

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Mitigation Credit Purchase Agreement for State Road 434 Six Laning
from the Orange County Line to State Road 436

DEPARTMENT: Public Works **DIVISION:** Engineering

AUTHORIZED BY: [Signature] **CONTACT:** Co-Co Wu, P.E. **EXT.** 5707
W. Gary Johnson, P.E., Director Jerry McCollum, P.E., County Engineer

Agenda Date 10/11/05 **Regular** **Consent** **Work Session** **Briefing**
Public Hearing – 1:30 **Public Hearing – 7:00**

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the Mitigation Credit Purchase Agreement for the State Road 434 widening project from the Orange County Line to State Road 436.

District 3 – Commissioner Dick Van Der Weide

(Jerry McCollum, P.E., County Engineer)

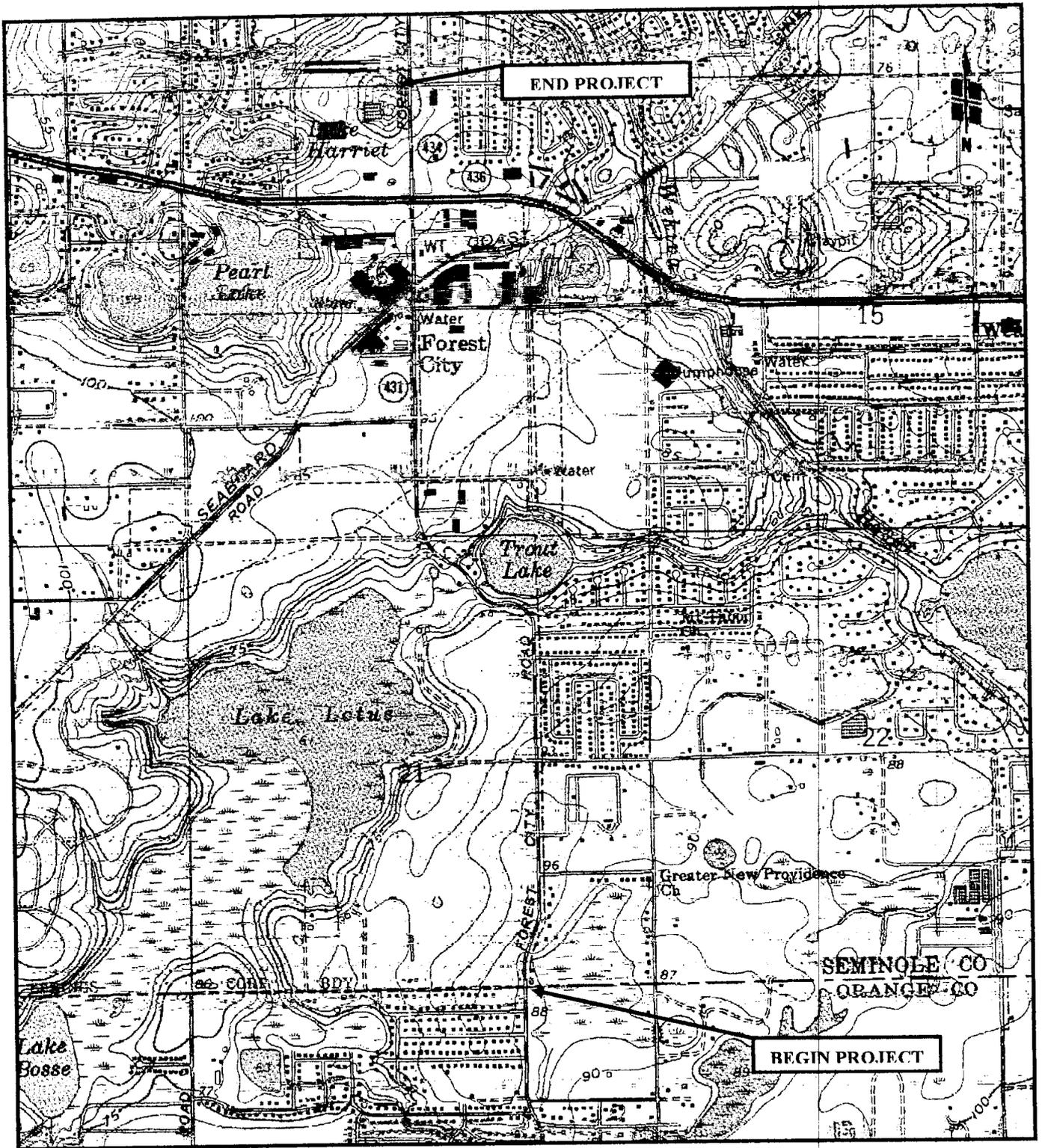
BACKGROUND:

