capacity Credit and Operation and Maintenance Credit shall be derived from the following schedule:

Year ^{1/}	BCC \$/MW-MO	OMC \$/MW-MO
1989	0	0
1990	0	0
1991	0	0
1992	14,730	4,310
1993	15,520	4,550
1994	16,360	4,800
1995	17,240	5,050
1996	18,170	5,330
1997	19,160	5,620
1998	20,190	5,930
1999	21,280	6,240
2000	22,430	6,580
2001	23,640	6,940
2002	24,920	7,310
2003	26,260	7,710
2004	27,680	8,130
2005	29,180	8,560
2006	30,750	9,030
2007	32,410	9,520
2008	34,160	10,030
2009 ^{2/}	36,000	10,570
2010 ^{3/}	0	0
2011 ^{3/}	0	0
2012 ^{5/}	22,200	2,870
2013	22,980	2,970
2014	23,780	3,060
2015	24,610	3,160

2016	25,470	3,260
2017	26,370	3,370
2018	27,290	3,480
2019	28,240	3,590
2020	29,230	3,710
2021	30,260	3,840
2022	31,310	3,960
2023	32,410	4,100
2024	33,550	4,230
2025	34,720	4,380
2026	35,930	4,530
2027	37,190	4,690
2028	38,490	4,850
2029	39,840	5,010
2030	41,240	5,190
2031 ^{4/}	42,680	5,370

^{1/} Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations commencing on the Monthly Billing Period of April through March of the following year: for years 1989 through 2010. In 2012, Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations commencing on the Monthly Billing Period of April through May of the following year. Starting in 2013 Base Capacity Credit and Operation and Maintenance Credit for the Monthly Capacity Payment are applicable to calculations commencing on the Monthly Billing Period of June through May of the following year.

^{2/} Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations through the Monthly Billing Period of March, 2010.

^{3/} Base Capacity Credit and Operation and Maintenance Credit shall be equal to zero during the Period of Refurbishment.

^{4/} Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payment are applicable to calculations through the Monthly Billing Period of April, 2032, assuming the Commercial Operation Date will occur on April 1, 2012.

^{5/} If the Commercial Operation Date occurs after April 1, 2012, the Base Capacity Credit and Operation and Maintenance Credit for Monthly Capacity Payments shall be recalculated and the above payment schedule revised to reflect the actual Commercial Operation Date and the remaining Term, including any extension pursuant to section 3 of this Amended Agreement.

EXHIBIT C

Exhibit C
Projected Payments to SWA vs. Payments Under FPL Standard Offer Contract

