

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: March 13, 2007

☒ Consent

☐ Regular

☐ Workshop

☐ Public Hearing

Department:

Submitted By: Engineering and Public Works

Submitted For: Roadway Production Section

**I. EXECUTIVE BRIEF**

Project No. 2004513

**Motion and Title:** Staff recommends motion to approve: An Agreement with Tetra Tech EC, Inc. (TTEC) for the \$128,000 purchase of 1.60 freshwater herbaceous mitigation credits from the Loxahatchee Mitigation Bank required for the construction of Hypoluxo Road from west of Lyons Road to west of Hagen Ranch Road (Project).

**Summary:** Through this Agreement, the County will obtain the mitigation credits required to satisfy the County's mitigation obligation to the South Florida Water Management District and the U.S. Army Corps of Engineers for the Project.

**District:** 3 (MRE)

**Background and Justification:** The construction of Hypoluxo Road from west of Lyons Road to west of Hagen Ranch Road is included in the Five-Year Road Program. The design of this road includes the widening of the existing sections of Hypoluxo Road within the project limits to a four-lane divided section, and construction of a new four-lane section that includes a bridge over Florida's Turnpike and will result in environmental impacts. This Agreement memorializes the process for the purchase of said credits to satisfy the permit conditions for this project.

**Attachments:**

1. Location Map
2. Mitigation Credit Agreement

Recommended by:

  
Division Director

2/17/07  
Date

Approved by:

  
County Engineer

2/13/07  
Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$128,000	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$128,000	-0-	-0-	-0-	-0-

# ADDITIONAL FTE  
POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget? Yes X No     
Budget Acct No.: Fund 3504 Dept. 361 Unit 1091 Object 6509  
Program

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund - Zone 4  
Hypoluxo Rd/W of Lyons to W of Hagen Ranch

1.60 Mitigation Credits

\$128,000

C. Departmental Fiscal Review: R. D. Ward 2/7/07

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Jan Burt 2-14-07  
OFMB  
CN 2-14-07  
CN 2/13/07

Jim J. Jurek 2/27/07  
Contract Dev. and Control  
2/29/07

This Contract complies with our  
contract review requirements.

