

Memorandum



Date: May 3, 2022

Agenda Item No. 8(O)(1)

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor *Daniella Levine Cava*

Subject: Mitigation Credit Purchase and Sale Agreement between Miami-Dade County and Florida Power & Light for North District WWTP Projects’ Wetland Impact

Executive Summary

Item seeks Board approval of a Mitigation Credit Purchase and Sale Agreement for 6.37 Saltwater Mitigation Credits from Florida Power & Light (FPL) Everglades Mitigation Bank to comply with the Florida Department of Environmental Protection’s (FDEP’s) requirements for securing permit numbers 13-0372409-004-EI and 13-0372409-005-SFI. The mitigation credits are essential to offset the clearing and filling of 17 acres of wetlands on a county parcel adjacent to the North District Wastewater Treatment Plant (NDWWTP). This parcel will be used to build new wastewater treatment infrastructure necessary to comply with Florida Ocean Outfall Legislation (OOL).

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Mitigation Credit Purchase and Sale Agreement (Agreement) for 6.37 Saltwater Mitigation Credits from the FPL Everglades Mitigation Bank. To comply with the OOL, Section 403.086(10), Florida Statutes, the Miami-Dade Water and Sewer Department (WASD) is upgrading the existing NDWWTP. This Agreement is necessary to secure permit numbers 13-0372409-004-EI and 13-0372409-005-SFI from the FDEP and to offset the clearing and filling of 17 acres of wetlands on a county parcel adjacent to the NDWWTP. This parcel will be used to build new wastewater treatment infrastructure required to comply with the OOL, Section 403.086(10), Florida Statutes. The Everglades Mitigation Bank Mitigation Credit Purchase and Sale Agreement is attached as Exhibit 1.

Scope

The OOL requires all southeast Florida utilities using ocean outfalls for disposal of treated wastewater to eliminate the normal use of ocean outfalls by the end of 2025. To comply with the OOL, the WASD is upgrading the existing NDWWTP. Because there is not enough space at the existing NDWWTP parcel to allow for the construction of the new treatment units needed as part of the upgrade, the new units will be located on a parcel adjacent to and south of the Plant. WASD evaluated the feasibility of constructing the facilities on other parcels and concluded that this location was the best option for the County. The parcel is in the City of North Miami and fronts Northeast 151st Street, near the intersection of Biscayne Boulevard; Folio No. 06-2216-000-0062. The site is in District 4, which is represented by Commissioner Sally A. Heyman.

Delegation of Authority

The resolution authorizes the County Mayor or County Mayor’s designee to execute the Everglades Mitigation Bank Mitigation Credit Purchase and Sale Agreement between FPL and the County, which allows the County to purchase the 6.37 saltwater mitigation credits needed to offset the

impact to the wetlands from the project being done at the NDWWTP in order to comply with the OOL in exchange for Seven Hundred Sixty-Four Thousand Four Hundred Dollars (\$764,400.00) in order to obtain Permit Numbers 13-0372409-004-EI and 13-0372409-005-SFI from the FDEP. Pursuant to the terms of the Agreement, both parties agree to waive trial by jury with respect to any litigation arising out this Agreement.

Fiscal Impact/Funding Source

The total cost of purchasing the required mitigation credit is \$764,400.00 for 6.37 saltwater mitigation credits from the Everglades Mitigation Bank. There is no other cost associated with maintaining this credit in the future. WASD has allocated funding for the mitigation credits in the FY 21/27 Multi Year Capital Plan under Wastewater – Outfall Legislation, Project #: 962670. Funding sources will be: WIFIA Loan, Wastewater Connection Charges and Wastewater Special Construction.

Track Record/Monitor

Marisela Aranguiz, P.E., Deputy Director for the Miami-Dade Water and Sewer Department, will be responsible for monitoring this Agreement.

