

EVERGLADES MITIGATION BANK
MITIGATION CREDIT PURCHASE AND SALE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made on this _____ day of _____, 2015, by and between Florida Power & Light Company, a Florida corporation (“**FPL**”) and the City of Fort Lauderdale (“**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, 132637449 and 0193232-001 from the Florida Department of Environmental Protection (“**FDEP**”), pursuant to Chapter 62-342, Florida Administrative Code (“**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 (“**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 “**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 SAJ-2002-05283 (LP-KDS) from the U. S. Army Corps of Engineers (ACOE), (b) Permit Number 06-0324476-002 from the Florida Department of Environmental Protection (FDEP), and (c) Permit Number DF14-1029 from Broward County Environmental Protection and Growth Management Department (BCEPGMD). ACOE, FDEP and BCEPGMD shall be referred to as “**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 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 up to a maximum of 0.01 Saltwater Mitigation Credits in the Mitigation Bank to partially or totally fulfill the mitigation requirements of the Purchaser’s Permit in consideration of a total sum of Two Thousand Dollars

(\$2,000.00) (“**Purchase Price**”), payable in U.S. dollars in cash or immediately available funds, subject to the terms herein. The Purchase Price shall be payable as follows:

- a) Payment of Two Thousand Dollars (\$2,000.00) due upon the execution of the Agreement.

The Purchase Price is nonrefundable, except as provided in this Paragraph and in Paragraph 3 and 12 hereof. If the Agencies differ in their determination of the number of Mitigation Credits to be purchased, 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 Agencies 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 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 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 sixty (60) days of receiving it from the 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 or withdrawn on Purchase’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.

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 will take place within thirty (30) days of FPL's receipt of approval of the Mitigation Credit withdrawal from the FDEP and/or ACOE ledger, whichever occurs first, unless extended by other provisions of this Agreement. The closing may be conducted by mail, 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, FPL shall deliver to Purchaser a Mitigation Credit Certificate reflecting the FDEP and/or ACOE approved Mitigation Credit withdrawal. If FPL has not received one agency's Mitigation Credit withdrawal approval at closing, FPL will provide to Purchaser an additional Mitigation Credit Certificate reflecting that agency's withdrawal approval within thirty (30) days after FPL receives the same.

6. **Acceptance of Purchase Agreement**

Purchaser shall execute and return this Agreement to FPL within thirty (30) days of receipt. If Purchaser fails to execute and return this Agreement to FPL within thirty (30) days, then FPL may withdraw its offer to enter into a Purchase Agreement with Purchaser.

7. **Fees**

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

8. **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.

9. **Applicable Law.**

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

10. **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., CRE/JB
Juno Beach, FL 33408
Attn: Joseph Sicbaldi

Notices to Purchaser shall be sent to: City of Fort Lauderdale
c/o Lee Feldman, City Manager
100 N. Andrews Ave, Suite 410
Fort Lauderdale, FL 33301

11. **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.

12. **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 5 business days, FPL shall be entitled to terminate the Agreement and retain the Purchaser's deposits, any Purchase Price 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, 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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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: _____
Dean J. Girard
Director, Real Estate

Date: _____

Purchaser: _____
City of Fort Lauderdale

By: _____
Lee Feldman
City Manager

Date: _____

CITY OF FORT LAUDERDALE

By _____
John P. "Jack" Seiler, Mayor

By _____
Lee R. Feldman, City Manager

ATTEST:

Jonda K. Joseph, City Clerk

Approved as to form:

Robert B. Dunckel, Assistant City Attorney