


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Robert Johnson
Manager of Procurement 


DATE: April 26, 2016

SUBJECT: SR 408 Widening, Good Homes Road to Hiawassee Road
Mitigation Credit Purchase and Sale Agreement
Project 408-127, Contract No. 001205

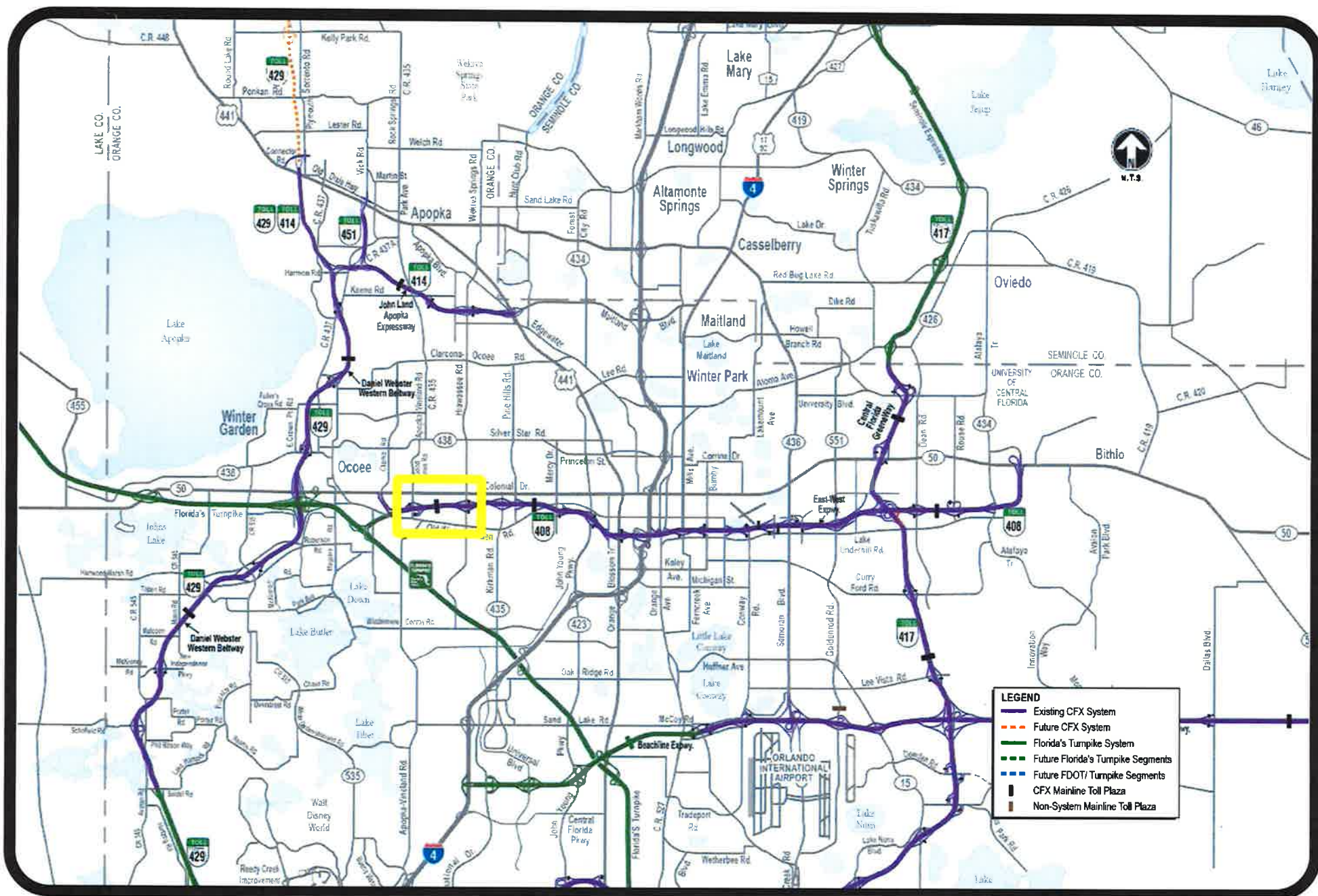
Board authorization is requested for CFX to enter into a Mitigation Credit Purchase and Sale Agreement with the Blackwater Creek Mitigation Bank to offset wetland impacts (as determined by the St. Johns River Water Management District) associated with the widening of SR 408 between Good Homes Road and Hiawassee Road, Project 408-127.

This Agreement contemplates the purchase of 0.5 Freshwater Herbaceous Mitigation Credits by CFX for a total cost payable to Blackwater Creek Mitigation Bank in the amount of Fifty-five Thousand dollars and no cents (\$55,000.00).

Reviewed by:


Glenn Pressimone, PE
Director of Engineering





Project Location Map for
S.R. 408 Widening, Good Home Road to Hiawassee Road (408-127)

BLACKWATER CREEK MITIGATION BANK
MITIGATION CREDIT PURCHASE AND SALE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AND SALE AGREEMENT ("Agreement") is made on this _____ day of _____ 2016, by and between Blackwater Creek Wetlands Mitigation, LLC ("BWC") and Central Florida Expressway Authority ("Purchaser").

