

Memorandum



Date: June 14, 2005

INLUC
Agenda Item No. 2 (P)

To: Honorable Chairman Joe A. Martinez and Members,
Board of County Commissioners

From: 
George M. Burgess
County Manager

Subject: Resolution approving the execution of an agreement between Miami-Dade County and the Florida Power & Light Company to purchase mitigation credits from the Everglades Mitigation Bank

RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution authorizing the execution of an agreement between Miami-Dade County through its Water and Sewer Department and Florida Power and Light Company (FPL) for the purchase of mitigation credits from FPL's Everglades Mitigation Bank (EMB) by payment from the County to FPL in the amount of \$850,500.

BACKGROUND

The Miami-Dade Water and Sewer Department is in the process of obtaining permits from the Department of Environmental Resources Management, South Florida Water Management District, Florida Department of Environmental Protection and the US Army Corps of Engineers (Corps) for a 40-acre expansion of its Northwest Wellfield residual lagoon located in County property west of the Florida Turnpike and north of N.W. 74 Street. The existing lagoon will soon be reaching its capacity to receive the residual products of the lime softening process from the Hialeah and Preston Water Treatment Plants. The expansion will provide a much needed residual disposal capacity.

All agencies are requiring environmental mitigation as a result of the expansion project. The Corps permit requires the purchase of mitigation credits in the amount of \$850,500 from the EMB. The amount is calculated using an ecological model based on a habit value for the impacted wetlands. According to the Corps no other mitigation banks are available in Miami-Dade County. The EMB is a wetland restoration project, owned and operated by FPL that is returning more than 13,500 acres of wetlands to their natural condition. The project, located in southern Miami-Dade County adjacent to FPL's Turkey Point Plant, has received federal, state and local regulatory approvals and provides an expedited and efficient mechanism for providing mitigation. Several other government agencies and utilities, including: the Miami Dade School Board, the Miami Dade Expressway Authority, the Florida Department of Transportation, Florida Power & Light Company, the City of Florida City and the City of Hialeah Gardens, have also used this mitigation bank. The attached agreement allows the County to make use of this mitigation bank.

Funding for the fees will be derived from existing Revenue Bond Funds and Plant Expansion Funds.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez **DATE:** July 7, 2005
and Members, Board of County Commissioners

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE COUNTY
MANAGER TO EXECUTE AN AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE
FLORIDA POWER AND LIGHT COMPANY TO
PURCHASE MITIGATION CREDITS FROM FPL'S
EVERGLADES MITIGATION BANK**

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of an agreement between the Florida Power and Light Company and the Miami-Dade Water and Sewer Department for the purchase of mitigation credits from the Everglades Mitigation Bank;

in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Dr. Barbara Carey-Shuler
Carlos A. Gimenez
Barbara J. Jordan
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2005. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency: 

By: _____
Deputy Clerk

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FLORIDA POWER & LIGHT COMPANY
EVERGLADES MITIGATION BANK
MITIGATION CREDIT PURCHASE AND SALE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made on this ____ day of _____, 2005, by and between Florida Power & Light Company, a Florida corporation (“**FPL**”) and Miami-Dade Water & Sewer Department, an agency of Miami-Dade County (“**Purchaser**”).

WITNESSETH

WHEREAS, FPL has obtained authorization to construct and maintain the Everglades Mitigation Bank, located in Miami-Dade County, Florida (“**Mitigation Bank**”); and

WHEREAS, FPL has obtained Mitigation Bank Permit Nos. 132622449 and 132637449 from the Florida Department of Environmental Protection (“**FDEP**”), pursuant to Chapter 62-342, Florida Administrative Code (“**FDEP Permits**”); Permit No. 199500155 (IP-GS) from the U.S. Army Corps of Engineers (“**ACOE**”) pursuant to the Clean Water Act Section 404, 33 U.S.C. §1344 (“**ACOE Permit**”); and Permit No. CC96-303/FW95-035 from the Miami-Dade County Department of Environmental Resources Management (“**DERM Permit**”) to construct, operate, manage, and maintain the Mitigation Bank, and to transfer credits from the Mitigation Bank (“**Mitigation Credits**”) to satisfy the mitigation requirements of third parties; and

WHEREAS, for the benefit of the Purchaser, Purchaser is in the process of obtaining or has obtained Permit Number 13-02230-P from the South Florida Water Management District (“**SFWMD**”), Permit Number 2003-7765 from the ACOE, and Permit Number FW03-055 from the Miami-Dade County Department of Environment Resources Management (“**DERM**”) the SFWMD, ACOE, and DERM shall collectively be referred to as “**Agency**” and the permits from Agency shall collectively be referred to as “**Purchaser’s Permits**”. Purchaser is in the process of obtaining the Purchaser’s Permits to impact wetlands under that Agency’s regulatory jurisdiction, which requires the Purchaser to provide mitigation.

