

AMENDED AND RESTATED ELECTRICAL  
POWER PURCHASE AGREEMENT

THIS AMENDED AND RESTATED ELECTRICAL POWER PURCHASE AGREEMENT (the "Revised Agreement"), made and entered into as of the 21st of February, 1989, amending and restating the Electric Power Purchase Agreement (the "Agreement") dated May 13, 1980, between Pinellas County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and Florida Power Corporation, a private utility corporation having its principal place of business at St. Petersburg, Florida, and authorized to do business in the State of Florida, hereinafter referred to as "FPC".

WITNESSETH:

WHEREAS, the COUNTY and FPC entered into the Agreement on May 13, 1980, wherein the COUNTY agreed to sell and FPC agreed to purchase all the electric energy, net of in-Facility use, generated by the COUNTY's Resource Recovery Facility (the "Facility");

WHEREAS, pursuant to the Agreement, FPC was to make, and has to date made, payments for electric energy value only;

WHEREAS, the parties agreed in the Agreement "that if after 18 months or more of operation, the Facility has been a satisfactory and reliable source of generation and the 'COUNTY' is prepared to accept a legally enforceable obligation to provide firm power; then good faith negotiations will be initiated to revise the pricing arrangement so as to reflect the value to 'FPC' of the Facility's firm electrical production capability;"

WHEREAS, the parties agree that the Facility can be a satisfactory and reliable source of electric power generation for thirty (30) years commencing January 1, 1995;

WHEREAS, the COUNTY is prepared to accept a legally enforceable obligation to provide firm power to FPC:

WHEREAS, the parties have consequently agreed to amend such Agreement to provide for payment for the provision of firm power and for certain conforming and associated amendments;

WHEREAS, the parties have further agreed to amend the Agreement to provide for an extension of the initial term of the Agreement, to address the treatment of certain standby charges and to provide for certain other matters and clarifying provisions;

NOW, THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

1. The provisions set forth herein constitute amendments to and a complete restatement of the Agreement.

2. The Agreement, dated May 13, 1980, as previously amended on August 1, 1981 and December 1, 1983, shall remain in full force and effect until superseded by these amendments and restatement on the effective dates provided herein.

3. The Agreement, as previously amended, is hereby amended and restated as follows: Effective on the date of this amendment, Section 9.0 "CONDITIONS OF TERMINATION" of the Agreement of May 13, 1980, as previously amended, is hereby deleted, and of no force and effect. Effective on 12:00 midnight on December 31, 1994, the May 13, 1980 Agreement, as previously amended, is hereby amended and revised to read as follows:

**WITNESSETH:**

WHEREAS, the COUNTY owns and contracts for the operation and maintenance of a Resource Recovery Facility (the "Facility") located at 3001 110th Avenue No., St. Petersburg, Pinellas County, Florida, having an installed electric generating capacity of approximately seventy-five megawatts (75 MW) of electric power; and

WHEREAS, the Facility generates electric energy utilizing steam produced by the resource recovery process and generates more electric energy than is used at the Facility resulting in excess electric energy the COUNTY has sold, and proposes to continue to sell, to FPC; and

WHEREAS, the COUNTY proposes to make available and to sell approximately sixty megawatts (60 MW) of net electric capacity; and

WHEREAS, subject to the terms and conditions of this Revised Agreement, the COUNTY desires to sell and deliver and FPC desires to purchase and accept said net electric energy and capacity for the term of this Revised Agreement;

NOW, THEREFORE, in consideration of the monies hereinafter agreed to be paid and the mutual covenants to be performed by each of the parties hereto, as hereinafter set forth, said parties do hereby mutually agree as follows:

**1.0 DEFINITIONS**

The following are definitions of certain terms used in this Revised Agreement:

1.1 Appendix or Appendices means the schedules, exhibits and attachments which are incorporated in and made part of this Revised Agreement, except that

Appendices D and E shall not be considered as incorporated in and made a part of this Revised Agreement.

1.2 Committed Capacity means the kilowatt capacity defined pursuant to subsection 5.1 as adjusted pursuant to this Revised Agreement.

1.3 Company means Wheelabrator Environmental Systems, Inc., and any successor company under contract with the COUNTY for the operation and maintenance of the Facility.

1.4 Effective Date means the date an order is made effective by the FPSC approving this Revised Agreement for full cost recovery.

1.5 FPSC means the Florida Public Service Commission and its successor.

1.6 Interconnection Agreement means that separate agreement addressing the electrical interconnection requirements attached hereto as Appendix D, which agreement shall supersede, on and after January 1, 1995, the Electrical Tie-Line Agreement dated May 13, 1980, as amended prior hereto and attached as Appendix E.

1.7 Net Electric Energy means all electric energy generated by the Facility in excess of the electric energy used by the Facility for Facility operations.

