

Diamond Williams

From: Grenz, Barbara [Barbara.Grenz@fpl.com]
Sent: Monday, August 08, 2011 11:03 AM
To: Filings@psc.state.fl.us
Cc: Charles Murphy; Adam Teitzman; richzambo@aol.com; Marsha Rule; danlarsen@bellsouth.net; Larry Harris; Cox, Will P.
Subject: Electronic Filing - Docket # 110018-EU - Resubmitted as one document
Attachments: Docket No. 110018-EU SWA FPL Letter to Clerk dated August 8, 2011 with revised Purchase Power Agreement and Appendix A, B & C.pdf

Electronic Filing

a. Person responsible for this electronic filing:

William P. Cox, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5662
Will.P.Cox@fpl.com

b. Docket No. 110018-EU

IN RE: Joint Petition for Need Determination between Solid Waste Authority and Florida Power & Light Company

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of seventy-five (75) pages.

e. The document attached for electronic filing is: *SWA/FPL Letter to Clerk dated August 8, 2011 with revised Purchase Power Agreement and Appendix A, B & C*

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8/8/2011

DOCUMENT NUMBER-DATE
05563 AUG-8 #
FPSC-COMMISSION CLERK

August 8, 2011

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 110018-EU

In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery

Dear Ms. Cole:

In Order No. PSC-11-0293-FOF-EU, issued in the above docket on July 6, 2011, the Florida Public Service Commission ("Commission") determined that there is a need for the Expanded Facility proposed by the Solid Waste Authority of Palm Beach County ("SWA"), and conditionally approved the proposed purchased power agreement (the "Contract") between SWA and Florida Power & Light Company ("FPL") for the sale and purchase of firm capacity and energy from the Expanded Facility. The Commission's approval of the Contract was conditioned, as set forth on page 12 of Order No. PSC-11-0293-FOF-EU, on the following:

1) SWA and FPL agree to exercise the option in the PPA to extend the Contract 26 months and specify in the Contract that the committed capacity will be between 70 and 80 MW; 2) the amended Contract must be filed with our [Commission] staff for administrative review to determine whether it is consistent with this Order; 3) FPL's recovery of the advanced capacity payment shall be made in the year in which such payment is made. These conditions represent savings to FPL ratepayers and should ensure that the project and Contract are cost effective and that the advanced funding payment for the design costs of the electrical component is less than the net present value of the avoided capacity cost for the electric utility as required by Section 377.709(3)(b)1., F.S.

DOCUMENT NUMBER-DATE

05563 AUG-8 =

FPSC-COMMISSION CLERK

In addition, the Commission identified at pages 17 and 22 of the Order, \$56,643,942 as the cost of the fixed advanced funding amount payable to SWA and to be recovered by FPL, along with other reasonable and prudent carrying costs and administrative costs incurred by FPL.

As suggested by the Commission, SWA and FPL have agreed to extend the Contract by an additional 26 months, and have further agreed to specify in the Contract that the committed capacity will be between 70 and 80 MW. Accordingly, SWA and FPL hereby submit the attached revised Contract for administrative review and approval by Commission Staff. The revised Contract shows in "redline" format the revisions suggested by the Commission, as well as those that incorporate the Commission prescribed fixed advanced capacity payment. Appendices B and C have been updated to reflect the increased length of the contract term and the prescribed amount of the fixed advanced capacity payment.

We trust this mutual, voluntary extension of the contract by FPL and SWA will eliminate any concerns of Commission Staff or the Commission as to the Expanded Facility providing a valuable renewable energy resource to the State at a price that is cost-effective and beneficial to FPL's customers.

Sincerely,

/s/ William P. Cox

William P. Cox
Senior Attorney
Florida Power & Light Company

For Joint Petitioner FPL

/s/ Richard A. Zambo

Richard A. Zambo
Richard A. Zambo, P.A.

Marsha E. Rule
Rutledge, Ecenia & Purnell, P.A.

Attorneys for Solid Waste Authority
of Palm Beach County

For Joint Petitioner SWA

Enclosures

cc: Charlie Murphy
Adam Teitzman
Tom Ballinger

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

THIS AGREEMENT ("Agreement") is made and entered this ____ day of _____, 2011, 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 plans to build and own a facility (the "Facility" hereinafter defined) which will be a producer of renewable energy as defined in Section 366.91(2)(d), Florida Statutes, and a renewable generating facility as defined in Rule 25-17.210, Florida Administrative Code; and,

WHEREAS, the Authority desires to sell, and FPL desires to purchase, electricity generated by the Facility consistent with Florida Public Service Commission ("FPSC") Rule 25-17.0837(1); and pursuant to Florida Statute 377.709, the Authority and FPL have sought approval for advance funding and associated cost recovery for the Facility; and,

WHEREAS, in the event a conflict arises among the terms or conditions contained herein, it is the Parties' intent that this 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 Facility in accordance with terms and conditions set forth herein relating to the Facility.

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

1. **DEFINITIONS** - As used in this Agreement and in Appendices A, B and C hereto, the following terms shall have the following meanings:
 - 1.1 **Advanced Capacity Payment** -- shall mean \$56,643,942.00.
 - 1.2 **Advanced Capacity Payment Date** -- shall mean the date on which the Advanced Capacity Payment is due to be paid in accordance with Section 4.3.
 - 1.3 **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.
 - 1.4 **Annual Capacity Factor** - the sum of the prior 12 consecutive Monthly Capacity Factors, including the month for which the calculation is made, divided by 12. During the first eleven months of operation after the Commercial Operation Date, the Annual Capacity Factor shall be calculated as the arithmetic average of the Monthly Capacity Factors commencing with the Commercial Operation Date and continuing through the current month of calculation.
 - 1.5 **As-Available Avoided Energy Costs** - costs computed pursuant to FPSC Rule 25-17.0825(2), effective October 25, 1990, as it may subsequently have been or may be amended from time to time or any successor or substitute calculation, formula or methodology relating thereto approved by the FPSC. FPL's Southeastern/Eastern

operating area shall be the designated avoided cost pricing area for purposes of this Agreement.

- 1.6 **Avoided Unit** - the FPL unit identified as the FPL avoided unit on April 1st 2011 in FPL's ten-year site plan as filed with the FPSC.
- 1.7 **Capacity** – the amount of electric power in megawatts ("MW") that the Facility is capable of generating and delivering to FPL's system, net of all internal and parasitic loads.
- 1.8 **Capacity Payment Refund** - shall be as defined in Section 6.3.2.
- 1.9 **Change in Law** – For the purposes of Section 15.1 and 15.2 of this Agreement, a Change in Law is defined as the adoption or implementation by binding federal or state regulation, law or rules requiring the investor owned utilities in the state of Florida to maintain a generation mix by fuel type that includes a stated quantity or percentage of renewable energy, without the concurrent creation of a Green Attribute or to procure a stated quantity or fraction of generation of renewable energy to meet their customer's load by means that include but are not limited to purchasing renewable energy, purchasing the non-energy attributes associated with renewable energy, or similar such means, methods or mechanisms that may be adopted or implemented through which FPL is allowed to compensate the Authority in an amount in excess of avoided cost for Energy or Capacity or both, and in any case without the creation of a Green Attribute.
- 1.10 **Commercial Operation** - means the physical and operational condition as determined by the Authority whereby the Facility has been completed in all material respects and is capable of operating such that the Authority can deliver at least 90% of the initial Committed Capacity.
- 1.11 **Commercial Operation Date** – means the date upon which the Authority determines, subject to the date specified in Section 3.3, that the Facility has achieved Commercial Operation.

- 1.12 **Committed Capacity** - the maximum Capacity in MW's in any one hour which the Authority contractually commits to sell to FPL pursuant to the terms of this Agreement, all as determined from time to time pursuant to Section 4.2.
- 1.13 **Current Committed Capacity** - shall be as defined in Section 6.3.1.
- 1.14 **Electrical Component** – the Facility turbine, generator and associated transmission facilities.
- 1.15 **Energy** - electrical energy in megawatt-hours ("MWH") generated by the Facility and delivered to FPL's system at a 138,000 voltage level.
- 1.16 **Event of Default** - any of those occurrences specified in Section 12.
- 1.17 **Facility** – one electrical generator located on the Site and designed to produce a maximum gross output of 105 MW of electrical power.
- 1.18 **FERC** - Federal Energy Regulatory Commission.
- 1.19 **Fixed Fraction or FF** – shall be that portion of the Energy price that is fixed in accordance with Section 6.2.
- 1.20 **Floating Energy Payment** – shall be that portion of the Energy price that floats in accordance with Section 6.2.
- 1.21 **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.
- 1.22 **FPSC** - Florida Public Service Commission.

- 1.23 **Green Attributes** – includes any and all environmental attributes of renewable energy other than the electric Energy and Capacity itself, 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, created by 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.
- 1.24 **Monthly Billing Period** - the period corresponding to the appropriate monthly billing cycle for regular retail service customers of FPL as determined by the applicable monthly meter reading schedule for the Facility's location.
- 1.25 **Monthly Billing Statement** - a monthly summary prepared by FPL in accordance with Section 7.0.
- 1.26 **Monthly Capacity Factor** – the lesser of 100% or 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 hours in the following periods shall be excluded - (A) Scheduled Maintenance Period as delineated in Section 1.29, (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 4.5 and/or 4.6.
- 1.27 **Notice** – shall be as defined in Section 14.1.
- 1.28 **Petition to Determine Need** – A joint petition of the Parties filed with the FPSC on January 7th 2011 to determine the need for the Facility.
- 1.29 **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 the Annual Capacity Factor the following periods shall be excluded from the computation so as not to reduce the Annual Capacity Factor; such cumulative periods not to exceed a total of 28 days in any calendar year, except that each fifth calendar year after the Commercial Operations Date the allowed duration of the Scheduled Maintenance Period shall not exceed 42 days,.

- 1.30 **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.
- 1.31 **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.
- 1.32 **Transmission Provider** – The entity or entities that owns the transmission network, transmits the Energy and provides certain ancillary services associated with the delivery of electricity.

2. FACILITY

- 2.1 The Authority shall own the Facility located on the Site.
- 2.2 The Authority shall, throughout the Term of this Agreement, maintain the status of the Facility as a producer of “renewable energy”, a “renewable generating facility” or any such comparable successor term or description as may be defined pursuant to Florida law.