The State Road 434 widening project involves adding a third through lane toward the median in each direction from the Orange County Line to State Road 436. The two existing bridges over the Little Wekiva River on State Road 434 will also be widened toward the median to form a single bridge structure. The center widening of the bridges results in 0.092 acre of shading impact to the wetland in the river and 0.114 acre impact to the Riparian Habitat Protection Zone (RHPZ) adjoining the wetland along the river. The St. Johns River Water Management District is requiring a total of 0.206 acre mitigation of the wetland and RHPZ impacts.

Reviewed by:
Co Atty: [Signature]
DFS: _____
Other: _____
DCM: [Signature]
CM: [Signature]
File No CPWE05

Since on-site mitigation is not feasible, an alternate mitigation plan is to obtain 0.206 mitigation credit through Wekiva River Mitigation Bank, which was approved by the Florida Department of Environmental Protection (Permit No. 0234803-001) on June 1, 2005. This mitigation credit will satisfy the mitigation requirement for the wetland and RHPZ impacts by this project. The execution of this agreement by the Board of County Commissioners will authorize purchase of the mitigation credits at a cost of \$21,630.00 and will allow staff to begin the final procedures for obtaining an environmental permit required for this project.

Attachments: Project Location Map
Agreement



Project Location Map

SR 434 (FOREST CITY ROAD) FROM THE ORANGE COUNT LINE TO SR 436
 FPID 240231-2-52-01
 SEMINOLE COUNTY
 SECTIONS 16 & 21. TOWNSHIP 21 S. RANGE 29 E

MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (hereinafter "Agreement") is made this 12th day of September, by and between **Wekiva River Mitigation Bank, LLC.**, (hereinafter "Seller"), whose mailing address is P.O. Box 540285 Orlando, Florida 32854 and **Seminole County Board of County Commissioners**, (hereinafter "Buyer") whose mailing address is 1101 East First Street Sanford, Florida 32771 (hereinafter collectively the "Parties").

WITNESSETH:

WHEREAS, the Seller maintains an ecological restoration project located in Lake County, Florida (hereinafter referred to as the "Mitigation Property");

WHEREAS, Seller owns a mitigation bank with freshwater mitigation credits (hereinafter "Credits") available for transfer and sale under Florida Department of Environmental Protection (hereinafter "FDEP") Permit No. 0234803-001 and U.S. Army Corps of Engineers (hereinafter "USACOE") Permit No. TBD;

WHEREAS, as part of the environmental permitting process involving the St. Johns River Water Management District (hereinafter "SJRWMD") it is anticipated that Buyer's permit from the aforementioned respective governmental agency will be conditioned upon purchase of Credits as compensatory mitigation;

WHEREAS, Seller agrees to sell and Buyer agrees to purchase Credits available from the Mitigation Property on the terms and conditions below to be used to offset wetland impacts associated with the proposed development of project known as **SR 434 from Orange County Line to SR 436** (hereinafter "Project") SJRWMD Application No. 4-117-94187-1;

WHEREAS, the current assumption is that the purchase of 0.206 freshwater wetland credits will be required by SJRWMD as a permit condition; and

WHEREAS, Seller requires as part of this Agreement for Buyer to remit this Agreement and funds to Seller via Mitigation Marketing in order to allow Seller to submit a minor permit modification (hereinafter "Minor Permit Modification") for a debit of 0.206 Credits from the seller's FDEP ledger so that the aforesaid respective Credits can be transferred to the Buyer.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

1. **Terms of Purchase.** Seller agrees to sell and Buyer agrees to buy mitigation credits required by SJRWMD as a condition of permit No. 4-117-94187-1. The purchase price (hereinafter "Purchase Price") of the anticipated requirement of 0.206 Credits is twenty-one thousand six hundred and thirty dollars U.S. (\$21,630.00) payable in check, wired federal funds or cashier's check. In the event the SJWMD requires additional credits then the purchase price will be based upon the rate of \$105,000.00 per credit. All payments shall be paid to the account of **Wekiva River Mitigation Bank** and submitted via Mitigation Marketing P.O. Box 540285 Orlando, Florida 32854.