1.8 On-Peak Period(s) means those daily time periods specified in Appendix B, as such periods shall be extended or reduced on a daily basis from time to time. Any amendment to Appendix B shall not be deemed to be an amendment or modification to this Revised Agreement for purposes of Section 16.0.

1.9 Point of Delivery means the overhead strain insulator on the high voltage structure of the Facility switchyard.

1.10 Resource Recovery Facility means a refuse-fired steam generating facility (and ancillary and supportive facilities located on the Facility site)

incorporating one or more steam generating units and processing equipment capable of recovering those materials remaining after burning operations.

1.11 Section means a Section of this Revised Agreement, unless such Section specifically refers to the Agreement of May 13, 1980.

1.12 Special Committed Capacity (Nomination) means the Committed Capacity during the period of the Modification identified in the Declaration pursuant to subsection 5.1.5 hereof.

1.13 State means the State of Florida.

## 2.0 BASIC CONSIDERATIONS

The COUNTY owns the Facility and has entered into a contract with the Company for the operation and maintenance thereof in connection with refuse disposal services provided on a COUNTY-wide basis and for the performance of the COUNTY's obligations with respect to the scheduling and delivery of Net Electric Energy and capacity to FPC. The COUNTY will sell and deliver Net Electric Energy to FPC and FPC agrees to purchase and accept Net Electric Energy and capacity from the COUNTY under the terms and conditions set forth in this Revised Agreement.

## 3.0 TERM OF AGREEMENT

The term of this Revised Agreement shall begin on the Effective Date and shall expire at 24:00 hours on December 31, 2024.

## 4.0 OPERATING CONDITIONS

During the term of this Revised Agreement, the COUNTY shall:

4.1 Operate the generating units prior to January 1, 1995, in compliance with the terms of Appendix E - the Electrical Tie-Line Agreement, and thereafter, in accordance with Appendix D - the Interconnection Agreement.

4.2 Provide FPC prior to December 1 of each calendar year an estimate of the amount of electricity to be generated by the Facility and delivered to FPC for each month of the following calendar year.

4.3 Promptly update the yearly generation schedule and scheduled outage and maintenance periods as and when the COUNTY determines any changes may be necessary.

4.4 Provide FPC by telephone prior to 9:00 A.M. of each day an estimate of the amount of electrical generation for the next succeeding day.

4.5 Coordinate scheduled outages and maintenance of the Facility with FPC. In coordinating such schedule, the parties agree to recognize and accommodate system demands and obligations by exercising reasonable efforts to agree to scheduled outage and maintenance periods when system demands are at seasonally low levels, which the parties contemplate will occur during the Spring and Fall months of each year.

4.6 Comply with reasonable requirements of FPC regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Revised Agreement.

4.7 Reduce, curtail, or interrupt electrical generation or take other appropriate action which in the judgement of the COUNTY, the Facility operator or FPC may be necessary to address an emergency at the Facility; provided however, that such response shall continue only for so long as it is reasonably necessary. The COUNTY and FPC agree to use all reasonable efforts to coordinate any such response with the scheduled outage periods designated pursuant to subsection 4.5 above.

4.8 Adjust reactive power flow in the interconnection so as to maintain a normal power factor of 1.00 except as may be reasonably requested by FPC within the range of 0.85 leading to 0.85 lagging power factor.

4.9 The estimates and schedules provided by the COUNTY under subsections 4.2, 4.3, 4.4, and 4.5 above shall be prepared in good faith, based on solid waste material availability and other conditions anticipated at the time such estimates and schedules are made; provided however, the COUNTY shall have no liability to FPC, nor shall the COUNTY be subject to any damage or penalty under this Revised Agreement if the actual amount of electric power delivered to FPC, or the times of such delivery, differ from the amounts and times reflected in such estimates and schedules; provided further, the COUNTY shall not be relieved of its obligation to deliver Committed Capacity under the otherwise applicable terms and conditions of this Revised Agreement.

## 5.0 TERMS OF PURCHASE AND SALE

The COUNTY shall sell and deliver to the Point of Delivery and FPC agrees to purchase, receive and accept, at the price specified in Section 6.0, et seq. the Net Electric Energy generated at the Facility. FPC shall also purchase and accept the Committed Capacity. Any amendment to Committed Capacity will neither affect the COUNTY's obligation to sell nor FPC's obligation to purchase and accept the Net Electric Energy.

### 5.1 Capacity Commitment

5.1.1 Of that amount of electric power generated at the Facility, the COUNTY anticipates that it will commit and make available to FPC sixty megawatts (60 MW) of Facility capacity, beginning on January 1, 1995.

5.1.2 Prior to January 1, 1993, the COUNTY shall have the one-time option of amending subsection 5.1.1 hereof to specify a change in the amount of

Committed Capacity by providing written notice to FPC of such change. Upon such notice, the COUNTY and FPC shall forthwith amend subsection 5.1.1. Such amendment shall specify that such change shall be the Committed Capacity rather than the anticipated Committed Capacity for purposes of this Revised Agreement. If the COUNTY does not give such notice to FPC prior to January 1, 1993, the anticipated Committed Capacity specified in subsection 5.1.1 shall be the Committed Capacity for purposes of this Revised Agreement.