3. TERM

3.1 This Agreement shall become effective when the conditions precedent described in Section 11.0 have taken place.

3.2 The initial term of this Agreement shall commence upon execution by both Parties and shall extend through 12:01 AM June 1, 2034 (“Term”).

3.3 Notwithstanding the foregoing, FPL may, upon delivery of written Notice to the Authority which shall be effective upon delivery, terminate this Agreement if the Authority fails to achieve Commercial Operation on or before June 1, 2016, provided, however, such Commercial Operation Date, 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 construction, startup, testing and acceptance of the 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 by FPL pursuant to this Section 3.3, the Authority shall reimburse FPL for all costs, other than the Advanced Capacity Payment which is addressed under Section 18.1, including interest at the rate of 10.5% per annum, which FPL has reasonably incurred following the execution of this Agreement in preparation to receive Energy and Capacity; provided, however, such costs other than the Advanced Capacity Payment shall not exceed \$85,000.

4. SALE OF ENERGY AND CAPACITY BY THE AUTHORITY

4.1 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 Agreement.

- 4.2 The initial Committed Capacity of the Facility shall be at least seventy (70) MW and not greater than eighty (80) MW as specified by the Authority in written Notice to FPL as soon as reasonably practicable following the execution of an agreement between the Authority and a contractor for the design, construction and operation of the Facility.
- 4.3 FPL shall provide a single Advance Capacity Payment to the Authority for the Committed Capacity upon the earlier of (i) the final payment date, as reasonably determined by the Authority and demonstrated to FPL's reasonable satisfaction, of the final payment for the Facility's turbine-generator, and (ii) December 31st 2014 (the "Advanced Capacity Payment Date").
- 4.4 FPL shall notify the Authority of the estimated amount of the Advanced Capacity Payment no later than ninety (90) days following the (i) Authority's notification to FPL of the Committed Capacity per Section 4.2, and (ii) determination of the Advanced Capacity Payment Date.
- 4.5 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.
- 4.6 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, provided for illustrative purposes, 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 Prior to delivering any Energy or Capacity the Authority shall enter into an Interconnection Agreement for the Facility with the Transmission Provider in accordance with applicable laws and regulations.
- 5.2 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 Agreement shall 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.
- 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 FPSC as they may be subsequently amended from time to time.

6. PAYMENT FOR ENERGY AND REFUNDS FOR CAPACITY

- 6.1 Prior to the Commercial Operation Date, FPL shall pay the Authority for each MWH of Energy at a rate equal to 99% of FPL's As-Available Avoided Energy Costs for FPL's Southeastern/ Eastern region.
- 6.2 Beginning on the Commercial Operation Date, Energy shall be paid for at a combination of fixed and floating energy rates. Such rates to be determined as follows:
- 6.2.1 The fraction of the energy rates to be fixed ("Fixed Fraction" or "FF") shall be the product of the Annual Capacity Factor as of the end of the previous calendar year and [TBD] %. *[The Authority, in its discretion, shall choose and insert the percentage, not to exceed 50%, prior to execution of this Agreement.]* For each month of the calendar year, the payment for the FF shall be the total net generation for each hour of each month times the FF times the forecast energy rate shown in Appendix C summed over all hours of the month. For the purpose of calculating the FF, and up until such time as an entire calendar year has elapsed since the Commercial Operation Date, each then complete calendar month shall be included in a cumulative average of the partial calendar year.
- 6.2.2 For each month prior to June 1st 2016, the Floating Energy Payment shall be calculated as the sum over all hours of the month of (1-FF) times the generation for the hour times the As-Available Avoided Energy Costs" for FPL's Southeastern/Eastern region times 99%.
- 6.2.3 For each month after June 1st 2016, the Floating Energy Payment shall be calculated as the sum over all hours of the month of (1-FF) times the generation for the hour times the lesser of the avoided energy cost of the Avoided Unit or As-Available Avoided Energy Costs for the FPL's Southeastern/Eastern region.
- 6.3 If, at the end of any Monthly Billing Period during the Term of this Agreement, the Facility has not operated at an Annual Capacity Factor of at least 70%, based on the

Committed Capacity, the Authority shall refund a pro-rata portion of the Advanced Capacity Payment. The refund shall be calculated as follows:

6.3.1 The Current Committed Capacity shall be calculated as the Committed Capacity necessary to achieve an Annual Capacity Billing Factor of 70%.

6.3.2 Payment obligation shall be calculated as the change in the Current Committed Capacity times the payment amount indicated in Appendix B for the month in which the Capacity Payment Refund obligation is triggered.

6.3.3 For all future calculations, the Current Committed Capacity as calculated in Section 6.3.1 shall become the Committed Capacity.

6.4 Regardless of any claim of Force Majeure, if for any reason during the Term, the Facility is abandoned, closed-down or rendered illegal by applicable law, ordinance or regulation and therefore fails to deliver at an Annual Capacity Factor of at least 55% of the initial contractual Committed Capacity, then the full amount of any as then yet un-refunded Advanced Capacity Payment shall be refunded to FPL, and this Agreement may be terminated by FPL, in FPL's sole discretion, without any further liability or obligations to the Authority.

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 Energy received in each hour by FPL in response to any request(s) by FPL pursuant to Section 8.3;
 - 7.1.5 The Monthly Capacity Factor, the Annual Capacity Factor, and the Fixed Fraction for the Monthly Billing Period;
 - 7.1.6 The fixed rate and floating rate paid by FPL for Energy during each hour in the Monthly Billing Period;
 - 7.1.7 The calculated payment for Energy during the Monthly Billing Period;
 - 7.1.8 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. Payment shall be made by automated clearing house not later than the 10th business day following the date of the Monthly Billing Statement. Delinquent payments shall thereafter include interest calculated at the rate of 10.5% per annum.
- 7.3 Within thirty (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 and notify FPL in writing within three (3) 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 and be discovered by either FPL or the Authority, 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 Agreement.

8. OPERATION AND MAINTENANCE OF THE FACILITY

- 8.1 During the Term of this Agreement, the Authority agrees to:
- 8.1.1 Provide FPL, prior to October 1st 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 significant change(s) have been identified;
 - 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 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 three (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 thirty (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 and on request of the Authority shall be promptly confirmed in writing by FPL.
- 8.4 During the Term of this 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 to the Authority, 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.
- 8.6 The Authority shall use reasonable efforts to 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 Agreement.

9. INSURANCE

The Authority shall procure a policy of liability insurance on a standard "Insurance Services Office" comprehensive commercial general liability form ("Policy"). The Policy shall cover generally all liabilities which might arise under, or in the performance or nonperformance of, this Agreement. At a minimum, the 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 by FPL, 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 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 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 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 Agreement. The Policy shall not be cancelled or materially altered without at least thirty (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 Agreement or the Authority's failure to abide by the provisions of this 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 Agreement or FPL's failure to abide by the provisions of this 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 AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS 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 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 AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

11. COVENANTS AND CONDITION PRECEDENT TO AGREEMENT

The Parties obligations pursuant to this Agreement, other than those that by necessity are required to satisfy the conditions precedent hereunder this Section 11, are expressly made subject to satisfaction or waiver of all of the following conditions:

- 11.1 Approval from the FPSC on or before December 31st 2011, and final non-appealable FPSC approval on terms and conditions reasonably acceptable to both Parties, of their Petition to Determine Need.
- 11.2 Successful negotiation and execution of an agreement for the design, construction and operation of the Facility, on or before December 31, 2011.
- 11.3 Obtaining Florida Power Plant Siting Act (PPSA) Modified Conditions of Certification, on or before February 29, 2012.
- 11.4 Securing acceptable long-term financing for the Facility, on or before April 1st 2012.
- 11.5 Final non-appealable approval from the FPSC on or before December 31st 2011 that (a) this Agreement is reasonable, prudent and in the best interests of FPL's customers without change or condition to this Agreement, or in the event of changes or conditions, then on terms that are reasonably acceptable to both Parties, and (b) FPL may recover from its customers all payments for Energy, Capacity or otherwise under this Agreement.
- 11.6 Approval of the terms of the Agreement by the Governing Board of the Solid Waste Authority and the management of FPL, on or before seventy five (75) days following the final non-appealable approvals contemplated in Sections 11.1 and 11.5 are received from the FPSC.
- 11.7 The Authority shall use commercially reasonable efforts to satisfy the conditions precedent outlined in Sections 11.1, 11.2, 11.3 and 11.4 and in the event that any of the conditions precedent in Sections 11.1, 11.2, 11.3 or 11.4 have not been fully satisfied, or waived by FPL, the Authority shall reimburse FPL for all costs, including interest at the

rate of 10.5% per annum from the date that FPL incurs such costs until the date that they are reimbursed, which FPL has reasonably incurred, following the execution of this Agreement, and in preparation to receive Energy and Capacity under this Agreement; provided, however, such costs, exclusive of the Advance Capacity Payment which is addressed under Section 18.1, shall not exceed \$85,000.

- 11.8 If the condition precedent set forth above in Section 11.5 or 11.6 has not been fully satisfied on or before the applicable date specified, then either Party may terminate this Agreement without liability or further liabilities or performance obligations as between FPL to the Authority.
- 11.9 Notwithstanding the conditions precedent contained in this Section 11, FPL shall submit this Agreement to the FPSC and seek the FPSC's approval of the obligations and duties imposed by this Agreement, and the Authority shall use its best efforts to support FPL's request for FPSC approval.

12. DEFAULT

- 12.1 Except as expressly provided elsewhere in this Agreement, if, after June 1st 2016, 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 non-delivery of Energy to constitute an Event of Default; provided, however, if the event of Force Majeure causing such non-delivery of Energy cannot be remedied by the Authority within 12 months, FPL may, for an additional period not to exceed twelve (12) months, waive its entitlement to declare such non-delivery of Energy to constitute an Event of Default so long as the Authority (i) is diligently pursuing corrective action, (ii) is providing to FPL, in writing, monthly status reports as to the nature and progress of the necessary corrective action and (iii) it is reasonable to expect that such corrective action shall remedy the non-delivery of Energy within twelve (12) months. If the Authority requests such waiver it shall not be unreasonably withheld by FPL.