### B. Approved as to Form and Legal Sufficiency:

Morner R. Allen 2/28/07  
Assistant County Attorney

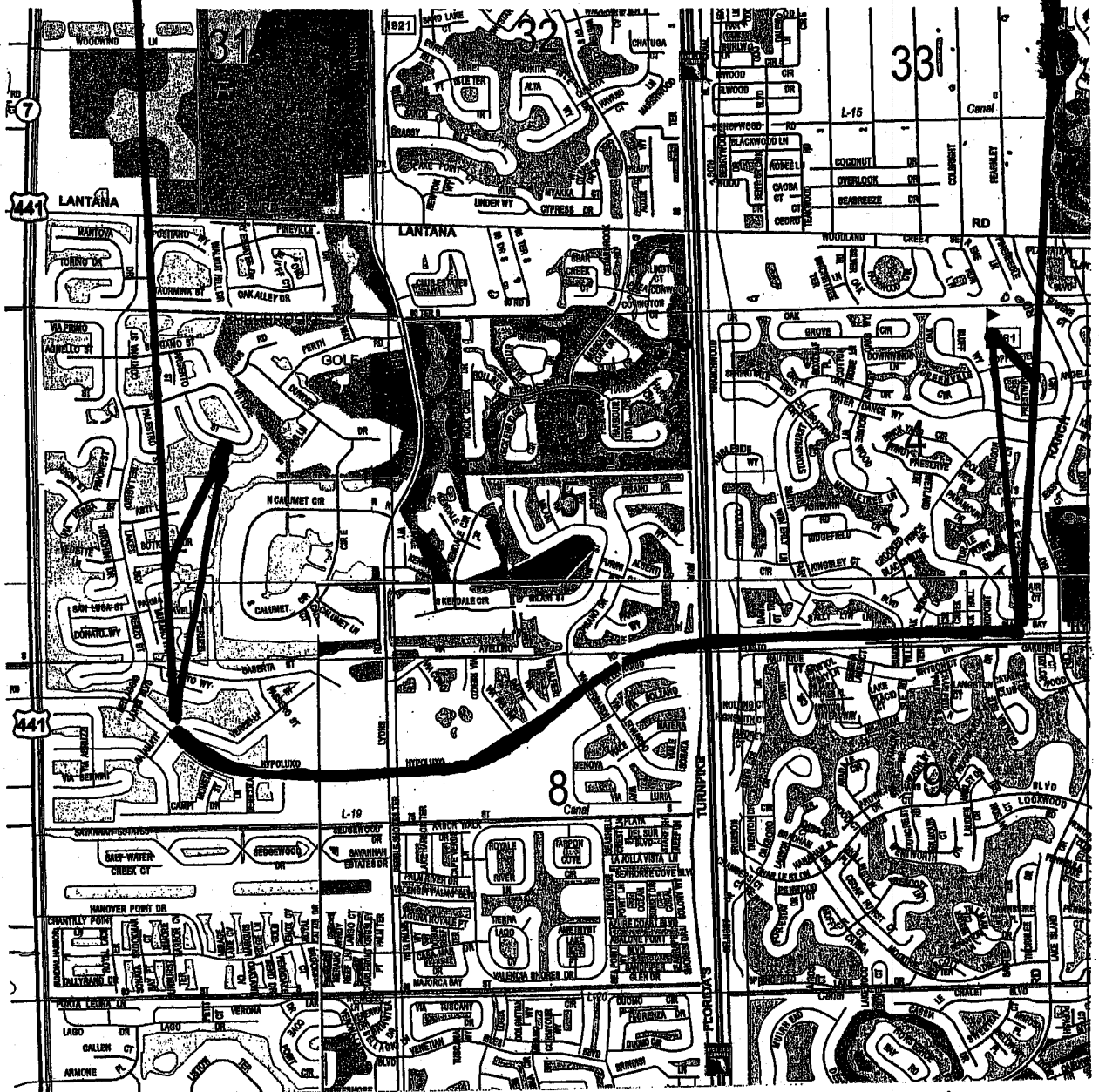
### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

# PROJECT LOCATION

**HYPOLUXO ROAD  
FROM WEST OF LYONS ROAD  
TO  
WEST OF HAGEN RANCH ROAD**



LOCATION SKETCH

**DRAFT: signed Agreements forthcoming**

**CONTRACT FOR SALE AND PURCHASE OF MITIGATION CREDITS**

**CONTRACT NO. 1147**

THIS AGREEMENT (hereinafter "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2007, between Tetra Tech EC, Inc., (hereinafter referred to as "Seller"), having an address of 759 S. Federal Highway, Suite 100, City of Stuart, County of Martin, State of Florida, 34994, and Palm Beach County, a political subdivision of the State of Florida, (hereinafter referred to as "Purchaser"), having an address of 2300 North Jog Road, West Palm Beach, FL 33411 (collectively hereinafter referred to as the "Parties").

**WITNESSETH:**

WHEREAS, Seller has obtained Environmental Resource Permit ("ERP") No. 014-0969-001 from the Florida Department of Environmental Protection ("FDEP"), pursuant to Chapter 62-342 of the Florida Administrative Code, and a Mitigation Banking Instrument ("MBI") and Department of the Army Permit ("DA Permit") No. 199707816 (IP-TA) from the U.S. Army Corps of Engineers ("ACOE") (collectively hereinafter referred to as "Seller's Permits"), to construct, operate, manage and maintain the Loxahatchee Mitigation Bank ("Bank") for a period of time before transferring it to the South Florida Water Management District ("SFWMD"); and,

WHEREAS, Seller and the SFWMD have entered into a contract whereby Seller has the obligation and rights to market and sell freshwater herbaceous and freshwater forested wetland mitigation credits from the Bank; and,

WHEREAS, Purchaser wishes to purchase and use 1.60 freshwater herbaceous credit ("Credits") from Seller to satisfy Purchaser's mitigation obligation to the SFWMD and the ACOE for the Purchaser's project known as Hypoluxo Road Extension from west of Lyons Road to west of Hagen Ranch Road Project located in Sections 07, 08, and 09, Township 45 South, Range 42 East, Palm Beach County, Florida and;

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. **DEFINITIONS**

"Credit Ledger" shall mean the two separate transaction records pursuant to Seller's Permits, regulated respectively by the FDEP and the ACOE, of credits that have been released by these agencies to the Bank for sale, and of credits that can be withdrawn from the Bank for transfer to a purchaser.

