

1. REQUESTED MOTION:

ACTION REQUESTED: Approve second amendment to agreement for Little Pine Island Mitigation Bank with Mariner Properties, Inc.

WHY ACTION IS NECESSARY: Requires BOCC approval for amendments to agreements.

WHAT ACTION ACCOMPLISHES: Allows County to purchase credits for additional CIP projects.

**2. DEPARTMENTAL CATEGORY:
 COMMISSION DISTRICT #:**

C9B

3. MEETING DATE:

04-22-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
 (Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT **Transportation**
- C. DIVISION
- BY: **Scott M. Gilbertson**

7. BACKGROUND:

On January 29, 1997 Lee County BOCC approved an agreement for Little Pine Island Mitigation Bank with Mariner Properties Development, Inc. Lee County purchased \$1,000,000 of mitigation credits for various Capital Improvement Projects. The first approved amendment (Item A 9 c on the 1/29/02 agenda) extended the contract for a period of 3 years to utilize the balance of the credits. This amendment allows the purchase of additional credits under the same agreement for the terms described in the attached amendment.

CONTINUED ON PAGE 2

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					<i>Appn 4/11/03</i>				
<i>4/11/03</i>	<i>[Signature]</i>	NA	<i>[Signature]</i>	<i>[Signature]</i>	OA <i>4/11/03</i>	OM <i>4/11/03</i>	Risk <i>4/11/03</i>	GC <i>4/11/03</i>	<i>[Signature]</i> 4.11.03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
 COUNTY ADMIN. *EW*
 4/11/03
 COUNTY ADMIN.
 FORWARDED TO:
 4/11/03

BLUE SHEET NO. 20030411 (Continued)

7. BACKGROUND (Continued):

Funds are available in the following accounts:

- 20 - Capital Improvements
- 5021 - Koreshan Boulevard
- 30700 - Transportation Capital Improvements - \$200,000.00
- 500540 - Improvement construction
- 20 - Capital Improvements
- 4053 - Three Oaks Ext. North
- 18804 - Impact Fee Rd. - South Fort Myers/San Carlos
- 506540 - Improvement Construction - \$759,295.00

3/24/03

**SECOND AMENDMENT TO MASTER PURCHASE AGREEMENT
FOR
LITTLE PINE ISLAND MITIGATION BANK CREDITS**

COMES NOW the Parties to that certain Agreement entered into on January 29, 1997 (Lee County Contract No. C-970142) and first amended on January 29, 2002, and make this Second Amendment to the Agreement for the purpose of extending the original Agreement.

WITNESSETH:

WHEREAS, on January 29, 1997, Mariner Properties Development, Inc. ("Mariner" or "Banker") and Lee County ("County" or "Purchaser"), collectively, the "Parties" hereto, entered into an Agreement for the sale and purchase of mitigation credits from the Little Pine Island Mitigation Bank ("Bank"); and,

WHEREAS, as part of the Agreement, the County purchased certain mitigation credits from the Banker, some of which have been utilized by the County for its capital projects; and,

WHEREAS, the County has realized significant savings of public dollars on wetland mitigation for capital projects resulting from the original Agreement; and,

WHEREAS, the County wishes to further extend the original Agreement as previously amended to include mitigation for additional capital projects which may need mitigation credits from Little Pine Island Mitigation Bank; and

WHEREAS, such an extension of the term of the original Agreement serves a public purpose, is in the public's interest and is to the public's benefit.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

I. AMENDMENTS:

Section 1. Agreement to Purchase.

This Paragraph is deleted in its entirety and replaced with the following:

"The Banker agrees to sell and Purchaser agrees to purchase 23.95 Herbaceous Freshwater wetland mitigation credits; 3 Herbaceous Saltwater wetland mitigation credits; 20.67 Forested Freshwater wetland mitigation credits; and 3 Forested Saltwater wetland mitigation credits subject to the terms and conditions of this Agreement. The above credits include 3 Herbaceous Freshwater credits and 10.62 Forested Freshwater credits reserved by the original Purchase Agreement and detailed on Exhibit A. The additional credits being purchased are detailed on Exhibit A-1.

Section 2. Purchase Price, Price Discount and Price Cap

This Paragraph is deleted in its entirety and replaced with the following:

The Purchase Price for the credits detailed on Exhibit A-1 is \$959,295. A deposit of \$959,295 is due upon execution of the Amendment in order to reserve the availability of credits, the discounted pricing of credits, the credit price cap and credit substitution flexibility.

2.A. Price Discount.

The Purchase Price reflects an extension of the existing Lee County discounted price for credits from the Little Pine Island Wetland Mitigation Bank. The Lee County price for credits at the time of this contract extension is \$24,024 per Herbaceous Freshwater credit, \$25,872 per Herbaceous Saltwater credit, \$27,720 per Forested Freshwater credit, and \$33,264 per Forested Saltwater credit.

2.B. Price Cap.

The Banker shall not increase the County's price for credits from the price quoted above more than 10% per year or a total of 30% over 5 years. The final price per credit is determined at the time of credit withdrawal. Credits reserved by the original Purchase Agreement which are detailed in Exhibit A have a price cap as follows; \$24,024 for Herbaceous Freshwater credits, \$25,872 for Herbaceous Saltwater credits, \$27,720 for Forested Freshwater

credits, and \$33,264 for Forested Saltwater credits.