- 12.2 Notwithstanding anything else to the contrary contained in this Agreement, the following shall constitute Events of Default regardless of any claim of Force Majeure as described in Section 13 herein or otherwise:
- 12.2.1 After the Commercial Operation Date, the Authority ceases delivery of Energy for 12 consecutive months, or
 - 12.2.2 After the Commercial Operation Date, the Authority fails, for any 24 consecutive months, to maintain an Annual Capacity Factor of 70%;
 - 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 (including, without limitation, that the Authority fails to give proper assurance of adequate performance within thirty (30) days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance), and such default has not been cured as soon as possible, but in any case 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 (1) 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 (10) 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.
- 12.3 Upon the occurrence of any of the foregoing Events of Default, the non-defaulting Party may, by written Notice to the defaulting Party, (i) declare permanently terminated all of

the non-defaulting Party's obligations under this Agreement, and (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 limitations of liability contained in Section 10.2 or the application and survival on termination of Section 12.2 and 12.3, of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Agreement.

13. FORCE MAJEURE

- 13.1 Except as otherwise provided in this 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 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 non-usable, 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 Energy which is not delivered to FPL due to events of Force Majeure shall not be reflected in the computation of Annual Capacity Factor, or Monthly Capacity Factor so as to reduce them. For purposes of this Section 13.4, the term "Force Majeure" shall be

defined as set forth in Section 1.21 hereof, except that "strikes, lockouts or other labor disputes or difficulties" shall be excluded from the definition. Energy which is not delivered to FPL due to events of Force Majeure shall be reflected in the computation, so as to reduce the computation, of (i) the Fixed Fraction and the Floating Energy Payment in Section 6.2, and (ii) the Annual Capacity Factor in Section 6.4.

14. NOTICES

14.1 Notices are required to be in writing under this Agreement and shall be delivered in person or sent by certified mail, return receipt requested, as specified below ("Notice"):

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
700 Universe Boulevard
Juno Beach, Florida 33408

Attention: EMT CONTRACTS DEPT [EMT/JB]
Contracts Manager/Coordinator
TEL#: 561-691-7886 / 7837

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 addresses for receipt of Notices and correspondence.

15. SALE OF GREEN ATTRIBUTES, CHANGE IN LAW, AND COST RECOVERY

15.1 The Authority retains any and all rights to, and is the exclusive owner of, any and all Green Attributes, other than those that have been transferred to FPL pursuant to this Section 15; provided, however, that the sale of any or all Green Attributes by the

Authority, if any, shall be in accordance with this Section 15. Upon occurrence of a Change in Law, the Authority and FPL shall negotiate for (i) the sale to FPL of renewable attributes or (ii) payments from FPL to the Authority in excess of avoided cost for Energy or Capacity, associated with a Change in Law, in accordance with the provisions of Section 15.2, below.

15.2 The Authority acknowledges that in the future FPL may become subject to a Change in Law. If a Change in Law occurs during the Term, the Parties shall in each instance negotiate in good faith for (i) the sale to FPL of renewable attributes or (ii) payments from FPL to the Authority in excess of avoided cost for Energy or Capacity, associated with a Change in Law, in accordance with the provisions of this Section 15.2. in order to ensure that:

15.2.1 The Authority is compensated, to the extent permitted by the FPSC, for any amount paid equitably in excess of avoided cost for Energy or Capacity,

15.2.2 FPL is able to recover from its customers all payments for any amount paid equitably in excess of avoided cost for Energy or Capacity; and

15.2.3 FPL is able to take credit for and recognize the Energy or Capacity associated with the Facility in satisfying any requirement or obligation pursuant to the Change in Law.

Following such Change in Law that occurs during the Term, the Parties shall commence negotiations within a reasonable time following written Notice by one Party to the other, of its understanding that a Change in Law has occurred, and of its desire to negotiate for the payment of an amount in excess of avoided cost for Energy or Capacity.

In the event the Parties are unable to reach agreement on the matters described in this Section 15.2, within thirty (30) days from commencement of negotiations, unless

extended by agreement of the Parties, then the Parties shall submit the matter of additional payments by FPL to the Authority to binding arbitration in accordance with the rules of the American Arbitration Association. Judgment on an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Such an award shall be binding on the Parties and subject only to approval by the FPSC with respect to recovery from FPL's customers. Notwithstanding anything else contained herein, FPL may waive, in its sole discretion, the requirement to have such an arbitral award approved by the FPSC or otherwise determine that recovery from FPL's customers is not required.

15.3 During the Term of this 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 of the Authority's Green Attributes ("Transfer"), to a period of twenty four (24) months duration, subject to one (1) year renewals upon three (3) months' Notice. For purposes of Section 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 Agreement. If at any time during the Term of this Agreement, FPL becomes obligated to purchase Green Attributes as the result of a reasonable interpretation of applicable federal, state or local laws, rules, 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 15.4 below prior to agreeing to renew an existing Transfer and/or prior to entering into a new Transfer.

15.4 Subject always to the obligation of the Parties to act and negotiate in good faith, the following provisions shall apply to any proposed Transfer by the Authority:

15.4.1 If the Authority receives an unsolicited bona fide offer or offers for Transfer of any or all of its Green Attributes ("Green Attributes Offer"), 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 Green Attributes 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 Green Attributes Offer (the "Option Period"). In the event the Authority is required to respond to a Green Attributes 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 Green Attributes 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 Green Attributes 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 Green Attributes Offer or at terms that are more advantageous to the buyer of such Green Attributes than those contained in the Green Attributes Offer, without first offering FPL an option to purchase at such more advantageous terms pursuant to the procedures of subsection (2) above.

15.4.2 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 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 15.4.2(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.

15.5 Subject always to the obligation of the Parties to act and negotiate in good faith, 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.

- 15.6 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.
- 15.7 If during the Term of this 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 Sections 15.4, 15.5 or 15.6 of this Agreement.
- 15.8 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 Agreement its best estimate of Green Attribute requirements for the following twenty-four (24) months.

16. TERMINATION AND RIGHT OF FIRST REFUSAL RIGHTS

- 16.1 At any time subsequent to the time the Facility first delivers Energy to FPL, but, no later than June 1, 2016, the Authority may, in its sole discretion, terminate this Agreement upon thirty (30) days Notice to FPL, and both Parties shall be fully relieved of any further obligation or liability hereunder, except as set forth in Section 16.2 through Section 16.5 and such other obligations that by their terms survive termination including without limitation Sections 18.10 and 18.11.
- 16.2 Within thirty (30) days of the effective date of termination of this Agreement pursuant to Section 16.1, the Authority shall refund to FPL the Advanced Capacity Payment plus interest on the Advanced Capacity Payment and any other pre-payments that have been made by FPL at a rate equivalent to FPL's FPSC authorized pre-tax rate of return plus 400 basis points.
- 16.3 Effective upon the Authority's termination of this Agreement pursuant to Section 16.1, FPL shall have, at FPL's sole discretion, a right of first refusal ("ROFR") to purchase all electric energy, capacity and other products generated by the Facility at the same rates, terms, and conditions that Authority has negotiated with any third party ("Third Party Offer").
- 16.4 The Authority will on or before five (5) business days from the date of receipt of a final Third Party Offer open for acceptance, pursuant to Section 16.3 provide by written Notice to FPL of FPL's ROFR to accept any such an offer on the same price, terms and conditions. FPL must exercise this ROFR within thirty (30) days of receipt of the Authority's written Notice.
- 16.5 Notwithstanding anything else contained herein, the ROFR as set forth in Section 16.3 shall survive termination of this Agreement by the Authority pursuant to Section 16.1.

17. FPL CUSTOMER RECOVERY

17.1 Notwithstanding anything to the contrary in this Agreement, if FPL, at any time during the Term of this 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, charges or otherwise, to recover from its customers all of the payments required to be made to the Authority under the terms of this Agreement or any subsequent amendment hereto, FPL may, at its sole option, adjust the payments made under this 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 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 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 to the Authority all withheld payments, with interest at the rate equivalent to FPL's FPSC authorized pre-tax rate of return. Interest shall accrue from the date of disallowance until the date it is ultimately reversed. The Authority acknowledges that any amounts initially received by FPL from its customers, but for which recovery is subsequently disallowed and charged back to FPL, may be offset or credited, with interest at a rate equivalent to FPL's FPSC authorized pre-tax rate of return, against subsequent payments to be made by FPL to the Authority under this Agreement. Such interest shall accrue from the date amounts are initially received by FPL from its customers until the date of the offset or credit.

If, at any time, FPL receives Notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or intends to deny FPL authorization to recover from its customers all payments required to be made under the terms of this Agreement, then FPL shall, within thirty (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 Agreement and its right to recover from its customers all payments required to be made by FPL hereunder, and will cooperate in any effort by the Authority to intervene in, or otherwise be allowed to defend, any proceeding challenging the validity of this Agreement and the right of FPL

to recover from its customers all payments to be made by it hereunder. The Authority shall, on reasonable request by FPL use best efforts to support, defend and uphold the validity of this Agreement and FPL's right to recover from its customers all payments required to be made by FPL hereunder.

The Parties do not intend this Section to grant any rights or remedies to any third party (ies) or to any legislative, administrative, judicial or regulatory body; and this Section 17.1 shall not operate to release any person from any claim or cause of action which each Party may have relating to, or to preclude the respective Party from asserting, the validity or enforceability of any obligation undertaken by either Party under this Agreement.

18. GENERAL APPLICATION

- 18.1 Anything to the contrary herein notwithstanding with respect to any termination of this Agreement after the Advanced Capacity Payment Date, the Authority shall refund to FPL the Advanced Capacity Payment that has been made by FPL. The Authority shall pay interest at a rate equivalent to FPL's FPSC authorized pre-tax rate of return on the Advanced Capacity Payment. Such interest shall accrue from the Advanced Capacity Payment Date until such time as the Advanced Capacity Payment is refunded. The obligation to make such a refund is binding on the Authority and its successors in interest. If the Authority is dissolved or otherwise ceases to function, to the extent permitted by applicable law, the Parties agree that the obligation to make such a refund is binding on those successor entities in proportion to their successor interests. Such refund shall be in addition to any other rights and remedies contained herein this Agreement or otherwise.
- 18.2 In the event that Florida Statute 377.709 or FPSC Rule 25-17.091 is repealed, amended or otherwise superseded, or else the provisions therein providing for refund of the Advanced Capacity Payment are no longer in force and effect, as those provisions applied at the date of execution of this Agreement, then the Authority shall within five (5) days of such change post to FPL adequate assurance of performance in a form that is reasonably acceptable to FPL. The amount of the adequate assurance shall at the time of posting, and

at all times thereafter, be equal to at least the un-refunded portion of the Advanced Capacity Payment.