5.1.3 On or after January 1, 1995 and prior to January 1, 2010, the COUNTY may reduce its Committed Capacity applicable to the five (5) year period from January 1, 2015 through December 31, 2019. On or after January 1, 2010, and prior to January 1, 2015, the COUNTY may reduce its Committed Capacity for the five (5) year period from January 1, 2020 through December 31, 2024. Should the COUNTY elect to reduce its Committed Capacity pursuant to this subsection 5.1.3, capacity payments applicable to such Committed Capacity shall be calculated in accordance with subsection 6.1.6 hereof.

5.1.4 If, on or after January 1, 1995, the COUNTY determines that it is permanently unable, due to the occurrence of a force majeure event, to make available to FPC the Committed Capacity, the COUNTY may, upon notice to FPC, reduce the amount of Committed Capacity to that amount which it determines it can make available. If the COUNTY reduces its Committed Capacity as provided in this subsection 5.1.4 and in accordance with Section 18.0, FPC, effective the date of the notice from the COUNTY, shall resume its capacity payment obligations on the basis of such reduced Committed Capacity level.

Commencing with the first monthly payment to be made by FPC to the COUNTY for capacity made available at the reduced Committed Capacity level, FPC shall reduce its capacity payments obligation applicable to such level for the month, by an amount equal to the capacity payments applicable to: (i) the

capacity reduction or (ii) fifty percent (50%) of the reduced Committed Capacity level, whichever amount affords the COUNTY the highest amount of capacity payments for such month. Such reduction shall reduce the aggregate amount of capacity payments due to the COUNTY each month for the lesser of: (i) five (5) consecutive years; (ii) the termination of capacity payments pursuant to subsection 5.1.3; (iii) the expiration of the term of this Revised Agreement; or (iv) the period prior to the reduction, during which capacity payments were made under this Revised Agreement. Such reduction shall in no case require the COUNTY to make capacity payments to FPC.

#### 5.1.5 Declaration of Special Event

Should a change in law or regulation occur after the Effective Date which, on or after January 1, 1995, causes the COUNTY to perform major air pollution emission limitation modifications (the "Modification") to the Facility, the COUNTY shall have the one-time option to issue a Declaration of Special Event (the "Declaration"). This Declaration shall not, in and of itself, be considered a force majeure pursuant to subsection 5.1.4 of this Revised Agreement. The Declaration shall, at a minimum, provide FPC with six months' written notice of the Modification period, provide a Nomination of Special Committed Capacity (the "Nomination"), and specify the time period of the Modification which shall be for no less than twelve (12) consecutive months nor more than twenty-four (24) consecutive months. The COUNTY shall have the right to adjust the Nomination with six months' written notice; provided however, that each Nomination and adjustment thereto shall be made no more often than every six (6) months. In no case shall the Nomination exceed the Committed Capacity in effect immediately preceding the Modification period.

During the period specified in the Declaration, the COUNTY shall be eligible to receive capacity payments on its Nomination, as adjusted pursuant

to this subsection, 5.1.5, based on Column 3 of Appendix A of this Revised Agreement providing that the COUNTY meets the performance obligations under this Revised Agreement that would otherwise qualify the COUNTY to receive capacity payments based on Column 1 of Appendix A. All provisions of this Revised Contract which are not specifically altered by this subsection, 5.1.5, shall remain in full force and effect.

5.2 The COUNTY will, where practicable, schedule electric power generation so that maximum output occurs during the same period as FPC's maximum load requirement, and will likewise schedule its minimum output during FPC's light load periods.

5.3 Prior to January 1, 1995, the provisions of subsections 5.3 and 5.4 of the Agreement dated May 13, 1980, as amended prior hereto shall apply. On and after January 1, 1995, if FPC is unable or unwilling to receive any electric energy due to the occurrence of events resulting from the willful or intentional act(s) or omission(s) or negligence of FPC, its agents, servants, or employees, FPC shall be obligated to make capacity payments which the COUNTY would be otherwise qualified to receive, and shall pay for energy actually received, if any, but shall not be obligated to pay for energy which the COUNTY would have delivered but for such occurrence. All such events shall be remedied by FPC with all reasonable dispatch.

## 6.0 CAPACITY AND ENERGY PURCHASE PRICE

### 6.1 Capacity

6.1.1 At the end of each billing month for capacity made available, beginning on and after January 1, 1995, FPC will calculate the most recent twelve (12) month rolling average total capacity factor ("Total Capacity Factor"), including such month, based on the COUNTY's Committed Capacity. FPC

will also calculate the capacity factor during FPC's On-Peak Period ("On-Peak Capacity Factor") during the same twelve (12) month rolling average period, based on the COUNTY's Committed Capacity. For purposes of the calculation of the capacity factor percentage based on FPC's On-Peak Periods, FPC agrees that during the term of this Revised Agreement, its On-Peak Periods shall not in the aggregate be less than 3,900 hours nor exceed 4,000 hours per calendar year.