WITNESSETH

WHEREAS, BWC has obtained Mitigation Bank Permit No. 4-069-92314-1 from the St. Johns River Water Management District ("SJRWMD") and Permit No. SAJ-2004-11053 from the U.S. Army Corps of Engineers ("ACOE") to construct, operate, manage, and maintain the Blackwater Creek Mitigation Bank ("Mitigation Bank"), and to transfer credits from the Mitigation Bank ("Mitigation Credits") to satisfy the mitigation requirements of third parties; and

WHEREAS, Purchaser is in the process of obtaining (for the project known as **SR 408 Widening-Good Homes Road to Hiawassee**), Permit No. **20358-30** from the St. Johns River Water Management District ("SJRWMD") to impact wetlands under the agency's regulatory jurisdiction, and which permits will require the Purchaser to provide mitigation. The Permit Application Number shall be referred to as "Purchaser's Permit" and the SJRWMD shall be referred to as "Agency".

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.

BWC hereby agrees to allocate and sell to Purchaser 0.5 Freshwater Herbaceous Mitigation Credits from the Mitigation Bank to fulfill specific mitigation requirements of the Purchaser's Permit in consideration of Purchaser's agreement to pay a total sum of Fifty-five Thousand dollars and no cents (\$55,000.00), at a prorated purchase price of One Hundred Ten Thousand dollars and no cents (\$110,000.00) per credit based upon final permitting agency requirements, ("Purchase Price"), payable in U.S. dollars in cash or immediately available funds, subject to the terms herein.

2. BWC's Obligations under this Agreement.

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

b. Upon payment of the full Purchase Price due hereunder, BWC shall assume legal responsibility for fulfilling the pertinent mitigation requirements of Purchaser's Permits consistent with the terms and conditions of its SJRWMD and ACOE Mitigation Bank Permit. Except as provided in Paragraph 3 below, BWC bears no responsibility or obligation relating to Purchaser's efforts to secure its 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 Permit.

4. Withdrawal of Credits.

a. Upon Purchaser providing to BWC copies of the Purchaser's Permit, BWC shall submit a request to the SJRWMD to withdraw and transfer mitigation credits as appropriate pursuant to the Mitigation Credit withdrawal process established in the BWC's SJRWMD Mitigation Bank Permit.

b. After obtaining approval of the Mitigation Credit withdrawal and transfer consistent with the provisions the SJRWMD Mitigation Bank Permit and USACE Mitigation Bank Permit, BWC, at closing, shall provide to the Purchaser a Certificate to evidence the transfer of the Mitigation Credits from BWC 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 BWC shall take place prior of BWC's receipt of approval of the Mitigation Credit withdrawal, unless extended by other provisions of this Agreement. All payments shall be paid to the account of Blackwater Creek Wetlands Mitigation, LLC. Payment shall be forwarded to Blackwater Creek Wetlands Mitigation, LLC, 10097 Cleary Boulevard Suite #303, Plantation, FL 33324. At the closing of the sale, Purchaser shall deliver to BWC the payment due, and BWC 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.

Notice to BWC sent to: Blackwater Creek Wetlands Mitigation, LLC
Attn: Stephen M. Collins, Authorized Agent
10097 Cleary Boulevard Suite #303
Plantation, FL 33324

With copy to : Environmental Resource Marketing
Attn : Sheri F. Lewin
614 East Highway 50, Suite 323
Clermont, FL 34711

Notice to Purchaser sent to: Central Florida Expressway Authority
Attn: Joseph Berenis
4974 ORL Tower Rd.
Orlando, Florida 32807

With copy to : Atkins
Attn: Michael Ray
482 South Keller Road
Orlando, Florida 32810

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 the full Purchase Price due under this Agreement and provide the Purchaser's Permits shall constitute the Purchaser's default of this Agreement. In the event of Purchaser's default hereunder, BWC shall be entitled to terminate the Agreement and retain all Mitigation Credits reserved or withdrawn on *Purchaser's* behalf. If BWC defaults hereunder, Purchaser's sole remedy shall be to terminate this Agreement and obtain any Purchase Price paid. The parties agree and

acknowledge that the SJRWMD and ACOE have exclusive jurisdiction to enforce BWC'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 BWC, and hereby covenants not to sue BWC, to enforce compliance with the terms and conditions of the SJRWMD and ACOE Permits.

11. Disputes.

In connection with any legal proceeding between BWC 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 BWC 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 BWC and Purchaser.

16. Waiver of Jury Trial.

The parties knowingly, voluntarily and intentionally waive the right 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) relating to this Agreement.

17. 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.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the dates written below their signatures. Signed, sealed and delivered:

WITNESS:

PURCHASER:

By: CENTRAL FLORIDA EXPRESSWAY
AUTHORITY

Name: Joseph Berenis, Chief of
Infrastructure

Print Name: _____

Date: _____

Print Name: _____

WITNESS:

BLACKWATER CREEK WETLANDS
MITIGATION, LLC

Print Name: _____

Stephen M. Collins, Authorized Agent

Date: _____