- 18.3 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.
- 18.4 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.
- 18.5 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 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.
- 18.6 This 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 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 Agreement, or any amendment of this Agreement, shall be effective unless it is in writing and signed by the Parties.
- 18.7 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter.

- 18.8 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this 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.
- 18.9 Nothing contained in this 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 Agreement.
- 18.10 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.
- 18.11 Section headings, titles and indexes appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- 18.11 This 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. With respect to any suit, action, Event of Default, termination or dispute otherwise arising under or relating to this Agreement, the Parties agree to submit to the United States District Court, Southern District of Florida, West Palm Beach and should such court not exercise its jurisdiction then the courts of Palm Beach County.
- 18.12 EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

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

THIS AGREEMENT ("Agreement") is made and entered this ____ day of _____, 2011, 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 plans to build and own a facility (the "Facility" hereinafter defined) which will be a producer of renewable energy as defined in Section 366.91(2)(d), Florida Statutes, and a renewable generating facility as defined in Rule 25-17.210, Florida Administrative Code; and,

WHEREAS, the Authority desires to sell, and FPL desires to purchase, electricity generated by the Facility consistent with Florida Public Service Commission ("FPSC") Rule 25-17.0837(1); and pursuant to Florida Statute 377.709, the Authority and FPL have sought approval for advance funding and associated cost recovery for the Facility; and,

WHEREAS, in the event a conflict arises among the terms or conditions contained herein, it is the Parties' intent that this 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 Facility in accordance with terms and conditions set forth herein relating to the Facility.

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

1. **DEFINITIONS** - As used in this Agreement and in Appendices A, B & C hereto, the following terms shall have the following meanings:
 - 1.1 **Advanced Capacity Payment** – shall mean ~~the lower of (i) the net present value of the avoided capacity cost for FPL over the term of the Agreement calculated by multiplying the Committed Capacity in MW's by the unit payment for the month when payment was due and owing as detailed in Appendix B. and (ii) the budgeted cost of the Electrical Component for the Facility \$56,643,942.00.~~
 - 1.2 **Advanced Capacity Payment Date** – shall mean the date on which the Advanced Capacity Payment is due to be paid in accordance with Section 4.3.
 - 1.3 **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.
 - 1.4 **Annual Capacity Factor** - the sum of the prior 12 consecutive Monthly Capacity Factors, including the month for which the calculation is made, divided by 12. During the first eleven months of operation after the Commercial Operation Date, the Annual Capacity Factor shall be calculated as the arithmetic average of the Monthly Capacity Factors commencing with the Commercial Operation Date and continuing through the current month of calculation.

- 1.5 **As-Available Avoided Energy Costs** - costs computed pursuant to FPSC Rule 25-17.0825(2), effective October 25, 1990, as it may subsequently have been or may be amended from time to time or any successor or substitute calculation, formula or methodology relating thereto approved by the FPSC. FPL's Southeastern/Eastern operating area shall be the designated avoided cost pricing area for purposes of this Agreement.
- 1.6 **Avoided Unit** - the FPL unit identified as the FPL avoided unit ~~to be identified~~ on April 1st 2011 in FPL's ten year site plan as filed with the FPSC.
- 1.7 **Capacity** – the amount of electric power in megawatts ("MW") that the Facility is capable of generating and delivering to FPL's system, net of all internal and parasitic loads.
- 1.8 **Capacity Payment Refund** - shall be as defined in Section 6.3.2.
- 1.9 **Change in Law** – For the purposes of Section 15.1 and 15.2 of this Agreement, a Change in Law is defined as the adoption or implementation by binding federal or state regulation, law or rules requiring the investor owned utilities in the state of Florida to maintain a generation mix by fuel type that includes a stated quantity or percentage of renewable energy, without the concurrent creation of a Green Attribute or to procure a stated quantity or fraction of generation of renewable energy to meet their customer's load by means that include but are not limited to purchasing renewable energy, purchasing the non-energy attributes associated with renewable energy, or similar such means, methods or mechanisms that may be adopted or implemented through which FPL is allowed to compensate the Authority in an amount in excess of avoided cost for Energy or Capacity or both, and in any case without the creation of a Green Attribute.
- 1.10 **Commercial Operation** - means the physical and operational condition as determined by the Authority whereby the Facility has been completed in all material respects and is capable of operating such that the Authority can deliver at least 90% of the initial Committed Capacity.

- 1.11 **Commercial Operation Date** – means the date upon which the Authority determines, subject to the date specified in Section 3.3, that the Facility has achieved Commercial Operation.
- 1.12 **Committed Capacity** - the maximum Capacity in MW's in any one hour which the Authority contractually commits to sell to FPL pursuant to the terms of this Agreement, all as determined from time to time pursuant to Section 4.2.
- 1.13 **Current Committed Capacity** - shall be as defined in Section 6.3.1.
- 1.14 **Electrical Component** – the Facility turbine, generator and associated transmission facilities.
- 1.15 **Energy** - electrical energy in megawatt-hours ("MWH") generated by the Facility and delivered to FPL's system at a 138,000 voltage level.
- 1.16 **Event of Default** - any of those occurrences specified in Section 12.
- 1.17 **Facility** – one electrical generator located on the Site and designed to produce a maximum gross output of 105 MW of electrical power.
- 1.18 **FERC** - Federal Energy Regulatory Commission.
- 1.19 **Fixed Fraction or FF** – shall be that portion of the Energy price that is fixed in accordance with Section 6.2.
- 1.20 **Floating Energy Payment** – shall be that portion of the Energy price that floats in accordance with Section 6.2.
- 1.21 **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.

- 1.22 **FPSC** - Florida Public Service Commission.
- 1.23 **Green Attributes** – includes any and all environmental attributes of renewable energy other than the electric Energy and Capacity itself, 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, created by 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.
- 1.24 **Monthly Billing Period** - the period corresponding to the appropriate monthly billing cycle for regular retail service customers of FPL as determined by the applicable monthly meter reading schedule for the Facility's location.
- 1.25 **Monthly Billing Statement** - a monthly summary prepared by FPL in accordance with Section 7.0.
- 1.26 **Monthly Capacity Factor** – the lesser of 100% or 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 hours in the following periods shall be excluded - (A) Scheduled Maintenance Period as delineated in Section 1.29, (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 4.5 and/or 4.6.
- 1.27 **Notice** – shall be as defined in Section 14.1.
- 1.28 **Petition to Determine Need** – A joint petition of the Parties filed with the FPSC on January 7th 2011 to determine the need for the Facility.

- 1.29 **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 the Annual Capacity Factor the following periods shall be excluded from the computation so as not to reduce the Annual Capacity Factor; such cumulative periods not to exceed a total of 28 days in any calendar year, except that each fifth calendar year after the Commercial Operations Date the allowed duration of the Scheduled Maintenance Period shall not exceed 42 days,.
- 1.30 **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.
- 1.31 **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.
- 1.32 **Transmission Provider** – The entity or entities that owns the transmission network, transmits the Energy and provides certain ancillary services associated with the delivery of electricity.

2. FACILITY

- 2.1 The Authority shall own the Facility located on the Site.
- 2.2 The Authority shall, throughout the Term of this Agreement, maintain the status of the Facility as a producer of “renewable energy”, a “renewable generating facility” or any such comparable successor term or description as may be defined pursuant to Florida law.

3. TERM

- 3.1 This Agreement shall become effective when the conditions precedent described in Section 11.0 have taken place.
- 3.2 The initial term of this Agreement shall commence upon execution by both Parties and shall extend through 12:01 AM April ~~June~~ 1, 2032~~24~~ ("Term") ~~unless extended in writing by mutual agreement of the Parties. At the option of the Authority (on reasonable agreement by FPL), and by written Notice to FPL no later than sixty (60) days following initial operation of the Expanded Facility, the Term shall be extended up to twenty six (26) months; provided, however, in no event shall the Agreement extend beyond June 1, 2034 without the prior written agreement of both Parties.~~
- 3.3 Notwithstanding the foregoing, FPL may, upon delivery of written Notice to the Authority which shall be effective upon delivery, terminate this Agreement if the Authority fails to achieve Commercial Operation on or before June 1, 2016, provided, however, such Commercial Operation Date, 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 construction, startup, testing and acceptance of the 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 by FPL pursuant to this Section 3.3, the Authority shall reimburse FPL for all costs, other than the Advanced Capacity Payment which is addressed under Section 18.1, including interest at the rate of 10.5% per annum, which FPL has reasonably incurred following the execution of this Agreement in preparation to receive Energy and Capacity; provided, however, such costs other than the Advanced Capacity Payment shall not exceed \$85,000.

4. SALE OF ENERGY AND CAPACITY BY THE AUTHORITY

- 4.1 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 Agreement.
- 4.2 The initial Committed Capacity of the Facility shall be at least ~~forty-fiveseventy~~ (4570) MW and not greater than ~~ninetyeighty~~ (980) MW as specified by the Authority in written Notice to FPL as soon as reasonably practicable following the execution of an agreement between the Authority and a contractor for the design, construction and operation of the Facility.
- 4.3 FPL shall provide a single Advance Capacity Payment to the Authority for the Committed Capacity upon the earlier of (i) the final payment date, as reasonably determined by the Authority and demonstrated to FPL's reasonable satisfaction, of the final payment for the Facility's turbine-generator, and (ii) December 31st 2014 (the "Advanced Capacity Payment Date").
- 4.4 FPL shall notify the Authority of the estimated amount of the Advanced Capacity Payment no later than ninety (90) days following the (i) Authority's notification to FPL of the Committed Capacity per Section 4.2, and (ii) determination of the Advanced Capacity Payment Date.
- 4.5 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.

4.6 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, provided for illustrative purposes, 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 Prior to delivering any Energy or Capacity the Authority shall enter into an Interconnection Agreement for the Facility with the Transmission Provider in accordance with applicable laws and regulations.
- 5.2 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 Agreement shall 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.
- 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 FPSC as they may be subsequently amended from time to time.

6. PAYMENT FOR ENERGY AND REFUNDS FOR CAPACITY

6.1 Prior to the Commercial Operation Date, FPL shall pay the Authority for each MWH of Energy at a rate equal to 99% of FPL's As-Available Avoided Energy Costs for FPL's Southeastern/ Eastern region.