6.1.2 If both the Total Capacity Factor and the On-Peak Capacity Factor calculated pursuant to subsection 6.1.1 hereof are seventy percent (70%) or greater, FPC agrees to pay the COUNTY a capacity payment that is the product of (i) the COUNTY's Committed Capacity in terms of kilowatts and (ii) the applicable rate for the period in question attached hereto as Column 1 of Appendix A; provided however, that the rate specified in Column 3 of Appendix A shall be applicable to the period specified in the Declaration issued in accordance with subsection 5.1.5 hereof and provided further, that the capacity payment shall be multiplied by the FPSC approved risk factor if a risk factor other than 1.0 is approved by the FPSC prior to the commencement of capacity payments under this Revised Agreement.

6.1.3 If the COUNTY does not maintain a minimum of a seventy percent (70%) Total Capacity Factor, FPC shall nevertheless make a capacity payment to the COUNTY if a seventy percent (70%) or greater On-Peak Capacity Factor is maintained during FPC's On-Peak Period. Such capacity payment shall be the product of (i) the COUNTY's Committed Capacity in terms of kilowatts and (ii) the applicable rate for the period in question pursuant to Column 2 of Appendix A; provided however, that the capacity payment shall be multiplied by the FPSC approved risk factor if the 1.0 risk factor referenced in subsection 6.1.2 hereof is not approved by the FPSC prior to the commencement of capacity payments.

6.1.4 If the COUNTY maintains an On-Peak Capacity Factor that is sixty percent (60%) or greater without regard to the Total Capacity Factor, FPC shall make a capacity payment to the COUNTY that is the product of (i) the COUNTY's Committed Capacity in terms of kilowatts and (ii) the applicable rate for the period in question pursuant to Column 3 of Appendix A; provided however, that the capacity payment shall be multiplied by the FPSC approved risk factor if the 1.0 risk factor referenced in subsection 6.1.2 hereof is not approved by the FPSC prior to the commencement of capacity payments.

6.1.5 FPC shall make no capacity payment to the COUNTY if the On-Peak Capacity Factor falls below sixty percent (60%).

6.1.6 Should the COUNTY elect to amend its Committed Capacity for the five year period from January 1, 2015 through December 31, 2019 pursuant to subsection 5.1.3, FPC and the COUNTY will negotiate a capacity payment schedule on the basis of FPC's avoided capacity costs which will not exceed the capacity payment rates listed in Appendix A, as applicable, for such five year period nor will it be less than the capacity payment rates listed for the year 2014, as applicable, in Appendix A.

Should the COUNTY elect to amend its Committed Capacity for the five year period from January 1, 2020 through December 31, 2024 pursuant to subsection 5.1.3, FPC and the COUNTY will negotiate a capacity payment schedule on the basis of FPC's avoided capacity costs which will not exceed the capacity payment rates listed in Appendix A, as applicable, for such five year period nor will it be less than the capacity payment schedule for the year 2019, as applicable, in Appendix A; provided however, that if the COUNTY elected to amend its Committed Capacity for the period from January 1, 2015 through December 31, 2019, the minimum capacity payment rate will be the previously

negotiated capacity payment schedule on the basis of FPC's avoided capacity costs applicable to the year 2019.

Nothing in this subsection, 6.1.6, shall change the basis for calculating energy payments.

6.1.7 In calculating the capacity factors pursuant to subsection 6.1.1, the parties agree to exclude hours and Net Electric Energy delivered by the COUNTY during the periods in which: (i) FPC does not or cannot perform its obligations to receive all the Net Electric Energy which the COUNTY can deliver; (ii) the COUNTY has declared a force majeure; and (iii) billing demand is excluded pursuant to FPC's Standby Tariff as approved by the FPSC.

For those hours which are included in the capacity factor calculation, the capacity factor shall be equal to the Net Electric Energy delivered during those hours divided by the sum of the Committed Capacities and Special Committed Capacitie(s), if any, applicable to such hours.

Nothing in this subsection, 6.1.7, shall relieve FPC of its obligation to pay for all energy delivered by the COUNTY.

6.1.8 On and after January 1, 1995, the COUNTY, upon written notice to FPC, may increase its Committed Capacity; provided however, that the new Committed Capacity shall not make the Facility ineligible for Qualifying Facility status pursuant to the rules and regulations of the FPSC or the Federal Energy Regulatory Commission. If the COUNTY so elects, capacity payments for such incremental increase will be paid in accordance with Rate Schedule COG-2 as it is available at the time of such commitment. If Rate Schedule COG-2 is not available, FPC will make capacity and energy payments to the COUNTY applicable to such incremental increase in an amount equal to FPC's avoided capacity and energy costs, and subject to the FPSC approved risk

factor, at the time of the COUNTY's written notice. This incremental capacity increase will be added to the Committed Capacity to produce a new Committed Capacity.