WHEREAS, the ACOE has required that Purchaser use Mitigation Credits from the Mitigation Bank to fulfill the mitigation requirements of Purchaser’s Permits;

NOW, THEREFORE, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purchase Price.**

FPL hereby agrees to allocate to Purchaser approximately 18.9 Freshwater Herbaceous Mitigation Credits in the Mitigation Bank to partially or totally fulfill the mitigation requirements of the Purchaser’s Permits in consideration of a total sum of Eight Hundred Fifty Thousand Five Hundred Dollars (\$850,500.00) (“**Purchase Price**”), payable in U.S. dollars in cash or immediately available funds, subject to the terms herein. A nonrefundable deposit in the

amount of Eighty-five Thousand Fifty Dollars (\$85,050.00) shall be paid by the Purchaser upon the execution of this Agreement, to be held in escrow by FPL pending closing in accordance with Paragraph 5 herein.

2. FPL's Obligations under this Agreement.

a. FPL shall cooperate with the Purchaser and with Agency and other applicable regulatory agencies to facilitate and expedite the transfer of the Mitigation Credits to the Purchaser to fulfill the mitigation requirements of Purchaser's Permits.

b. Upon payment of the full Purchase Price due hereunder, FPL shall assume the responsibility for fulfilling the mitigation requirements of Purchaser's Permits. This responsibility will be met by FPL's compliance with the terms and conditions of its FDEP Mitigation Bank Permits, ACOE Permit, and DERM Permit. Except as provided in Paragraph 3 below, FPL bears no responsibility or obligation relating to Purchaser's efforts to secure all necessary construction permits.

3. Credit Purchase Conditioned on Agency Approval of Use of Mitigation Credits as Mitigation.

Purchase of the Mitigation Credits under this Agreement is conditioned on the Purchaser obtaining the approval of the Agency for the use of the Mitigation Credits to fulfill the mitigation requirements of Purchaser's Permits. If the Purchaser does not provide to FPL, within one hundred and eighty (180) days of the date of this Agreement, the Purchaser's Permits as required for FPL to withdraw Mitigation Credits from the Mitigation Bank as provided in Paragraph 4 below, Purchaser shall be in default of this Agreement and FPL may avail itself of the remedies specified in Section 10 herein, unless Purchaser's inability to provide the Purchaser's Permit is due to any Agency's denial of any of the Purchaser's Permit, in which case, Purchaser shall be entitled to receive a refund of any deposit paid. A "denial" shall be deemed to occur in the event the Agency's governing body with the authority to approve or deny the Purchaser's Permit has taken final agency action.

4. Withdrawal of Credits.

Upon Purchaser providing to FPL the Purchaser's Permits, FPL shall submit a Mitigation Credit withdrawal request to the FDEP and/or ACOE as appropriate pursuant to the Mitigation Credit withdrawal process established in the FDEP Mitigation Bank Permits and ACOE Mitigation Banking Instrument.

After obtaining approval of the Mitigation Credit withdrawal as provided in the FDEP Mitigation Bank Permits and/or ACOE Mitigation Banking Instrument, FPL, at closing, shall provide to the Purchaser a Certificate to evidence the transfer of the Mitigation Credits from FPL to the Purchaser ("**Mitigation Credit Certificate**").

5. **Transfer of Credits to Purchaser.**

The closing of the sale of the Mitigation Bank Credits to the Purchaser and Purchaser's Payment of the Purchase Price to FPL will take place within fifteen (15) days of FPL's receipt of approval of the Mitigation Credit withdrawal, unless extended by other provisions of this Agreement. The closing shall be held at the offices of Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408, or at a mutually agreed upon location. At the closing of the sale, Purchaser shall deliver to FPL the one payment due, and FPL shall deliver to Purchaser a Mitigation Credit Certificate.