Year	(1) Coal based Negotiated Capacity Payments \$/kW-Mo	(2) Projected Coal Energy Payments c/KWH	(3) 2014 CC SOC Capacity Payments \$/kW-Mo	(4) 2014 CC SOC Energy Payment C/KWH	Capacity		Availability		89% on-peak		89% all hours		(13) (7) -(11) Diff Negotiated-SOC \$
					(5) Energy Capacity Payments \$	(6) 55 MW Negotiated Energy Payments \$	(7) Negotiated Total Payment \$	(8) Negotiated Total Payment \$/MWH	(9) 2014 CC SOC Capacity Payments \$	(10) 2014 CC SOC Energy Payments \$	(11) 2014 CC SOC Total Payment \$	(12) 2014 CC SOC Payment Total \$/MWH	
2012	25.07	2.60	0	6.69	12,409,650	8,374,503	20,784,153	48.47	0	21,502,276	21,502,276	50.15	-718,123
2013	25.58	2.58	0	6.58	16,885,000	11,075,956	27,960,956	65.21	0	28,206,596	28,206,596	65.78	-245,640
2014	26.47	2.63	7.57	7.29	17,469,650	11,256,053	28,725,703	66.99	2,913,834	31,259,666	34,173,500	79.70	-5,447,797
2015	27.38	2.67	7.68	7.74	18,072,450	11,436,149	29,508,599	68.82	5,068,448	33,191,127	38,259,575	89.22	-8,750,976
2016	28.33	2.71	7.87	8.08	18,697,800	11,616,246	30,314,046	70.69	5,194,112	34,630,538	39,824,650	92.87	-9,510,604
2017	29.32	2.74	8.06	8.48	19,350,650	11,751,319	31,101,969	72.53	5,322,394	36,380,411	41,702,805	97.25	-10,600,836
2018	30.34	2.78	8.27	9.03	20,024,950	11,931,416	31,956,366	74.52	5,455,164	38,722,982	44,178,146	103.03	-12,221,780
2019	31.39	2.82	8.47	9.71	20,716,300	12,111,512	32,827,812	76.56	5,592,422	41,630,028	47,222,450	110.13	-14,394,637
2020	32.48	2.87	8.68	10.16	21,435,150	12,291,609	33,726,759	78.65	5,731,550	43,549,243	49,280,793	114.93	-15,554,033
2021	33.62	2.91	8.90	10.33	22,187,000	12,471,706	34,658,706	80.83	5,875,914	44,283,060	50,158,974	116.97	-15,500,268
2022	34.78	2.95	9.12	10.50	22,956,450	12,651,803	35,608,253	83.04	6,021,400	45,045,101	51,066,501	119.09	-15,458,248
2023	35.99	3.00	9.35	10.68	23,755,600	12,876,924	36,632,524	85.43	6,170,252	45,807,142	51,977,394	121.22	-15,344,870
2024	37.25	3.06	9.58	10.87	24,585,550	13,102,045	37,687,595	87.89	6,322,320	46,597,407	52,919,728	123.41	-15,232,133
2025	38.55	3.11	9.82	11.06	25,443,000	13,327,166	38,770,166	90.42	6,478,649	47,415,896	53,894,545	125.69	-15,124,379
2026	39.89	3.16	10.07	11.25	26,329,600	13,552,287	39,881,887	93.01	6,642,971	48,234,385	54,877,356	127.98	-14,995,469
2027	41.29	3.21	10.32	11.44	27,250,300	13,777,408	41,027,708	95.68	6,810,139	49,052,873	55,863,013	130.28	-14,835,304
2028	42.73	3.27	10.57	11.64	28,202,900	14,002,529	42,205,429	98.43	6,979,121	49,927,810	56,906,931	132.71	-14,701,501
2029	44.22	3.33	10.84	11.84	29,185,750	14,272,675	43,458,425	101.35	7,154,497	50,774,522	57,929,019	135.10	-14,470,594
2030	45.77	3.38	11.11	12.05	30,209,300	14,497,796	44,707,096	104.26	7,332,995	51,677,682	59,010,677	137.62	-14,303,581
2031	47.38	3.43	11.39	12.26	31,267,500	14,722,917	45,990,417	107.25	7,516,207	52,580,842	60,097,049	140.15	-14,106,632
2032	48.05	3.49	11.67	12.48	7,928,250	3,737,009	11,665,259	27.20	1,926,339	13,378,056	15,304,395	35.69	-3,639,136
			NPV	2008 \$			232,750,853				305,178,987		-72,428,134

Notes:

- (1) Capacity Payments based on FGPP filing installed cost of 2013 coal unit de-escalated by one year to 2012 at 3.5% discount rate
- (2) Projected energy payments based on projection of Coal based energy rates for SJRPP times a contract heat rate of 10.5 MMBTU/MWHr (11-06-08 \$/MMBTU fuel projections.)
- (3) SOC capacity payments based on refiled tariff sheets of May 20th, 2008 with capital cost of 2014 CC unit assumed in conversion filing
Capacity payment rate adjusted to reflect that under SOC SWA would only receive 68% of the payment for an ACBF OF 89%
- (4) Projected energy payments based on projection of As-Available rates for 2012, 2013 and three months in 2014. 9 months in 2014 based on Gas price for CC unit.
In all other years 2015-2032 projected energy payments based on projections of 2014 Combined Cycle unit energy costs using latest fuel forecast dated 11-06-08 times (x)CC heat rate of 6.582 MBTU/MWHr.

(Projected NPV Savings) 8.89%