6.2 Beginning on the Commercial Operation Date, Energy shall be paid for at a combination of fixed and floating energy rates. Such rates to be determined as follows:

6.2.1 The fraction of the energy rates to be fixed ("Fixed Fraction" or "FF") shall be the product of the Annual Capacity Factor as of the end of the previous calendar year and [TBD] %. *[The Authority, in its discretion, shall choose and insert the percentage, not to exceed 50%, prior to execution of this Agreement.]* For each month of the calendar year, the payment for the FF shall be the total net generation for each hour of each month times the FF times the forecast energy rate shown in Appendix C summed over all hours of the month. For the purpose of calculating the FF, and up until such time as an entire calendar year has elapsed since the Commercial Operation Date, each then complete calendar month shall be included in a cumulative average of the partial calendar year.

6.2.2 For each month prior to June 1st 2016 the Floating Energy Payment shall be calculated as the sum over all hours of the month of (1-FF) times the generation for the hour times the As-Available Avoided Energy Costs" for FPL's Southeastern/Eastern region times 99%.

6.2.3 For each month after June 1st 2016, the Floating Energy Payment shall be calculated as the sum over all hours of the month of (1-FF) times the generation for the hour times the lesser of the avoided energy cost of the Avoided Unit or As-Available Avoided Energy Costs for the FPL's

Southeastern/Eastern region.

6.3 If, at the end of any Monthly Billing Period during the Term of this Agreement, the Facility has not operated at an Annual Capacity Factor of at least 70%, based on the Committed Capacity, the Authority shall refund a pro-rata portion of the Advanced Capacity Payment. The refund shall be calculated as follows:

6.3.1 The Current Committed Capacity shall be calculated as the Committed Capacity necessary to achieve an Annual Capacity Billing Factor of 70%.

6.3.2 Payment obligation shall be calculated as the change in the Current Committed Capacity times the payment amount indicated in Appendix B for the month in which the Capacity Payment Refund obligation is triggered.

6.3.3 For all future calculations, the Current Committed Capacity as calculated in Section 6.3.1 shall become the Committed Capacity.

6.4 Regardless of any claim of Force Majeure, if for any reason during the Term, the Facility is abandoned, closed-down or rendered illegal by applicable law, ordinance or regulation and therefore fails to deliver at an Annual Capacity Factor of at least 55% of the initial contractual Committed Capacity, then the full amount of any as then yet un-refunded Advanced Capacity Payment shall be refunded to FPL, and this Agreement may be terminated by FPL, in FPL's sole discretion, without any further liability or obligations to the Authority.

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 Energy received in each hour by FPL in response to any request(s) by FPL pursuant to Section 8.3;
 - 7.1.5 The Monthly Capacity Factor, the Annual Capacity Factor, and the Fixed Fraction for the Monthly Billing Period;
 - 7.1.6 The fixed rate and floating rate paid by FPL for Energy during each hour in the Monthly Billing Period;
 - 7.1.7 The calculated payment for Energy during the Monthly Billing Period;
 - 7.1.8 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. Payment shall be made by automated clearing house not later than the 10th business day following the date of the Monthly Billing Statement. Delinquent payments shall thereafter include interest calculated at the rate of 10.5% per annum.
- 7.3 Within thirty (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 and notify FPL in writing within three (3) 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 and be discovered by either FPL or the Authority, 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 Agreement.

8. OPERATION AND MAINTENANCE OF THE FACILITY

- 8.1 During the Term of this Agreement, the Authority agrees to:
- 8.1.1 Provide FPL, prior to October 1st 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 significant change(s) have been identified;
 - 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 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 three (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 thirty (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 and on request of the Authority shall be promptly confirmed in writing by FPL.
- 8.4 During the Term of this 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 to the Authority, 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.
- 8.6 The Authority shall use reasonable efforts to 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 Agreement.

9. INSURANCE

The Authority shall procure a policy of liability insurance on a standard "Insurance Services Office" comprehensive commercial general liability form ("Policy"). The Policy shall cover generally all liabilities which might arise under, or in the performance or nonperformance of, this Agreement. At a minimum, the 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 by FPL, 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 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 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 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 Agreement. The Policy shall not be cancelled or materially altered without at least thirty (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 Agreement or the Authority's failure to abide by the provisions of this 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 Agreement or FPL's failure to abide by the provisions of this 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 AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS 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 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 AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

11. COVENANTS AND CONDITION PRECEDENT TO AGREEMENT

The Parties obligations pursuant to this Agreement, other than those that by necessity are required to satisfy the conditions precedent hereunder this Section 11, are expressly made subject to satisfaction or waiver of all of the following conditions:

- 11.1 Approval from the FPSC on or before December 31st 2011, and final non-appealable FPSC approval on terms and conditions reasonably acceptable to both Parties, of their Petition to Determine Need.
- 11.2 Successful negotiation and execution of an agreement for the design, construction and operation of the Facility, on or before December 31, 2011.
- 11.3 Obtaining Florida Power Plant Siting Act (PPSA) Modified Conditions of Certification, on or before February 29, 2012.
- 11.4 Securing acceptable long-term financing for the Facility, on or before April 1st 2012.
- 11.5 Final non-appealable approval from the FPSC on or before December 31st 2011 that (a) this Agreement is reasonable, prudent and in the best interests of FPL's customers without change or condition to this Agreement, or in the event of changes or conditions, then on terms that are reasonably acceptable to both Parties, and (b) FPL may recover from its customers all payments for Energy, Capacity or otherwise under this Agreement.

- 11.6 Approval of the terms of the Agreement by the Governing Board of the Solid Waste Authority and the management of FPL, on or before seventy five (75) days following the final non-appealable approvals contemplated in Sections 11.1 and 11.5 are received from the FPSC.
- 11.7 The Authority shall use commercially reasonable efforts to satisfy the conditions precedent outlined in Sections 11.1, 11.2, 11.3 and 11.4 and in the event that any of the conditions precedent in Sections 11.1, 11.2, 11.3 or 11.4 have not been fully satisfied, or waived by FPL, the Authority shall reimburse FPL for all costs, including interest at the rate of 10.5% per annum from the date that FPL incurs such costs until the date that they are reimbursed, which FPL has reasonably incurred, following the execution of this Agreement, and in preparation to receive Energy and Capacity under this Agreement; provided, however, such costs, exclusive of the Advance Capacity Payment which is addressed under Section 18.1, shall not exceed \$85,000.
- 11.8 If the condition precedent set forth above in Section 11.5 or 11.6 has not been fully satisfied on or before the applicable date specified, then either Party may terminate this Agreement without liability or further liabilities or performance obligations as between FPL to the Authority.
- 11.9 Notwithstanding the conditions precedent contained in this Section 11, FPL shall submit this Agreement to the FPSC and seek the FPSC's approval of the obligations and duties imposed by this Agreement, and the Authority shall use its best efforts to support FPL's request for FPSC approval.

12. DEFAULT

- 12.1 Except as expressly provided elsewhere in this Agreement, if, after June 1st 2016, 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 non-delivery of Energy to constitute an Event of Default; provided, however, if the event of Force Majeure causing such non-delivery of Energy cannot be remedied by the Authority within 12 months, FPL may, for an additional period not to exceed twelve (12) months, waive its entitlement to declare

such non-delivery of Energy to constitute an Event of Default so long as the Authority (i) is diligently pursuing corrective action, (ii) is providing to FPL, in writing, monthly status reports as to the nature and progress of the necessary corrective action and (iii) it is reasonable to expect that such corrective action shall remedy the non-delivery of Energy within twelve (12) months. If the Authority requests such waiver it shall not be unreasonably withheld by FPL.

12.2 Notwithstanding anything else to the contrary contained in this Agreement, the following shall constitute Events of Default regardless of any claim of Force Majeure as described in Section 13 herein or otherwise:

12.2.1 After the Commercial Operation Date, the Authority ceases delivery of Energy for 12 consecutive months, or

12.2.2 After the Commercial Operation Date, the Authority fails, for any 24 consecutive months, to maintain an Annual Capacity Factor of 70%;

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 (including, without limitation, that the Authority fails to give proper assurance of adequate performance within thirty (30) days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance), and such default has not been cured as soon as possible, but in any case 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 (1) 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 (10) 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.

- 12.3 Upon the occurrence of any of the foregoing Events of Default, the non-defaulting Party may, by written Notice to the defaulting Party, (i) declare permanently terminated all of the non-defaulting Party's obligations under this Agreement, and (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 limitations of liability contained in Section 10.2 or the application and survival on termination of Section 12.2 and 12.3, of either Party for obligations arising prior to such termination or for damages, if any, resulting from breach of this Agreement.

13. FORCE MAJEURE

- 13.1 Except as otherwise provided in this 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 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 non-usable, 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 Energy which is not delivered to FPL due to events of Force Majeure shall not be reflected in the computation of Annual Capacity Factor, or Monthly Capacity Factor so as to reduce them. For purposes of this Section 13.4, the term "Force Majeure" shall be defined as set forth in Section 1.21 hereof, except that "strikes, lockouts or other labor disputes or difficulties" shall be excluded from the definition. Energy which is not delivered to FPL due to events of Force Majeure shall be reflected in the computation, so as to reduce the computation, of (i) the Fixed Fraction and the Floating Energy Payment in Section 6.2, and (ii) the Annual Capacity Factor in Section 6.4.

14. NOTICES

- 14.1 Notices are required to be in writing under this Agreement and shall be delivered in person or sent by certified mail, return receipt requested, as specified below ("Notice"):

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
700 Universe Boulevard
Juno Beach, Florida 33408

Attention: EMT CONTRACTS DEPT [EMT/JB]
Contracts Manager/Coordinator
TEL#: 561-691-7886 / 7837

- 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 addresses for receipt of Notices and correspondence.

15. SALE OF GREEN ATTRIBUTES, CHANGE IN LAW, AND COST RECOVERY

15.1 The Authority retains any and all rights to, and is the exclusive owner of, any and all Green Attributes, other than those that have been transferred to FPL pursuant to this Section 15; provided, however, that the sale of any or all Green Attributes by the Authority, if any, shall be in accordance with this Section 15. Upon occurrence of a Change in Law, the Authority and FPL shall negotiate for (i) the sale to FPL of renewable attributes or (ii) payments from FPL to the Authority in excess of avoided cost for Energy or Capacity, associated with a Change in Law, in accordance with the provisions of Section 15.2, below.