2. **AGREEMENT TO PURCHASE AND SELL**

Seller agrees to sell and deliver and Purchaser agrees to buy, receive, and pay for 1.60 freshwater herbaceous credits from the Bank. The purchase price for the Credits is \$128,000.00. Upon execution of this Agreement, 20 percent (\$25,600.00) of the purchase price is due and payable as an initial deposit to Seller. Seller and Purchaser agree to adjust the purchase price with no further liquidated damages, at the rate of \$80,000.00 per credit, for freshwater herbaceous credits, for any decrease in the maximum amount of credits required by Purchaser at the time of Purchaser's request to Seller for credit withdrawal and transfer. Any increase in credits required over 1.60 freshwater herbaceous credits is subject to availability of the additional credits from Seller. Should Purchaser require freshwater herbaceous credits, up to a total of two (2.0) freshwater herbaceous credits, within six (6) months of execution of this Agreement, the purchase price for freshwater herbaceous credits will be \$80,000.00 per credit to equal a total of two (2.0) freshwater herbaceous credits. Should Purchaser require in excess of a total of two (2.0) freshwater herbaceous credits, the additional credits are to be purchased at the credit price in effect at the time Purchaser requests additional credits from Seller. Purchaser shall notify Seller of the need for additional credits and Purchaser and Seller shall enter into an Amendment to this Agreement that shall require the remittance of an additional deposit providing for the additional purchase.

Payments, including deposits, shall be made by wire transfer or bank, certified or regular check of Purchaser payable to Seller, subject to collection. Purchaser agrees that all funds deposited may be used by Seller in Seller's sole discretion, for any business purpose, including but not limited to the offset of any and all costs associated with the reservation, transfer or production of Credits in accordance with this Agreement.

Upon execution of this Agreement, and receipt of the required initial deposit, Seller will reserve Credits for ledger withdrawal and transfer to Purchaser. On or before May 1, 2007, Purchaser will remit the balance of the purchase price (\$102,400.00) as an additional deposit. On or before June 1, 2007, Purchaser shall deliver a copy of Purchaser's Permits (as hereinafter defined) to Seller. This delivery shall be accompanied by a written request that Seller apply to the FDEP and/or the ACOE that the reserved Credits be withdrawn from Seller's respective Credit Ledgers and transferred to Purchaser. Upon receipt of said request, and provided that Purchaser has paid the aforesaid balance of the purchase price, Seller shall promptly request the credit withdrawal and transfer from the FDEP and/or the ACOE. Seller shall promptly notify Purchaser in writing upon confirmation that the credit withdrawal and transfer has been reflected in the respective Credit Ledgers. Seller shall provide to Purchaser a copy of the FDEP and ACOE letter confirming the credit withdrawals. Following these actions, Seller's entire obligation under this Agreement will have been met. Should the withdrawal and transfer of these Credits be denied by the FDEP and/or ACOE, Seller shall promptly notify Purchaser of such denial, and Purchaser, by providing Seller with a written request, may terminate this Agreement in its entirety. In the event of such termination, Seller's sole obligation and Purchaser's sole right shall be for the return and receipt, respectively, of Purchaser's deposit(s), without interest thereon. However, if Seller has already transferred credits from either FDEP or ACOE credit ledgers, then Purchaser shall have no right to terminate this Agreement and no deposits shall be returned.

Seller is aware that Purchaser will be utilizing said Credits specifically for the purposes described in DA Permit to be applied for and is expected to be issued by the ACOE, and ERP Application No. 060509-8 expected to be issued by the SFWMD (collectively hereinafter referred to as "Purchaser's Permits") for the Hypoluxo Road Extension from west of Lyons Road

to west of Hagen Ranch Road Project located in Palm Beach County, Florida. Should Purchaser's Permits be denied or disapproved by the SFWMD and the ACOE, Purchaser may terminate this Agreement in its entirety. In the event of such termination, Seller's sole obligation and Purchaser's sole right shall be for the return and receipt, respectively, of Purchaser's deposit(s), without interest thereon. In order to so terminate, Purchaser shall provide Seller with a written request for termination, together with a copy of the SFWMD and ACOE notice of permit denial or disapproval received by Purchaser.