Background

WASD operates three regional wastewater treatment facilities, serving more than 2.5 million customers. The OOL requires all southeast Florida utilities utilizing ocean outfalls for disposal of treated wastewater to:

- Eliminate the normal use of ocean outfalls by the end of 2025
- Reduce nutrient discharges by implementing advanced wastewater treatment (AWT) by 2018 or equivalent
- Reuse 60 percent (60%) of the baseline wastewater flow by 2025 if technically, environmentally, and economically feasible

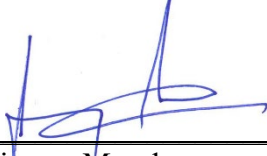
To comply with the OOL, WASD is upgrading the existing NDWWTP. As part of the upgrade, filters and chlorine contact tanks are proposed to allow for High Level Disinfection (HLD). A new injection well pump station, five injection wells, and two monitoring wells are proposed to be used for effluent disposal. An additional electrical building is also included in the upgrades.

FDEP has determined that 6.37 equivalent saltwater mitigation bank credits are required to obtain the necessary state and federal wetland permits (Environmental Resource Permit 13-0372409-004-EI; Section 404 Permit 13-372409-005-SFI). FPL operates a saltwater mitigation bank in the southern part of the County and sells these types of credits, which are permitted by the FDEP, U.S. Army Corps of Engineers (USACE), and Miami-Dade Regulatory and Economic Resources (RER). There are no other saltwater mitigation banks available for the project.

Execution of this Agreement is necessary to obtain the FDEP dredge and fill permits for the OOL projects at NDWWTP.

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The parcel where the new facilities will be located is 27 acres. Seventeen (17) acres of wetlands are proposed to be impacted to allow for construction of these structures, to provide appropriate clearances, and to provide for future operation and maintenance of the processes. As part of the development, 2.2 acres of wetlands will be preserved.



Jimmy Morales
Chief Operations Officer

EXHIBIT 1

EVERGLADES MITIGATION BANK MITIGATION CREDIT PURCHASE AND SALE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made on this ____ day of _____, 2022, by and between Florida Power & Light Company, a Florida corporation (“**FPL**”) and Miami-Dade County (“**Purchaser**”) for the North District Wastewater Treatment Plant Ocean Outfall Legislation Upgrades.

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, 132637449 and 0193232-001 from the Florida Department of Environmental Protection (“**FDEP**”) pursuant to Chapter 62-342, Florida Administrative Code (collectively, the “**FDEP Permits**”); Permit Nos. 199500155 (IP-GS) and SAJ-1995-155 (IP-TKW) from the U.S. Army Corps of Engineers (“**ACOE**”) pursuant to the Clean Water Act Section 404, 33 U.S.C. § 1344 (collectively, the “**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 the following permits (collectively, the “**Purchaser’s Permit**”) from the following agencies to impact wetlands under that agency’s regulatory jurisdiction which requires the Purchaser to provide mitigation: (a) Permit Number 13-0372409-004-EI and 13-0372409-005-SFI from the FDEP; (b) Permit Number CLI-2020-0395 from Miami-Dade County Regulatory and Economic Resources (“**RER**”) (FDEP and RER referred to hereinafter as the “**Agency**”); and

WHEREAS, the Purchaser is in the process of obtaining Agency approval or the Agency has approved the use of Mitigation Credits from the Mitigation Bank to fulfill the mitigation requirements of Purchaser’s Permit.

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 up to a maximum of 6.37 Saltwater Mitigation Credits in the Mitigation Bank to partially or totally fulfill the mitigation requirements of the Purchaser’s Permit in consideration of the total sum of Seven Hundred Sixty-Four Thousand Four Hundred Dollars (\$764,400.00) (“**Purchase Price**”), payable in U.S. dollars in cash or immediately available funds, subject to the terms herein. The Purchase Price shall be payable to FPL as follows:

- a) Seven Hundred Sixty-Four Thousand Four Hundred Dollars (\$764,400.00) simultaneously upon Purchaser's execution of this Agreement.