6.1.9 In calculating the capacity payment due to the COUNTY for its most recent month of performance, the capacity payment for which the COUNTY has otherwise qualified pursuant to subsections 6.1.1 through 6.1.8 or subsection 5.1.5 of this Revised Agreement, shall be adjusted, if during such month there occurred; (i) a force majeure for a portion of the month as determined pursuant to Section 18.0; (ii) a default for a portion of the month; or (iii) an adjustment to the Committed Capacity or Nomination as provided herein. For either or both clauses (i) and (ii), a ratio shall be calculated the numerator of which shall be the hours in the month less those applicable hours during force majeure and default, if any, and the denominator of which shall be the hours in the month. Such ratio shall be multiplied by the applicable rate(s) in Appendix A. For a month during which there is an adjustment (or adjustments) in the Committed Capacity or Nomination, the capacity payment shall be prorated against the fractions of the month at each Committed Capacity or Nomination.

## 6.2 Energy

6.2.1 For Net Electric Energy generated at the Facility and delivered by the COUNTY to FPC at the Point of Delivery each month, FPC will pay the COUNTY an amount computed as follows:

6.2.1.1 Prior to January 1, 1995, the COUNTY will receive Net Electric Energy payments based on the May 13, 1980 Agreement as amended.

6.2.1.2 For Net Electric Energy delivered on and after January 1, 1995, FPC agrees to pay the COUNTY in accordance with the rates resulting from the

procedures contained in Rate Schedule COG-2 attached hereto as Appendix C. Such procedures shall not be subject to amendments pursuant to Section 22.0.

6.2.2 Energy associated with the increased capacity commitment of subsection 6.1.8 shall be deemed to be delivered to FPC in the same proportion that the increased capacity commitment is to new Committed Capacity and payment for such proportion of energy will be in accordance with Rate Schedule COG-2 as it is available at the time of such incremental increase in Committed Capacity; provided however, that for incremental increases in Committed Capacity that brings the new Committed Capacity to less than or equal to the January 1, 1995, Committed Capacity, the total of capacity plus energy payment shall not exceed the price per kwh that otherwise would have been computed under this Revised Agreement. If Rate Schedule COG-2 is not available, FPC will make capacity and energy payments to the COUNTY applicable to such increase in an amount equal to FPC's avoided capacity and energy cost, and subject to the FPSC approved risk factor, at the time of the COUNTY's written notice. In no case will the total payment for energy plus capacity exceed the total payment per kwh due for energy plus capacity for the prior Committed Capacity.

6.3 The parties recognize that in 1988 the State enacted comprehensive solid waste recycling legislation but that the FPSC has not as of the date of FPC petition to the FPSC for an order approving this Revised Agreement, promulgated regulations covering the capacity rates for resource recovery facilities. Neither the execution of this Revised Agreement prior to the effective date of this legislation nor the terms of this Revised Agreement shall impair any rights of the COUNTY to receive any payments for capacity or electric energy to which it may become entitled under this legislation. If the COUNTY becomes entitled to a different capacity or energy payment under

this legislation and any FPSC regulations thereunder, the COUNTY may elect to have such payments prospectively substituted for the capacity or electric energy payments, or both, in this Revised Agreement by giving notice to FPC and taking such other action as may be required by law to entitle it to such payments. The parties agree to negotiate in good faith to modify any terms of this Revised Agreement necessary to accommodate such substitution. Any such modification shall be subject to FPSC approval for full cost recovery to FPC.

6.4 The purchase and sale of electricity pursuant to this Revised Agreement shall be construed as a net billing arrangement.

#### 7.0 MEASUREMENT

7.1 All Net Electric Energy delivered and made available to or received from FPC shall be capable of being measured hourly and compensated for losses to the Point of Delivery. All measurements shall be made and adjusted in accordance with the FPSC's applicable rules and regulations as the same may be amended from time to time. The metering package to measure and record energy delivered in both directions shall be provided by FPC and shall be calibrated as part of the interconnection operation and maintenance expense as provided in Rate Schedule COG-2. Either party may require additional calibrations at the expense of the requesting party. In the event an error in calibration of two percent (2%) or more is found, the error shall be assumed to have developed linearly with time since the last calibration, and such error shall result in a corresponding adjustment to Net Electric Energy payments, and if such an energy adjustment would have otherwise qualified the COUNTY for (a) different capacity payment(s) due to revised calculations of capacity factors, such adjustment(s) shall be credited or debited against future capacity payment(s), in either or both cases, to be paid by FPC to the COUNTY in the second succeeding billing

timeframe; provided however, that interest on any additional payment by FPC or refund by the COUNTY as a consequence shall not accrue.