2. **Covenants of Seller.** Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's permits from the FDEP for the Mitigation Property. Responsibility for compliance with the Seller's permits as to mitigation on the Mitigation Property shall solely be the responsibility of Seller. The provisions of this paragraph 3 shall survive the closing hereunder.

3. **Conditions of Transfer of Credit.** Upon receipt of a copy of buyers permit, Seller shall provide to Buyer within ten (10) days thereafter documentation as required by the FDEP to effectuate the transfer of Credits as per the conditions of the Buyer's permit (i.e. copy of signed minor permit modification request) for the Project. Buyer is hereby notified that the transfer of Credits generally takes approximately thirty (30) to sixty (60) days to complete.

4. **Debit of Credits and Transfer.** Upon notification of the debit of the Credits by the FDEP, the same shall be transferred to Buyer together with document(s) evidencing such transfer of Credits. The Parties hereby agree that evidence of the Credits being transferred shall be the receipt by Seller from the FDEP of the Minor Permit Modification to its Environmental Resources Permit (hereinafter "ERP") and/or ledger evidencing the debit of credits. Once transfer has been completed, it is acknowledged that seller's payment is fully earned and the county shall make payment in full within the (10) days thereafter.

5. **Breach of Seller.** If, for any reason, the Credits have not been conveyed to Buyer due to breach by Seller of the Agreement, then Seller shall have twenty (20) days to remedy said breach.

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 by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

Notices to Seller shall be sent to: Wekiva River Mitigation Bank, LLC
P.O. Box 540285
Orlando, Florida 32854

With a copy to: Mitigation Marketing, LLC
Attn: Sheri Lewin
P.O. Box 540285 *USPS*
Orlando, Florida 32854
1005 Edgewater Drive *Physical*
Orlando, Florida 32804
407-481-0677 phone
407-648-3866 fax

Notices to Buyer shall be sent to: Seminole County Board of County Commissioners
Attn: Co-Co Wu, P.E.
1101 East First Street
Sanford, Florida 32771
407-665-5707 phone
407-665-5786 fax

With a copy to: HNTB
Attn: Karen Van den Avont
300 Primera Boulevard Suite 200
Lake Mary, Florida 32746
407-805-0355 phone
407-805-0227 fax

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid. All Parties agree that any notice may be faxed to any of the above Parties or their attorneys. Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

9. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Buyer and Seller.
10. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
11. **No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither party shall hold itself out as an agent, partner or joint venturer with the other.
12. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.

13. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.
14. **Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.
15. **Effective Date.** This Agreement is effective on the date on which the last of the parties signs this Agreement. If more than 30 days have transpired between the first and last signature, this agreement is null and void.
16. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Agreement, which are initialed by both parties, shall control over the printed provisions in conflict therewith.
17. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument.
18. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
19. **Agreement Not Recordable.** This Agreement shall be recorded in the records of the clerk of the Board of County Commissioners, however, shall not be recorded in the land records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place said party in default hereof.

SIGNATURE PAGES FOR MITIGATION CREDIT PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written and in accordance with the terms of this Agreement.

Signed, sealed and delivered in the presence of:

SELLER:
WEKIVA RIVER MITIGATION BANK, LLC



Witness Signature

By: 

Dennis K. Benbow, Managing Member

VICTORIA KERESZLEY

Witness Name

Executed on 9/12, 2005

BUYER:
Seminole County Board of County Commissioners

~~_____
Witness Signature~~

~~By: _____~~

~~_____
Witness Name~~

~~Executed on _____, 2005~~

MITIGATION CREDIT PURCHASE AGREEMENT

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

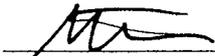
MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
Legal sufficiency

As authorized for execution by
The Board of County
Commissioners at their regular
meeting of _____, 2005.



County Attorney