6. **Successors and Assigns.**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

7. **Applicable Law.**

This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

8. **Notices.**

All notices required or remitted by the Agreement shall be in writing and shall be sent by Certified or Registered Mail, by national overnight courier service, or hand-delivered to the address below. Notices shall be deemed delivered and given when mailed, if mailed; or upon receipt, if delivered by hand or by courier.

Notices to FPL shall be sent to:

Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
Attn: Stephen Collins, CRE/JB
Telephone: (561) 691-2244
Telecopier: (561) 691-2190

Notices to Purchaser shall be sent to:

John W. Chorlog, Jr., PE
Deputy Director, Operations
Miami-Dade Water & Sewer Department
3071 SW 38th Avenue
Miami, FL 33146
Telephone: (786) 552-8102
Telecopier: (786) 552-8637

9. No Third Party Beneficiaries.

This Agreement does not confer any benefits to persons or entities whom are not either (a) parties to this Agreement, or (b) successors and permitted assigns of the parties to this Agreement.

10. Remedies.

Purchaser's failure to pay any deposits required, the full Purchase Price due under this Agreement and provide the Purchaser's Permit within the time periods required herein shall constitute the Purchaser's default of this Agreement. In the event of Purchaser's default hereunder, FPL shall be entitled to terminate the Agreement and retain the Purchaser's deposits and all Mitigation Credits reserved or withdrawn on Purchaser's behalf. If FPL defaults hereunder, Purchaser's sole remedy shall be to terminate this Agreement and obtain a refund of the Purchaser's deposits and any Purchase Price paid. The parties agree and acknowledge that FDEP, the ACOE, and DERM have exclusive jurisdiction to enforce FPL's compliance with the terms and conditions of their respective permits authorizing the Mitigation Bank, and Purchaser agrees it shall not be entitled to sue FPL, and hereby covenants not to sue FPL, to enforce compliance with the terms and conditions of the FDEP Mitigation Bank Permits, ACOE Permit, or DERM Permit.

11. Disputes.

In connection with any legal proceeding between FPL and Purchaser brought to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs, expenses and reasonable attorneys' and paralegals' fees incurred by said prevailing party in such proceedings, including all costs, expenses, and reasonable attorneys' and paralegals' fees incurred on appeal, in administrative proceedings or in any arbitration.

12. Brokers.

Purchaser and FPL represent to each other that neither they nor anyone on their behalf has dealt with or consulted with any broker, agent, or other person in connection with this matter, and that no commission or finder's fee will be payable as a result of the execution of this Agreement or the consummation of the transaction contemplated hereby. In the event a broker, agent, or other person claims to have dealt with one of the parties contrary to the foregoing representation, the party with whom the broker, agent, or other person claims to have dealt or consulted agrees to indemnify and hold the other party harmless against any such claims or demands, including reasonable attorneys' fees and costs incurred by such other party.

13. Construction.

This Agreement shall not be construed more strictly against one party than the other by virtue of the fact that it was prepared by counsel for one of the parties.

14. Interpretation.

In the interpretation of this Agreement, a single number includes the plural, the words "person" and "party" include corporations, partnerships, firms or associations whenever the context so requires. Captions of paragraphs and sections are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify or amplify or limit the scope or content of the interpretation, construction or meaning of the provisions of this Agreement.

15. Confidentiality.

The terms of this Agreement are confidential and may not be disclosed to third parties except as provided by law or with the written permission of FPL and Purchaser.

16. Entire Agreement.

The terms and conditions of this Agreement constitute the sole and entire agreement between the parties with respect to the subject matter hereof. This Agreement may be amended, modified or altered only by the written agreement of the parties. This Agreement supersedes any and all previous oral or written agreements and understandings relating to the subject matter hereof and contains the entire agreement of the parties relating to the subject matter thereof.

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

FPL:
Florida Power & Light Company,
A Florida corporation

By: Nancy A. Swalwell
Nancy A. Swalwell
Director, Corporate Real Estate
Assistant Secretary

Date: May 11, 2005

Purchaser:

ATTEST:

Miami-Dade County

By: _____
Clerk

By: _____ (Seal)

Date: _____