7.2 The COUNTY may, at its expense, audit FPC's records relative to FPC's hourly receipt of Net Electric Energy generated by the Facility and FPC's methodology for computing the hourly avoided cost of energy paid for Net Electric Energy received under the terms of this Revised Agreement. Such audits will be performed in such a manner as to not violate FPC's agreements covering proprietary software used in preparing such records and computing such avoided costs.

#### 8.0 PAYMENT PROCEDURE

Commencing at the end of the first calendar month after the date of the execution of this Revised Agreement, payments shall be made monthly to the COUNTY in accord with the following procedure:

8.1 Payment for Net Electric Energy shall be based on the delivery of electric energy as measured in the manner specified under Section 7.0 and in accordance with subsection 6.2 et seq. of this Revised Agreement. Capacity payments shall be calculated pursuant to subsection 6.1 et seq.

8.2 FPC shall submit to the COUNTY, as promptly as possible, but within thirty (30) days following the first of each month, a tabulation showing electrical energy deliveries prior to January 1, 1995, together with the appropriate prices and cost compilations for the entire prior month as determined under subsections 6.2.1.1. Actual payment shall be mailed with the submittal. Any necessary adjustments will be made in the following month's submittal.

8.3 For payments made for energy and capacity delivered after 24:00 December 31, 1994, the capacity payment for a given month shall be added to the

electric energy payment for such month in accordance with subsection 6.2.1.2 et seq. and tendered by FPC, with cost tabulations showing the basis for payment, to the COUNTY as a single payment. FPC agrees to make such payments to the COUNTY as promptly as possible, normally by the twentieth (20th) business day following the date the meter is read.

Monthly payments which have not been paid in full for more than forty-five (45) days following the end of the delivery month shall accrue interest at the thirty (30) day highest grade commercial paper rate in effect on the first business day of the month in which the invoice is dated, but not to exceed two percent (2%) per month from date of invoice or exceed applicable State usury limitations. Such interest shall not be added to any unpaid amount due when the amount of the delivery is disputed, except that interest shall be paid on the amount finally determined to be due and payable.

## 9.0 DEFAULT AND TERMINATION

### 9.1 Mandatory Default.

The COUNTY shall be in default under this Revised Agreement if the COUNTY voluntarily (i) declares bankruptcy or (ii) ceases all electric power generation at the Facility for twelve (12) consecutive months.

### 9.2 Optional Default.

FPC may declare the COUNTY to be in default under this Revised Agreement: (i) if the COUNTY, after January 1, 1995, fails to receive a capacity payment per Column 1 of Appendix A for twenty-four (24) consecutive months, or (ii) because of the COUNTY's refusal or inability to deliver its Committed Capacity after January 1, 1995. For purposes of subsection, 9.2 (ii), FPC shall give notice of intent to declare default to the COUNTY sixty (60) days prior to the declaration of any optional default.

### 9.3 Default Remedy.

If the COUNTY shall be in default under subsections 9.1 or 9.2 hereof, FPC shall have no capacity payment obligation during such period nor shall any capacity payment obligation accrue during such period. The COUNTY may give notice that the default is remedied and resume Committed Capacity deliveries within twelve (12) months after the COUNTY is declared to be in default under this Revised Agreement. Thereafter, FPC shall be obligated to make capacity payments to the COUNTY in accordance with this Revised Agreement. Beginning with such month, the capacity factor will be calculated on the assumption that such month is the first of twelve (12) months to which such capacity factor performance criteria will be imposed as contemplated in Rate Schedule COG-2, attached hereto as Schedule C, which shall not be subject to amendment pursuant to Section 22.0.

If the COUNTY's default is not remedied within such twelve (12) month period, but thereafter is remedied as provided herein, FPC, at its option, may resume capacity payments in accordance with Section 6.0 et seq.

### 9.4 Revised Agreement Survival after Default.

Except as provided in subsection 9.3 and Section 18.0 with respect to FPC's obligation to make capacity payments, default shall not relieve either party from performing their other obligations under this Revised Agreement. Prices paid by FPC, if any, for electric capacity after default is remedied shall not be greater than those prices applicable pursuant to the terms of this Revised Agreement. Prices paid by FPC for energy during and/or after default is remedied shall be the same as those prices applicable pursuant to the terms of this Revised Agreement prior to default.

## **10.0 GOVERNING LAW**

The interpretation and performance of this Revised Agreement and each of its provisions shall be governed by the laws of the State.

## **11.0 COMMUNICATIONS**

Any notice, request, consent, payment or other communication required or authorized by this Revised Agreement to be given by one party to the other party shall be in writing. It shall either be personally delivered or mailed, postage prepaid, to the representative of said other party designated in this Section 11.0. Any such notice, request, consent, payment, or other communication so delivered or mailed shall be deemed to be given when so delivered or mailed. Routine communication during Facility operations shall be exempt from this Section, 11.0.