If Purchaser has failed to meet its obligations under this Agreement, Seller shall provide written notice to Purchaser identifying such default, whereupon Purchaser shall have thirty (30) days within which to cure such default (or a reasonable period of time if such default cannot reasonably be cured within thirty (30) days). In the event Purchaser fails to cure such default within the applicable time period, Seller shall be entitled to retain the full amount of the initial deposit paid by Purchaser, together with interest on all deposits, as and for liquidated damages and as Seller's sole and exclusive remedy, and this Agreement shall be deemed terminated and of no further force and effect.

### **3. SELLER'S OBLIGATION**

Upon Seller's receipt of confirmation that the credit withdrawal and transfer has been approved, and is reflected in the respective Credit Ledgers, Seller shall assume the responsibility for fulfilling the mitigation requirements of Purchaser's Permits that is associated with the use of Credits from the Bank. This obligation will be met by Seller in compliance with the terms and conditions of Seller's Permits. Seller warrants that all Credits will be considered valid for use in connection with Purchaser's Permits regarding wetland impact mitigation.

If any regulatory change occurs that interferes with Seller fulfilling its obligations under this Agreement, Seller shall provide documentation of the regulatory change with a description of the impacts upon this Agreement. In this event, Purchaser's obligation shall be to review and respond to such notification within twenty (20) days of receipt and Purchaser shall have a right to request a full refund of Purchaser's deposit(s) without interest thereon. Such request shall not be unreasonably denied.

4. **CREDITS**

In the performance of their respective obligations, Seller will deliver and Purchaser will receive Credits that must be used to offset construction impacts authorized by Purchaser's Permits.

5. **USE OF CREDITS**

The use of these Credits is limited as specified in the Seller's ERP executed by the FDEP on February 18, 2000, and the Seller's MBI executed by the ACOE effective September 10, 2000, and as specified in Purchaser's Permits.

Purchaser covenants and warrants that it has or will obtain all necessary or required licenses, certificates, approvals or the like in order for Purchaser to legally and properly conduct and perform the obligations pursuant to this Agreement and in connection with the use of the Credits.

6. **LIABILITY**

Neither party assumes any liability or responsibility for the actions or activities of the other, or their respective employees, agents, representatives or the like in connection with this Agreement.

The warranties and remedies set forth in this Agreement above are exclusive. Seller makes no other warranties express or implied, with respect to its performance under this Agreement. Neither party shall have any liability to the other for any special, incidental or consequential damages arising out of its performance or non-performance of obligation hereunder, whether such liability is based in contract, tort or otherwise, including but not limited to negligence, warranty, indemnity or strict liability.

7. **COMPLIANCE**

Purchaser and Seller shall fully comply with all federal, state and local laws, ordinances, statutes, rules, regulations, orders, judgments and license and permit conditions or requirements



(hereinafter "Laws"), including but not limited to all Laws pertaining to the environment and/or natural resources as same relate to Purchaser obtaining permits authorizing its use of said Credits and/or to Purchaser's use of said Credits in fulfilling its permit requirements. Either Party shall, if requested, furnish proof of any license or permit required in connection with the performance of the Agreement. All fees and charges in connection with either Party's compliance with applicable Laws shall be borne by such party.

Purchaser accepts the responsibility to obtain all necessary regulatory approvals, permits or the like relating to Purchaser's project or use of the Credits.

**8. NO PROMISES OR INDUCEMENTS**

Purchaser and Seller, including its agents, representatives, employees or the like, each hereby acknowledge and agree that this Agreement is entered into with full reliance on its own independent investigation and due diligence and not on any statements, representations or agreements made by Seller or Purchaser. Further, Seller and Purchaser have not made any promises or inducements other than what is contained in this Agreement to the other Party's representatives, employees or the like.

**9. APPROVAL**

This Agreement shall not be binding on either Party unless signed by such Parties' representative as set forth on the signature page attached hereto; likewise no modification to this Agreement shall be binding on either Party unless in writing and similarly signed. Commencement of performance prior to compliance with the preceding sentence shall not be construed as a waiver hereof.