15.2 The Authority acknowledges that in the future FPL may become subject to a Change in Law. If a Change in Law occurs during the Term, the Parties shall in each instance negotiate in good faith for (i) the sale to FPL of renewable attributes or (ii) payments from FPL to the Authority in excess of avoided cost for Energy or Capacity, associated with a Change in Law, in accordance with the provisions of this Section 15.2. in order to ensure that:

15.2.1 The Authority is compensated, to the extent permitted by the FPSC, for any amount paid equitably in excess of avoided cost for Energy or Capacity,

15.2.2 FPL is able to recover from its customers all payments for any amount paid equitably in excess of avoided cost for Energy or Capacity; and

15.2.3 FPL is able to take credit for and recognize the Energy or Capacity associated with the Facility in satisfying any requirement or obligation pursuant to the Change in Law.

Following such Change in Law that occurs during the Term, the Parties shall commence negotiations within a reasonable time following written Notice by one Party to the other, of its understanding that a Change in Law has occurred, and of its desire to negotiate for the payment of an amount in excess of avoided cost for Energy or Capacity.

In the event the Parties are unable to reach agreement on the matters described in this Section 15.2, within thirty (30) days from commencement of negotiations, unless extended by agreement of the Parties, then the Parties shall submit the matter of additional payments by FPL to the Authority to binding arbitration in accordance with the rules of the American Arbitration Association. Judgment on an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Such an award shall be binding on the Parties and subject only to approval by the FPSC with respect to recovery from FPL's customers. Notwithstanding anything else contained herein, FPL may waive, in its sole discretion, the requirement to have such an arbitral award approved by the FPSC or otherwise determine that recovery from FPL's customers is not required.

- 15.3 During the Term of this 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 of the Authority's Green Attributes ("Transfer"), to a period of twenty four (24) months duration, subject to one (1) year renewals upon three (3) months' Notice. For purposes of Section 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 Agreement. If at any time during the Term of this Agreement, FPL becomes obligated to purchase Green Attributes as the result of a reasonable interpretation of applicable federal, state or local laws, rules, 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 15.4 below prior to agreeing to renew an existing Transfer and/or prior to entering into a new Transfer.

15.4 Subject always to the obligation of the Parties to act and negotiate in good faith, the following provisions shall apply to any proposed Transfer by the Authority:

15.4.1 If the Authority receives an unsolicited bona fide offer or offers for Transfer of any or all of its Green Attributes (“Green Attributes Offer”), 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 Green Attributes 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 Green Attributes Offer (the “Option Period”). In the event the Authority is required to respond to a Green Attributes 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 Green Attributes 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 Green Attributes 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 Green Attributes Offer or at terms that are more advantageous to the buyer of such Green Attributes than those contained in the Green Attributes Offer, without first offering FPL an option to purchase at such more advantageous terms pursuant to the procedures of subsection (2) above.

15.4.2 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 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 15.4.2(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.

15.5 Subject always to the obligation of the Parties to act and negotiate in good faith, 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.

15.6 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.

15.7 If during the Term of this 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 Sections 15.4, 15.5 or 15.6 of this Agreement.

- 15.8 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 Agreement its best estimate of Green Attribute requirements for the following twenty-four (24) months.

16. TERMINATION AND RIGHT OF FIRST REFUSAL RIGHTS

- 16.1 At any time subsequent to the time the Facility first delivers Energy to FPL, but, no later than June 1, 2016, the Authority may, in its sole discretion, terminate this Agreement upon thirty (30) days Notice to FPL, and both Parties shall be fully relieved of any further obligation or liability hereunder, except as set forth in Section 16.2 through Section 16.5 and such other obligations that by their terms survive termination including without limitation Sections 18.10 and 18.11.

- 16.2 Within thirty (30) days of the effective date of termination of this Agreement pursuant to Section 16.1, the Authority shall refund to FPL the Advanced Capacity Payment plus interest on the Advanced Capacity Payment and any other pre-payments that have been made by FPL at a rate equivalent to FPL's FPSC authorized pre-tax rate of return plus 400 basis points.

- 16.3 Effective upon the Authority's termination of this Agreement pursuant to Section 16.1, FPL shall have, at FPL's sole discretion, a right of first refusal ("ROFR") to purchase all electric energy, capacity and other products generated by the Facility at the same rates, terms, and conditions that Authority has negotiated with any third party ("Third Party Offer").

- 16.4 The Authority will on or before five (5) business days from the date of receipt of a final Third Party Offer open for acceptance, pursuant to Section 16.3 provide by written

Notice to FPL of FPL's ROFR to accept any such an offer on the same price, terms and conditions. FPL must exercise this ROFR within thirty (30) days of receipt of the Authority's written Notice.

- 16.5 Notwithstanding anything else contained herein, the ROFR as set forth in Section 16.3 shall survive termination of this Agreement by the Authority pursuant to Section 16.1.

17. FPL CUSTOMER RECOVERY

- 17.1 Notwithstanding anything to the contrary in this Agreement, if FPL, at any time during the Term of this 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, charges or otherwise, to recover from its customers all of the payments required to be made to the Authority under the terms of this Agreement or any subsequent amendment hereto, FPL may, at its sole option, adjust the payments made under this 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 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 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 to the Authority all withheld payments, with interest at the rate equivalent to FPL's FPSC authorized pre-tax rate of return. Interest shall accrue from the date of disallowance until the date it is ultimately reversed. The Authority acknowledges that any amounts initially received by FPL from its customers, but for which recovery is subsequently disallowed and charged back to FPL, may be offset or credited, with interest at a rate equivalent to FPL's FPSC authorized pre-tax rate of return, against subsequent payments to be made by FPL to the Authority under this Agreement. Such interest shall accrue from the date amounts are initially received by FPL from its customers until the date of the offset or credit.

If, at any time, FPL receives Notice that the FPSC or any other legislative, administrative, judicial or regulatory body seeks or intends to deny FPL authorization to recover from its customers all payments required to be made under the terms of this Agreement, then FPL shall, within thirty (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 Agreement and its right to recover from its customers all payments required to be made by FPL hereunder, and will cooperate in any effort by the Authority to intervene in, or otherwise be allowed to defend, any proceeding challenging the validity of this Agreement and the right of FPL to recover from its customers all payments to be made by it hereunder. The Authority shall, on reasonable request by FPL use best efforts to support, defend and uphold the validity of this Agreement and FPL's right to recover from its customers all payments required to be made by FPL hereunder.

The Parties do not intend this Section to grant any rights or remedies to any third party (ies) or to any legislative, administrative, judicial or regulatory body; and this Section 17.1 shall not operate to release any person from any claim or cause of action which each Party may have relating to, or to preclude the respective Party from asserting, the validity or enforceability of any obligation undertaken by either Party under this Agreement.

18. GENERAL APPLICATION

- 18.1 Anything to the contrary herein notwithstanding with respect to any termination of this Agreement after the Advanced Capacity Payment Date, the Authority shall refund to FPL the Advanced Capacity Payment that has been made by FPL. The Authority shall pay interest at a rate equivalent to FPL's FPSC authorized pre-tax rate of return on the Advanced Capacity Payment. Such interest shall accrue from the Advanced Capacity Payment Date until such time as the Advanced Capacity Payment is refunded. The obligation to make such a refund is binding on the Authority and its successors in interest. If the Authority is dissolved or otherwise ceases to function, to the extent permitted by applicable law, the Parties agree that the obligation to make such a refund is binding on those successor entities in proportion to their successor interests. Such refund shall be in addition to any other rights and remedies contained herein this Agreement or otherwise.

- 18.2 In the event that Florida Statute 377.709 or FPSC Rule 25-17.091 is repealed, amended or otherwise superseded, or else the provisions therein providing for refund of the Advanced Capacity Payment are no longer in force and effect, as those provisions applied at the date of execution of this Agreement, then the Authority shall within five (5) days of such change post to FPL adequate assurance of performance in a form that is reasonably acceptable to FPL. The amount of the adequate assurance shall at the time of posting, and at all times thereafter, be equal to at least the un-refunded portion of the Advanced Capacity Payment.
- 18.3 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.
- 18.4 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.
- 18.5 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 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.
- 18.6 This 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 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 Agreement, or any amendment of this Agreement, shall be effective unless it is in writing and signed by the Parties.
- 18.7 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default) or other matter.
- 18.8 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this 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.
- 18.9 Nothing contained in this 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 Agreement.
- 18.10 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.
- 18.11 Section headings, titles and indexes appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- 18.11 This 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. With respect to any suit, action, Event of Default, termination or dispute otherwise arising under or relating to this Agreement, the Parties agree to submit to the United States District Court,

Southern District of Florida, West Palm Beach and should such court not exercise its jurisdiction then the courts of Palm Beach County.