Notices and other communications by FPC to COUNTY shall be addressed to:

Bob Van Deman, P.E.  
Director, Pinellas County Department  
of Solid Waste Management  
2800 - 110th Avenue North  
St. Petersburg, FL 33716  
Telephone: (813) 892-7565

Notices and other communications by the COUNTY to FPC shall be addressed to:

Thomas I. Wetherington  
Florida Power Corporation  
P.O. Box 14042  
MAC-H2J  
St. Petersburg, FL 33733  
Telephone: (813) 866-5660

Either party may change its representative by written notice to the other party.

The parties' representatives designated above shall have full authority to act for their respective principals in all technical matters relating to

the performance of this Revised Agreement. However, they shall not have the authority to amend, modify, or waive any provision of this Revised Agreement.

#### 12.0 LOSS OF SOURCE

12.1 The parties agree that FPC will petition the FPSC to modify the Standby Tariff to include the intent of subsection 12.2 hereof.

12.2 When an outage of the Facility is caused by loss of source from FPC's transmission lines or substation, no billing demand will be charged on demand used during Facility restart. Such exclusion of billing demand will be limited to a period of six (6) hours from the restoration of the interconnection. Electric energy used by the Facility during any such restart shall be charged by FPC at the standby rate as filed with and approved by the FPSC. This Section will become effective when the FPSC approves this modification to the Standby Tariff.

#### 13.0 DISCLAIMER

In executing this Revised Agreement, FPC does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the COUNTY or any assignee of this Revised Agreement, nor does it create any third party beneficiary rights.

#### 14.0 SUCCESSORS AND ASSIGNS

This Revised Agreement shall inure to the benefit of and be binding upon the COUNTY and FPC and their respective successors by operation of law, but shall not be assignable by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

## 15.0 SEVERABILITY

If any part of this Revised Agreement, for any reason, be declared invalid, or unenforceable by a public authority or court of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of the Revised Agreement, which remainder shall remain in force and effect as if this Revised Agreement had been executed without the invalid or unenforceable portion.

## 16.0 COMPLETE REVISED AGREEMENT AND AMENDMENTS

The terms and provisions contained in this Revised Agreement constitute the entire agreement between the COUNTY and FPC and shall supersede all previous communications, representations, or agreements, either verbal or written, between the COUNTY and FPC with respect to the Facility and this Revised Agreement. No amendment or modification to this Revised Agreement shall be binding unless it shall be set forth in writing and duly executed with the same formality as this Revised Agreement by both parties hereto.

## 17.0 RESPONSIBILITY AND INDEMNIFICATION

Both parties hereto expressly agree to indemnify and save harmless and defend the other against all claims, suits, actions, demands, costs, or expense for loss, damage, or injury to persons or property, in any manner directly or indirectly connected with or growing out of the generation, transmission, or use of electrical capacity and energy on its own side of the point of transfer of ownership, unless such claim or demand shall arise out of or result from the negligence or willful misconduct of the other party, its agents, servants, or employees, provided however, that neither party hereby

assumes responsibility for damage or injury to employees of the other party when in the course and scope of said employee's employment, said other party's employees are on first party's premises.

#### 18.0 FORCE MAJEURE

If either party shall be unable, by reason of force majeure, to carry out its obligations under this Revised Agreement, either wholly or in part, the party so failing shall give written notice and full particulars to the other party as soon as possible after the occurrence of any such cause; which, however, shall be remedied with all possible dispatch. No capacity payment obligation shall accrue during any period of force majeure. The other obligations of the parties shall also be suspended; except that to the extent that the parties are able to partially perform their other obligations under this Revised Agreement during the period of force majeure, they will perform such obligations. If the COUNTY notifies FPC of a force majeure event, FPC's right to declare optional default under subsection 9.2 hereof shall be suspended during the period of force majeure.

FPC shall resume its obligation to make capacity payments if the COUNTY, within twenty-four (24) months after declaration of any force majeure event, gives written notice and: (i) reduces its Committed Capacity pursuant to subsection 5.1.4 and begins delivery of such reduced amount; or (ii) resumes its original Committed Capacity delivery; provided however, that if such notice and Committed Capacity delivery under clauses (i) or (ii) hereof do not occur within such twenty-four (24) month period, the COUNTY will be in default of this Revised Agreement and any obligations of FPC to resume capacity payments will be at FPC's discretion; and the COUNTY will not be entitled to the one-year default remedy provided in subsection 9.3 hereof.

19.0 EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.

Except as specifically provided in subsection 5.3 of this Revised Agreement, neither party shall be liable to the other for incidental, consequential or indirect damages, including, but not limited to, the costs of replacement power, whether arising in contract, tort, or otherwise.