**10. NOTICE**

All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing and shall be sent by certified mail, postage prepaid, return receipt requested; or shall be hand delivered; or shall be delivered by a

recognizable national overnight courier service; or shall be sent by facsimile transmission addressed as follows:

As to Purchaser:                      Attention: Omelio Fernandez, P.E.,  
Director of Engineering and Public Works  
Palm Beach County – Roadway Production Division  
2300 N. Jog Road; 3<sup>rd</sup> Floor West  
West Palm Beach, FL 33411-2745  
Phone: 561-684-4150  
Facsimile: 561-684-4166

And to:                                      Kathleen Farrell, P.E., Project Engineer  
Palm Beach County – Roadway Production Division  
2300 N. Jog Road; 3<sup>rd</sup> Floor West  
West Palm Beach, FL 33411-2745  
Phone: 561-684-4150  
Facsimile: 561-684-4166

Copy to:                                      Marlene Everitt, Esquire  
Assistant County Attorney  
Palm Beach County  
301 N. Olive Ave., Ste. 600  
West Palm Beach, FL 33401  
Phone: 561-355-3629  
Facsimile: 561-355-4398

As to Seller:                                Attention: Jonathan S. Weiss  
Tetra Tech EC, Inc.  
759 S. Federal Highway, Suite 100  
Stuart, FL 34994

Phone: 772-781-3406

Facsimile: 772-781-3480

or to any other address or addresses as any party may designate from time to time by notice given in accordance with this Section. Any such notice will be deemed delivered: (a) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authority as not deliverable, as the case may be if mailed; (b) on the date delivered by personal delivery, provided a signed written receipt is obtained; (c) on the date of delivery by a recognized national overnight courier service; or (d) on the date of facsimile transmission. Facsimile signatures on any notices sent pursuant to this Agreement shall be deemed hereby for all purposes to be originals. Sender shall retain report(s) of facsimile transmission confirmation(s) for record purposes.

**11. TERM**

This Agreement shall become effective as of the date first set forth above and shall remain in effect as provided herein.

**12. SEVERABILITY**

If any one or more of the provisions contained in this Agreement (other than provisions constituting a material consideration to a party's entering into this Agreement) shall be found void, illegal or unenforceable in any respect under any applicable law, then the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired; provided, however, that in such case the Parties shall use their best efforts to achieve the purpose of the invalid provision.

**13. RELATIONSHIP OF PARTIES**

The relationship between the Parties is that of independent entities and nothing herein shall be construed to place them in the relationship of a partnership, agency, joint venture or employer/employee. Neither Seller nor Purchaser shall be authorized, either expressly or

impliedly, to act on behalf of the other party or to assume any obligation of any kind on behalf of the other party.

**14. AMENDMENTS**

This Agreement shall not be orally modified and no amendment hereto shall be effective except by a writing signed by all Parties. None of the terms and conditions contained herein may be added to, deleted, modified or altered except by written instrument signed by all Parties.

**15. TRANSFER OF OBLIGATION**

Neither of the Parties shall transfer or assign this Agreement, or any right or obligation hereunder (except the right to receive money) without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors and permitted assigns. In no event shall Purchaser be allowed to transfer Credits or this Agreement for any use other than that identified in Purchaser's Permits.

**16. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Florida. The venue for any litigation will be Palm Beach County, Florida. Both Parties hereby agree to waive a jury trial, and will proceed to a trial by judge if necessary.

**17. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties and replaces or supersedes any and all prior agreements, representations or understandings between the Parties relating to the subject matter hereof.

Signed, Sealed and delivered  
in the presence of:

As to Seller:

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Print Witness Name)

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Print Witness Name)

Date of Execution by Seller:

\_\_\_\_\_, 2007

Tetra Tech EC, Inc.

"SELLER"

By: \_\_\_\_\_

(Signature)

Jonathan S. Weiss

(Print Signatory's Name)

Its: Executive Vice President

(SEAL)

Date of Execution by County:

\_\_\_\_\_, 2007

ATTEST:

Public Works

By: \_\_\_\_\_

Fiscal Manager

PALM BEACH COUNTY, a political  
subdivision of the State of  
Florida by its Director of Engineering &

By: \_\_\_\_\_

Omelio Fernandez, P.E., Director

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_

Assistant County Attorney