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

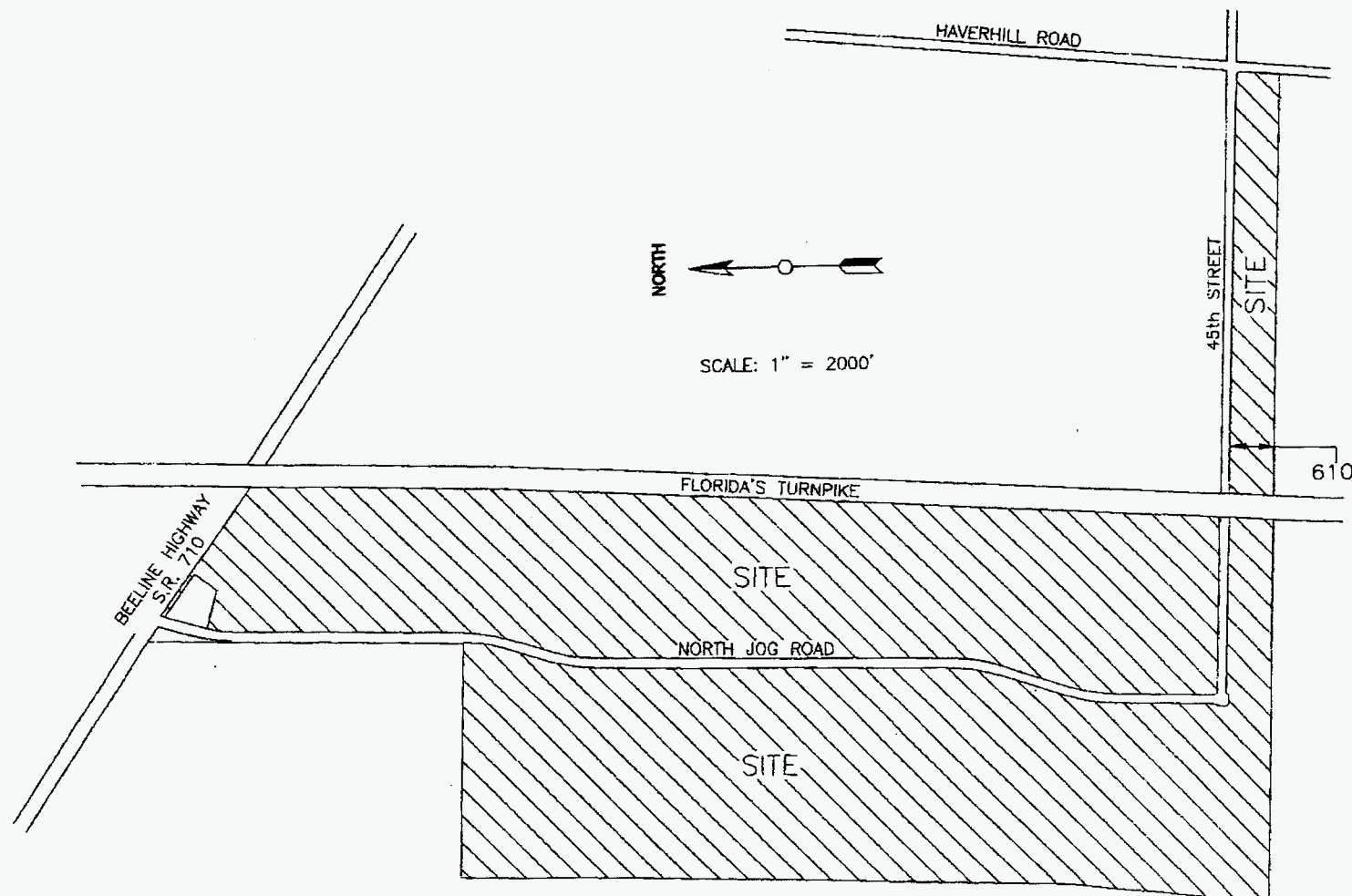
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

APPENDIX A

TO

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

598885-144



**SOLID WASTE AUTHORITY
OF PALM BEACH COUNTY**
7501 North Jog Road
West Palm Beach, Florida 33412
Phone: (561)840-4000 FAX: (561)683-4067



Date	Revision	Description

**NORTH COUNTY RESOURCE RECOVERY
FACILITY SITE**

DESCRIPTION OF THE SITE	
DWN. B. HEADBERG	DSN:
CHK:	SCALE: AS SHOWN
APV:	DATE: MAR 2009

SHEET
1

Appendix B

2016 3 x 1 CC Avoided Unit

In-Service Date

Jun-16

Electrical Block Cost

66,693,241

Assumed Capacity

75.00 MW

Discount Rate

7.293%

Assumed Payment Date:

Jan-14

Preliminary - Subject to Section 6 and Section 1.1 of the Agreement

Months	Date	Discount	Value of Deferral (\$/kW-Mo)	PV	Unit Payment (\$/kW)
1	Jan-14	0.99		-	\$ 755.91
2	Feb-14	0.99		-	\$ 760.50
3	Mar-14	0.98		-	\$ 765.13
4	Apr-14	0.98		-	\$ 769.78
5	May-14	0.97		-	\$ 774.46
6	Jun-14	0.96		-	\$ 779.16
7	Jul-14	0.96		-	\$ 783.90
8	Aug-14	0.95		-	\$ 788.66
9	Sep-14	0.95		-	\$ 793.45
10	Oct-14	0.94		-	\$ 798.28
11	Nov-14	0.94		-	\$ 803.13
12	Dec-14	0.93		-	\$ 808.01
13	Jan-15	0.92		-	\$ 812.92
14	Feb-15	0.92		-	\$ 817.86
15	Mar-15	0.91		-	\$ 822.83
16	Apr-15	0.91		-	\$ 827.83
17	May-15	0.90		-	\$ 832.86
18	Jun-15	0.90		-	\$ 837.92
19	Jul-15	0.89		-	\$ 843.02
20	Aug-15	0.89		-	\$ 848.14
21	Sep-15	0.88		-	\$ 853.29
22	Oct-15	0.88		-	\$ 858.48
23	Nov-15	0.87		-	\$ 863.70
24	Dec-15	0.86		-	\$ 868.95
25	Jan-16	0.86		-	\$ 874.23
26	Feb-16	0.85		-	\$ 879.54
27	Mar-16	0.85		-	\$ 884.89
28	Apr-16	0.84		-	\$ 890.28
29	May-16	0.84		-	\$ 895.67
30	Jun-16	0.83	\$ 8.14	6.79	\$ 892.98
31	Jul-16	0.83	\$ 8.14	6.75	\$ 890.27
32	Aug-16	0.82	\$ 8.14	6.71	\$ 887.54
33	Sep-16	0.82	\$ 8.14	6.66	\$ 884.79
34	Oct-16	0.81	\$ 8.14	6.62	\$ 882.03
35	Nov-16	0.81	\$ 8.14	6.58	\$ 879.25
36	Dec-16	0.80	\$ 8.14	6.54	\$ 876.45
37	Jan-17	0.80	\$ 8.38	6.70	\$ 873.40
38	Feb-17	0.79	\$ 8.38	6.66	\$ 870.33
39	Mar-17	0.79	\$ 8.38	6.62	\$ 867.24
40	Apr-17	0.78	\$ 8.38	6.58	\$ 864.13

41	May-17	0.78	\$	8.38	6.54	\$	861.00
42	Jun-17	0.78	\$	8.38	6.50	\$	867.85
43	Jul-17	0.77	\$	8.38	6.46	\$	854.68
44	Aug-17	0.77	\$	8.38	6.42	\$	851.50
45	Sep-17	0.76	\$	8.38	6.38	\$	848.29
46	Oct-17	0.76	\$	8.38	6.34	\$	845.07
47	Nov-17	0.76	\$	8.38	6.30	\$	841.82
48	Dec-17	0.76	\$	8.38	6.27	\$	838.56
49	Jan-18	0.74	\$	8.63	6.41	\$	835.03
50	Feb-18	0.74	\$	8.63	6.37	\$	831.47
51	Mar-18	0.73	\$	8.63	6.34	\$	827.90
52	Apr-18	0.73	\$	8.63	6.30	\$	824.30
53	May-18	0.73	\$	8.63	6.26	\$	820.68
54	Jun-18	0.72	\$	8.63	6.22	\$	817.03
55	Jul-18	0.72	\$	8.63	6.19	\$	813.37
56	Aug-18	0.71	\$	8.63	6.15	\$	809.68
57	Sep-18	0.71	\$	8.63	6.11	\$	805.96
58	Oct-18	0.70	\$	8.63	6.07	\$	802.23
59	Nov-18	0.70	\$	8.63	6.04	\$	798.47
60	Dec-18	0.70	\$	8.63	6.00	\$	794.69
61	Jan-19	0.69	\$	8.89	6.14	\$	790.64
62	Feb-19	0.69	\$	8.89	6.11	\$	786.65
63	Mar-19	0.68	\$	8.89	6.07	\$	782.44
64	Apr-19	0.68	\$	8.89	6.03	\$	778.31
65	May-19	0.67	\$	8.89	6.00	\$	774.15
66	Jun-19	0.67	\$	8.89	5.96	\$	769.97
67	Jul-19	0.67	\$	8.89	5.92	\$	765.76
68	Aug-19	0.66	\$	8.89	5.89	\$	761.52
69	Sep-19	0.66	\$	8.89	5.85	\$	757.26
70	Oct-19	0.65	\$	8.89	5.82	\$	752.97
71	Nov-19	0.65	\$	8.89	5.78	\$	748.66
72	Dec-19	0.65	\$	8.89	5.75	\$	744.32
73	Jan-20	0.64	\$	9.15	5.88	\$	739.69
74	Feb-20	0.64	\$	9.15	5.85	\$	735.03
75	Mar-20	0.63	\$	9.15	5.81	\$	730.36
76	Apr-20	0.63	\$	9.15	5.78	\$	725.63
77	May-20	0.63	\$	9.15	5.74	\$	720.89
78	Jun-20	0.62	\$	9.15	5.71	\$	716.12
79	Jul-20	0.62	\$	9.15	5.67	\$	711.32
80	Aug-20	0.62	\$	9.15	5.64	\$	706.48
81	Sep-20	0.61	\$	9.15	5.60	\$	701.62
82	Oct-20	0.61	\$	9.15	5.57	\$	696.74
83	Nov-20	0.60	\$	9.15	5.54	\$	691.82
84	Dec-20	0.60	\$	9.15	5.50	\$	686.87
85	Jan-21	0.60	\$	9.43	5.63	\$	681.62
86	Feb-21	0.59	\$	9.43	5.60	\$	676.33
87	Mar-21	0.59	\$	9.43	5.56	\$	671.02
88	Apr-21	0.59	\$	9.43	5.53	\$	665.87
89	May-21	0.58	\$	9.43	5.50	\$	660.29
90	Jun-21	0.58	\$	9.43	5.46	\$	654.88
91	Jul-21	0.58	\$	9.43	5.43	\$	649.43
92	Aug-21	0.57	\$	9.43	5.40	\$	643.95

93	Sep-21	0.57	\$	9.43	5.37	\$	638.44
94	Oct-21	0.57	\$	9.43	5.33	\$	632.89
95	Nov-21	0.56	\$	9.43	5.30	\$	627.31
96	Dec-21	0.56	\$	9.43	5.27	\$	621.70
97	Jan-22	0.56	\$	9.71	5.39	\$	615.77
98	Feb-22	0.55	\$	9.71	5.36	\$	609.81
99	Mar-22	0.55	\$	9.71	5.33	\$	603.81
100	Apr-22	0.55	\$	9.71	5.30	\$	597.77
101	May-22	0.54	\$	9.71	5.26	\$	591.70
102	Jun-22	0.54	\$	9.71	5.23	\$	585.59
103	Jul-22	0.54	\$	9.71	5.20	\$	579.44
104	Aug-22	0.53	\$	9.71	5.17	\$	573.26
105	Sep-22	0.53	\$	9.71	5.14	\$	567.03
106	Oct-22	0.53	\$	9.71	5.11	\$	560.77
107	Nov-22	0.52	\$	9.71	5.08	\$	554.48
108	Dec-22	0.52	\$	9.71	5.04	\$	548.14
109	Jan-23	0.52	\$	10.00	5.16	\$	541.48
110	Feb-23	0.51	\$	10.00	5.13	\$	534.77
111	Mar-23	0.51	\$	10.00	5.10	\$	528.03
112	Apr-23	0.51	\$	10.00	5.07	\$	521.24
113	May-23	0.50	\$	10.00	5.04	\$	514.41
114	Jun-23	0.50	\$	10.00	5.01	\$	507.64
115	Jul-23	0.50	\$	10.00	4.98	\$	500.63
116	Aug-23	0.50	\$	10.00	4.95	\$	493.68
117	Sep-23	0.49	\$	10.00	4.92	\$	486.69
118	Oct-23	0.49	\$	10.00	4.89	\$	479.65
119	Nov-23	0.49	\$	10.00	4.86	\$	472.57
120	Dec-23	0.48	\$	10.00	4.83	\$	465.45
121	Jan-24	0.48	\$	10.29	4.94	\$	457.98
122	Feb-24	0.48	\$	10.29	4.91	\$	450.47
123	Mar-24	0.47	\$	10.29	4.88	\$	442.92
124	Apr-24	0.47	\$	10.29	4.86	\$	435.32
125	May-24	0.47	\$	10.29	4.83	\$	427.67
126	Jun-24	0.47	\$	10.29	4.80	\$	419.98
127	Jul-24	0.46	\$	10.29	4.77	\$	412.24
128	Aug-24	0.46	\$	10.29	4.74	\$	404.45
129	Sep-24	0.46	\$	10.29	4.71	\$	396.61
130	Oct-24	0.45	\$	10.29	4.68	\$	388.73
131	Nov-24	0.45	\$	10.29	4.65	\$	380.80
132	Dec-24	0.45	\$	10.29	4.63	\$	372.82
133	Jan-25	0.45	\$	10.60	4.73	\$	364.49
134	Feb-25	0.44	\$	10.60	4.71	\$	356.11
135	Mar-25	0.44	\$	10.60	4.68	\$	347.67
136	Apr-25	0.44	\$	10.60	4.66	\$	339.19
137	May-25	0.44	\$	10.60	4.62	\$	330.65
138	Jun-25	0.43	\$	10.60	4.59	\$	322.06
139	Jul-25	0.43	\$	10.60	4.57	\$	313.42
140	Aug-25	0.43	\$	10.60	4.54	\$	304.73
141	Sep-25	0.43	\$	10.60	4.51	\$	295.98
142	Oct-25	0.42	\$	10.60	4.48	\$	287.18
143	Nov-25	0.42	\$	10.60	4.46	\$	278.32
144	Dec-25	0.42	\$	10.60	4.43	\$	269.42

145	Jan-26	0.42	\$	10.91	4.53	\$	260.14
146	Feb-26	0.41	\$	10.91	4.51	\$	250.81
147	Mar-26	0.41	\$	10.91	4.48	\$	241.42
148	Apr-26	0.41	\$	10.91	4.45	\$	231.97
149	May-26	0.41	\$	10.91	4.42	\$	222.47
150	Jun-26	0.40	\$	10.91	4.40	\$	212.90
151	Jul-26	0.40	\$	10.91	4.37	\$	203.28
152	Aug-26	0.40	\$	10.91	4.35	\$	193.60
153	Sep-26	0.40	\$	10.91	4.32	\$	183.87
154	Oct-26	0.39	\$	10.91	4.29	\$	174.07
155	Nov-26	0.39	\$	10.91	4.27	\$	164.21
156	Dec-26	0.39	\$	10.91	4.24	\$	154.30
157	Jan-27	0.39	\$	11.23	4.34	\$	144.00
158	Feb-27	0.38	\$	11.23	4.31	\$	133.65
159	Mar-27	0.38	\$	11.23	4.29	\$	123.23
160	Apr-27	0.38	\$	11.23	4.26	\$	112.74
161	May-27	0.38	\$	11.23	4.23	\$	102.20
162	Jun-27	0.37	\$	11.23	4.21	\$	91.69
163	Jul-27	0.37	\$	11.23	4.18	\$	80.91
164	Aug-27	0.37	\$	11.23	4.16	\$	70.17
165	Sep-27	0.37	\$	11.23	4.13	\$	59.37
166	Oct-27	0.37	\$	11.23	4.11	\$	48.50
167	Nov-27	0.36	\$	11.23	4.08	\$	37.58
168	Dec-27	0.36	\$	11.23	4.06	\$	26.55
169	Jan-28	0.36	\$	11.56	4.15	\$	16.16
170	Feb-28	0.36	\$	11.56	4.13	\$	3.69
171	Mar-28	0.35	\$	11.56	4.10	\$	-
172	Apr-28	0.35	\$	11.56	4.08	\$	-
173	May-28	0.35	\$	11.56	4.05	\$	-
174	Jun-28	0.35	\$	11.56	4.03	\$	-
175	Jul-28	0.35	\$	11.56	4.00	\$	-
176	Aug-28	0.34	\$	11.56	3.98	\$	-
177	Sep-28	0.34	\$	11.56	3.96	\$	-
178	Oct-28	0.34	\$	11.56	3.93	\$	-
179	Nov-28	0.34	\$	11.56	3.91	\$	-
180	Dec-28	0.34	\$	11.56	3.88	\$	-
181	Jan-29	0.33	\$	11.90	3.97	\$	-
182	Feb-29	0.33	\$	11.90	3.95	\$	-
183	Mar-29	0.33	\$	11.90	3.92	\$	-
184	Apr-29	0.33	\$	11.90	3.90	\$	-
185	May-29	0.33	\$	11.90	3.88	\$	-
186	Jun-29	0.32	\$	11.90	3.85	\$	-
187	Jul-29	0.32	\$	11.90	3.83	\$	-
188	Aug-29	0.32	\$	11.90	3.81	\$	-
189	Sep-29	0.32	\$	11.90	3.78	\$	-
190	Oct-29	0.32	\$	11.90	3.76	\$	-
191	Nov-29	0.31	\$	11.90	3.74	\$	-
192	Dec-29	0.31	\$	11.90	3.72	\$	-
193	Jan-30	0.31	\$	12.24	3.80	\$	-
194	Feb-30	0.31	\$	12.24	3.78	\$	-
195	Mar-30	0.31	\$	12.24	3.76	\$	-
196	Apr-30	0.30	\$	12.24	3.73	\$	-

197	May-30	0.30	\$	12.24	3.71	\$	-
198	Jun-30	0.30	\$	12.24	3.69	\$	-
199	Jul-30	0.30	\$	12.24	3.67	\$	-
200	Aug-30	0.30	\$	12.24	3.64	\$	-
201	Sep-30	0.30	\$	12.24	3.62	\$	-
202	Oct-30	0.29	\$	12.24	3.60	\$	-
203	Nov-30	0.29	\$	12.24	3.58	\$	-
204	Dec-30	0.29	\$	12.24	3.56	\$	-
205	Jan-31	0.29	\$	12.60	3.64	\$	-
206	Feb-31	0.29	\$	12.60	3.62	\$	-
207	Mar-31	0.29	\$	12.60	3.59	\$	-
208	Apr-31	0.28	\$	12.60	3.57	\$	-
209	May-31	0.28	\$	12.60	3.55	\$	-
210	Jun-31	0.28	\$	12.60	3.53	\$	-
211	Jul-31	0.28	\$	12.60	3.51	\$	-
212	Aug-31	0.28	\$	12.60	3.49	\$	-
213	Sep-31	0.28	\$	12.60	3.47	\$	-
214	Oct-31	0.27	\$	12.60	3.44	\$	-
215	Nov-31	0.27	\$	12.60	3.42	\$	-
216	Dec-31	0.27	\$	12.60	3.40	\$	-
217	Jan-32	0.27	\$	12.96	3.48	\$	-
218	Feb-32	0.27	\$	12.96	3.46	\$	-
219	Mar-32	0.27	\$	12.96	3.44	\$	-
220	Apr-32	0.26	\$	12.96	3.42	\$	-
221	May-32	0.26	\$	12.96	3.40	\$	-
222	Jun-32	0.26	\$	12.96	3.38	\$	-
223	Jul-32	0.26	\$	12.96	3.36	\$	-
224	Aug-32	0.26	\$	12.96	3.34	\$	-
225	Sep-32	0.26	\$	12.96	3.32	\$	-
226	Oct-32	0.25	\$	12.96	3.30	\$	-
227	Nov-32	0.25	\$	12.96	3.28	\$	-
228	Dec-32	0.25	\$	12.96	3.26	\$	-
229	Jan-33	0.25	\$	13.34	3.33	\$	-
230	Feb-33	0.25	\$	13.34	3.31	\$	-
231	Mar-33	0.25	\$	13.34	3.29	\$	-
232	Apr-33	0.25	\$	13.34	3.27	\$	-
233	May-33	0.24	\$	13.34	3.25	\$	-
234	Jun-33	0.24	\$	13.34	3.23	\$	-
235	Jul-33	0.24	\$	13.34	3.21	\$	-
236	Aug-33	0.24	\$	13.34	3.19	\$	-
237	Sep-33	0.24	\$	13.34	3.17	\$	-
238	Oct-33	0.24	\$	13.34	3.15	\$	-
239	Nov-33	0.24	\$	13.34	3.14	\$	-
240	Dec-33	0.23	\$	13.34	3.12	\$	-
241	Jan-34	0.23	\$	13.73	3.19	\$	-
242	Feb-34	0.23	\$	13.73	3.17	\$	-
243	Mar-34	0.23	\$	13.73	3.15	\$	-
244	Apr-34	0.23	\$	13.73	3.13	\$	-
245	May-34	0.23	\$	13.73	3.11	\$	-

**SWA Contract
Appendix C
Fixed Energy Prices
2016 Avoided Unit**

Year	Contract energy rates \$/MWH
2011	
2012	
2013	
2014	
2015	66.80
2016	56.80
2017	47.46
2018	51.15
2019	54.14
2020	57.29
2021	60.60
2022	64.78
2023	69.32
2024	73.93
2025	78.56
2026	80.34
2027	81.83
2028	83.36
2029	84.93
2030	86.58
2031	88.34
2032	90.04
2033	91.89
2034	93.63