20.0 PERMITS

The COUNTY hereby agrees to seek to obtain any and all governmental permits, certificates, or similar authority the COUNTY is required to obtain as a prerequisite to engaging in the activities provided for in this Revised Agreement. FPC hereby agrees, at the COUNTY's expense, to seek to obtain any and all governmental permits, certifications or similar authority FPC is required to obtain as a prerequisite to engaging in the activities provided for in this Revised Agreement or related to FPC's interconnection with the Facility.

21.0 RENEGOTIATIONS DUE TO REGULATORY CHANGES

Anything in this Revised Agreement to the contrary notwithstanding, should FPC at any time during the term of this Revised Agreement fail to obtain or be denied the FPSC's authorization, or the authorization of any other regulatory body which now has or in the future may have jurisdiction over FPC's rates and charges, to recover from its customers all the payments required to be made to the COUNTY under the terms of this Revised Agreement or any subsequent amendment to this Revised Agreement, the parties agree that, at

to recovery them from its customers is not obtained or is denied. It is the intent of the parties that FPC's payment obligations under this Revised Agreement or any amendment thereto are conditioned upon FPC's being fully reimbursed for such payments through the Fuel and Purchased Power Costs Recovery Clause or other authorized rates or charges. Any amounts initially recovered by FPC from its ratepayers but for which recovery is subsequently disallowed by the FPSC and charged back to FPC may be off-set or credited against subsequent payments made by FPC for purchases from the COUNTY, or alternatively, shall be repaid by the COUNTY.

#### 22.0 INCORPORATION OF RATE SCHEDULE.

The parties agree that this Revised Agreement shall be subject to all the provisions contained in FPC's published Rate Schedule COG-2 as attached hereto as Appendix C and as may be amended from time to time, except that the prices for capacity shall be those on the attached Appendix A and the pricing methodology for energy shall be those in Rate Schedule COG-2 attached hereto as Appendix C as of the date of the execution of this Revised Agreement, unless specifically otherwise provided in this Revised Agreement. The Rate Schedule is incorporated herein by reference.

#### 23.0 SURVIVAL OF REVISED AGREEMENT.

This Revised Agreement, as may be amended from time to time, shall be binding and inure to the benefit of the parties' respective successors-in-interest and legal representatives.

IN WITNESS WHEREOF, the parties hereunto have caused these presents to be executed the day and year first above written.

ATTEST:

FLORIDA POWER CORPORATION

By: *Kathleen P. Fortright*  
Assistant Secretary

By: *A. J. Keesler, Jr.*  
A. J. Keesler, Jr.  
President

PINELLAS COUNTY, FLORIDA  
By and Through its Board of  
County Commissioners.

ATTEST: KARLEEN F. De BLAKER  
Clerk

By: *Brian J. ...*  
Chairman

By: *C. R. Short*  
Chief Deputy Clerk

Approved as to form:

*[Signature]*  
County Attorney



APPENDIX A

TOTAL  $\geq 70\%$   $< 70\%$   $\geq 60\%$   
 ON-PEAK  $\geq 70\%$   $\geq 70\%$   $\geq 60\%$

MONTHLY CAPACITY PAYMENTS -\$/KW

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YEAR	COLUMN 1	COLUMN 2	COLUMN 3
1995	20.06	8.41	6.74
1996	21.32	8.95	7.17
1997	22.67	9.53	7.63
1998	24.11	10.13	8.12
1999	25.63	10.78	8.64
2000	27.26	11.47	9.19
2001	28.98	12.21	9.78
2002	30.82	12.98	10.40
2003	32.77	13.80	11.06
2004	34.85	14.68	11.76
2005	37.06	15.61	12.50
2006	39.41	16.60	13.29
2007	41.91	17.65	14.14
2008	44.57	18.77	15.04
2009	47.40	19.96	15.99
2010	50.41	21.23	17.01
2011	53.61	22.58	18.09
2012	57.01	24.01	19.23
2013	60.64	25.54	20.46
2014	64.49	27.16	21.76
2015	68.59	28.89	23.14
2016	72.95	30.73	24.61
2017	77.60	32.68	26.18
2018	82.53	34.76	27.84
2019	87.79	36.97	29.62
2020	93.38	39.33	31.50
2021	99.32	41.83	33.51
2022	105.65	44.49	35.64
2023	112.38	47.33	37.91
2024	119.54	50.35	40.33

The years stated in this Appendix are those that would otherwise apply should there be no force majeure event(s); and each price listed in Column 1 through Column 3 shall be applicable commencing with the first hour of each stated year. If there is (are) any force majeure event(s), the application of subsequent prices shall be deferred by the sum of previous force majeure hours.

**APPENDIX B  
On-Peak Periods**

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Month	Hours	Total Hours
January	7-12 & 17-22	10
February	7-12 & 17-22	10
March	7-12 & 17-22	10
April	11-22	11
May	11-22	11
June	11-23	12
July	11-23	12
August	11-23	12
September	11-23	12
October	11-22	11
November	11-22	11
December	7-12 & 17-22	10

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**Note: No on-peak hours occur on Thanksgiving and Easter holidays.**