Section 5. Approval for Use of Credits at County Projects.

The first sentence in Section 5 will be amended to delete the following words:

“and shall use its best efforts to obtain”

Section 9. Termination.

Delete the final sentence of the paragraph. Replace with the following:

“The Term of this Agreement shall extend for a period of five years from the date of the execution of the Second Amendment to the Agreement.”

Section 12. Notices.

Delete the final portion of the first sentence of the paragraph which begins with “Audrey Vance...”. Replace with the following:

“Lee County Attorney’s office, P.O. Box 398, Fort Myers, FL 33902 and in the case of the Banker to Richard C. Anderson, Mariner Properties Development, Inc., 13451 McGregor Blvd, Ste 31, Fort Myers, FL 33919.”

EXHIBIT "A"
Lee County Mitigation Credit Needs Estimate

<u>Project</u>	<u>Estimated Credit Type & Amount</u>	<u>Estimated Mitigation Cost</u>	<u>Estimated Permit Date</u>	<u>Estimated Delivery Date</u>
Bonita Beach Rd Phase II ^{1,2}	FS .99 HF .44	\$ 32,956	2/98	2/98
Gladiolus Rd ^{1,2}	FS 1.26 HS .74	\$ 46,256	11/98	4/98
Corkscrew Rd ^{1,2}	FF .2	\$ 4,200	12/98	1/99
Midpoint Bridge ^{1,2}	HS 1.33	\$ 26,068	6/99	10/99
Pondella Rd ^{1,2}	FF .07	\$ 1,470	6/99	10/99
Bonita Beach Rd Phase I ^{1,2}	HF .11 FF .07	\$ 3,472	6/99	10/99
Del Prado Ext. ^{1,2&3}	HF 12.73 FF 4.61	\$391,611	6/99	11/99
Pine Island STP ^{1,3}	FF .66 HF .16	\$ 20,126	9/99	11/99
Alico Rd ^{1,4}	FF 2.55	\$ 70,686	9/02	9/02
Palmetto Ext. ⁴	FF .50	\$ 13,860	3/03	4/03
Three Oaks ⁴ Parkway North	HF 3.00 FF 10.62	\$366,499	5/05	6/05
Total	41.314	\$977,200		

¹ Actual credits used, actual mitigation costs, actual permit dates and actual delivery dates

² Per a commitment by Mariner Properties Development, the first 5.92 credits delivered for Bonita Beach Road, Gladiolus Road, Corkscrew and .71 credits for Del Prado Ext. are at the original discounted credit prices contained in the original Exhibit A.

Approved by Lee County _____ Date: _____

EXHIBIT "A"
Lee County Mitigation Credit Needs Estimate
Continued

³ Credits withdrawn between 2/1/99 and 1/31/00 except as noted in footnote #2 above. Prices are computed at a 20% increase over the original discounted credit price (10% increase per year per Paragraph 2 of the Contract) as follows:

HF = Herbaceous Freshwater at discounted price of \$21,840 per credit
HS = Herbaceous Saltwater at discounted price of \$23,520 per credit
FF = Forested Freshwater at discounted price of \$25,200 per credit
FS = Forested Saltwater at discounted price of \$30,240 per credit

⁴ Credits withdrawn after 2/1/00. Prices are computed at a 30% increase over the original discounted credit price (10% increase per year per Paragraph 2 of the Contract) as follows:

HF = Herbaceous Freshwater at discounted price of \$24,024 per credit
HS = Herbaceous Saltwater at discounted price of \$25,872 per credit
FF = Forested Freshwater at discounted price of \$27,720 per credit
FS = Forested Saltwater at discounted price of \$33,264 per credit

Approved by Lee County _____ Date: _____

EXHIBIT "A-1"
Lee County Mitigation Credit Needs Estimate

<u>Project</u>	<u>Estimated Credit Type & Amount</u>		<u>Estimated Mitigation Cost</u>	<u>Estimated Permit Date</u>	<u>Estimated Delivery Date</u>
Three Oaks ¹ Parkway North	FF	5.38	\$149,133	5/05	6/05
	(A) HF	3.50	\$ 84,084	3/04	4/04
	(B) HF	8.95	\$215,014	4/05	5/05
	(B) FF	.92	\$ 25,502	4/05	5/05
	(C) HF	.50	\$ 12,012	6/05	7/05
	(C) FF	1.75	\$ 48,510	6/05	7/05
	FF	2.00	\$ 55,440	5/06	6/06
Koreshan Blvd ¹ Extension	HF	8.00	\$192,192	6/05	7/05
	(D) HS	3.00	\$ 77,616	6/05	7/05
	(D) FS	3.00	\$ 99,792	6/05	7/05
Total		37.00	\$959,295		

¹ The Purchase Price for mitigation credits reflects an extension of the existing Lee County discounted price for credits from the Little Pine Island Wetland Mitigation Bank. The Lee County price for credits at the time of contact extension is \$24,024 per Herbaceous Freshwater credit, \$25,872 per Herbaceous Saltwater credit, \$27,720 per Forested Freshwater credit, and \$33,264 per Forested Saltwater credit.

Approved by Lee County _____ Date: _____