The Purchase Price is nonrefundable, except as provided in this Paragraph and in Paragraph 3 and 12 hereof. If the Agency determines that Purchaser needs less than 6.37 Mitigation Credits, Purchaser shall notify FPL of the number of Mitigation Credits that Purchaser requires, and the parties shall reduce the Purchase Price based on a price of One Hundred Twenty Thousand Dollars (\$120,000.00) per Mitigation Credit. In such event, Purchaser shall be entitled to receive a corresponding refund of the Purchase Price paid and FPL shall retain those Mitigation Credits for which Purchaser received the refund. If the Agency differs in its determination of the number of Mitigation Credits to be purchased by Purchaser, then the Purchase Price shall be governed by the individual Agency determination reflecting the highest Mitigation Credit required.

2. **FPL's Obligations under this Agreement.**

- a. FPL shall cooperate with the Purchaser and with the 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 Permit.

- b. Upon FPL's receipt of Purchase Price and Purchaser providing to FPL the Purchaser's Permit, FPL shall assume the responsibility for fulfilling the mitigation requirements of Purchaser's Permit. This responsibility will be met by FPL's compliance with the terms and conditions of its FDEP Permits and ACOE 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 each Agency for the use of the Mitigation Credits to fulfill the mitigation requirements of Purchaser's Permit. Purchaser shall provide FPL with a copy of the Purchaser's Permit within ten (10) days of Purchaser's Permit being issued by each respective Agency to enable FPL to submit the credit withdrawal request as required in Paragraph 4. If Purchaser's inability to provide FPL with a copy of Purchaser's Permit is due to Agency denial of Purchaser's Permit, then Purchaser shall be entitled to receive a refund of the Purchase Price paid and FPL shall retain all Mitigation Credits reserved on Purchaser's behalf. 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 after Purchaser has made a good faith effort to obtain the Purchaser's Permit.

4. **Withdrawal of Credits.**

Upon FPL's receipt of the full Purchase Price within the time period required and Purchaser providing to FPL the Purchaser's Permit, 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 Mitigation Bank Permits within ten (10) business days of receipt of Purchaser's Permits.

After obtaining approval of the Mitigation Credit withdrawal as provided in the FDEP Permits and/or ACOE Mitigation Banking Instrument, FPL shall provide to the Purchaser copies of the Agency approvals to evidence the transfer of the Mitigation Credits from FPL to the Purchaser.

5. **Acceptance of Purchase Agreement**

Purchaser shall execute and return this Agreement to FPL within thirty (30) days of receipt. If FPL fails to receive Purchaser's executed counterpart to this Agreement within such thirty (30) day time period, then FPL, in its sole discretion, may withdraw its offer to enter into a Purchase Agreement with Purchaser.

6. **Fees**

Any returned checks shall be subject to a \$50.00 service charge.

7. **Successors and Assigns.**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This Agreement may be assigned by Purchaser to another party, with the prior written consent of FPL, which consent shall not be unreasonably withheld or delayed.

8. **Applicable Law.**

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

9. **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
Environmental Services JES/JB
700 Universe Blvd.
Juno Beach, FL 33408
Attn: Joseph Sicbaldi

Notices to Purchaser shall be sent to: Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, FL 33146
Attn: Roy Coley, MBA Director

10. **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.

11. **Remedies.**

Purchaser's failure to make the payments due under this Agreement within the time periods required herein shall constitute the Purchaser's default of this Agreement. In the event of Purchaser's default hereunder and Purchaser's failure to cure such default within five (5) business days, FPL shall be entitled to terminate the Agreement and retain the Purchaser's deposits, any Purchase Price due and/or paid and all Mitigation Credits reserved or withdrawn on Purchaser's behalf as its sole remedy. 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 and the ACOE 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 Permits and ACOE Permit.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **Waiver of Jury Trial.**

Purchaser and FPL agree with each other that each knowingly, voluntarily and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement, or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written) or action of the other party.

18. **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. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement.

19. **Recitals.** The above-mentioned recitals are true and correct and incorporated herein by reference.

[Signatures appear on following page.]

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: 
Michael W. Sole, Vice President, Environmental Services

Date: 3/11/2022

Purchaser:

Miami-Dade County

By: _____
Jimmy Morales, Chief Operations Officer
Office of Mayor Daniella Levine Cava

Date: _____



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 3, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(1)

Please note any items checked.

- "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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(O)(1)
5-3-22

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE MITIGATION CREDIT PURCHASE AND SALE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT FOR PURCHASE OF MITIGATION CREDITS IN THE AMOUNT OF \$764,400.00 FROM FLORIDA POWER & LIGHT IN ORDER TO OFFSET WETLAND IMPACT FOR AN OCEAN OUTFALL PROJECT AT THE NORTH DISTRICT WASTEWATER TREATMENT PLANT

WHEREAS, Florida promulgated the Ocean Outfall Legislation ("OOL"), Section 403.086(10), Florida Statutes, that requires all southeast Florida utilities using ocean outfalls for disposal of treated wastewater to eliminate the normal use of ocean outfalls by the end of 2025, among other requirements; and

WHEREAS, the Miami-Dade Water and Sewer Department ("WASD") must construct new wastewater treatment and management facilities to comply with the OOL at its Central and North District Wastewater Treatment Plants ("WWTPs"); and

WHEREAS, WASD's OOL Compliance Plan for the North District WWTP requires construction of filters, chlorine contact tanks, an injection well pump station, five injection wells, two monitoring wells, an electrical building, and a stormwater management pond with other associated site improvements; and

WHEREAS, the new facilities at the North District WWTP will utilize an adjacent, previously undeveloped, 27 acre parcel, which will result in an impact to 17 acres of halophytic wetlands; and

WHEREAS, in order to obtain the necessary Environmental Resource Permit 13-0372409-004-EI and Section 404 Clean Water Act Permit 13-0372409-005-SFI, the Florida Department of Environmental Protection (“FDEP”) determined that the impact to the 17 acres of halophytic wetlands will require 6.37 saltwater mitigation bank credits to offset impacts; and

WHEREAS, Florida Power and Light (“FPL”) owns the Everglades Mitigation Bank, which sells mitigation credits that can be purchased to offset impacts caused to wetlands by construction projects; and

WHEREAS, FPL is willing to enter into the Everglades Mitigation Bank Mitigation Credit Purchase and Sale Agreement (the “Agreement”) with the County through which the County will be able to purchase the required 6.37 saltwater mitigation bank credits to offset the impacts to wetlands caused by this project at the North District WWTP that are needed to obtain permits from FDEP,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board incorporates and adopts the foregoing recitals as if fully set forth herein.

Section 2. The Board authorizes the County Mayor or County Mayor’s designee to execute the Agreement between FPL and the County, attached to the accompanying memorandum, which will allow the County to purchase the 6.37 saltwater mitigation credits needed to offset the impact to the wetlands from the project being done at the North District WWTP in order to comply with the OOL in exchange for \$764,400.00 in order to obtain Permit Numbers 13-0372409-004-EI and 13-0372409-005-SFI from the FDEP.

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:

- | | |
|---------------------------------------|------------------------|
| Jose "Pepe" Diaz, Chairman | |
| Oliver G. Gilbert, III, Vice-Chairman | |
| Sen. René García | Keon Hardemon |
| Sally A. Heyman | Danielle Cohen Higgins |
| Eileen Higgins | Joe A. Martinez |
| Kionne L. McGhee | Jean Monestime |
| Raquel A. Regalado | Rebeca Sosa |
| Sen. Javier D. Souto | |

The Chairperson thereupon declared this resolution duly passed and adopted this 3rd day of May, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis