

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 04-28

WHEREAS, the Texas Transportation Code authorizes the creation of regional mobility authorities for the purposes of constructing, maintaining, and operating one or more transportation projects in regions of this state; and

WHEREAS, the Central Texas Regional Mobility Authority (CTRMA) was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process of 46 Tex. Admin. Code § 26.01 *et seq.* (the "RMA Rules"); and

WHEREAS, following consultation between the predecessor to the CTRMA in the development of the US 183-A turnpike project and the U.S. Fish & Wildlife Service (USFWS), the USFWS issued a Biological Opinion concerning potential impacts of US 183-A on the golden-cheeked warbler; and

WHEREAS, the CTRMA is required to purchase golden-cheeked warbler environmental mitigation credits in connection with the development of US 183-A; and

WHEREAS, to meet that obligation the CTRMA may purchase credits from the Hickory Pass Ranch Conservation Bank, a source of mitigation credits approved by the USFWS; and

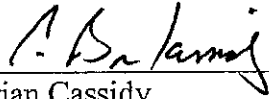
WHEREAS, the CTRMA is required to purchase 75.0 mitigation credits at a cost of \$5,250.00 per credit, for a total cost of \$393,750.00; and

WHEREAS, the CTRMA has previously received authorization from TxDOT to expend funds from the \$12.7 million toll equity grant for mitigation credits;

NOW THEREFORE, BE IT RESOLVED, that the Board hereby authorizes the Chairman or his designee to execute the "Golden-Cheeked Warbler Mitigation Credit Purchase Agreement" with Hickory Pass, L.P. in the form attached as "Attachment A"; and

BE IT FURTHER RESOLVED, that upon execution of the Agreement, the Board directs CTRMA staff to tender a check in the amount of \$393,750.00 as consideration for the purchase of environmental mitigation credits.

Submitted and reviewed by:



C. Brian Cassidy
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Bob Tesch
Chairman, Board of Directors
Resolution Number 04-28
Date Passed 6/30/04

Attachment A

GOLDEN-CHEEKED WARBLER MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (this "Agreement") is made by **Hickory Pass, L.P.**, a Texas limited partnership ("HP"), and **Central Texas Regional Mobility Authority ("CTRMA")**.

BACKGROUND

- A. HP, in cooperation with U.S. Fish and Wildlife Service (the "Service"), has established the Hickory Pass Ranch Conservation Bank (the "Conservation Bank") for the preservation and protection of the Golden-cheeked Warbler ("GCW") – a federally listed endangered species.
- B. HP and the Service signed the Hickory Pass Ranch Conservation Bank Agreement (the "Conservation Bank Agreement"), effective April 1, 2002, that governs the Conservation Bank.
- C. The Conservation Bank Agreement provides for the creation of mitigation credits ("Mitigation Credits") that HP may sell to public or private parties seeking to mitigate the effects of their proposed projects on GCWs. Each Mitigation Credit shall be equivalent to one acre of GCW habitat that is acceptable by the Service for GCW mitigation.
- D. CTRMA is responsible for constructing, maintaining, repairing and operating transportation projects pursuant to Chapter 370 of the Texas Transportation Code (the "RMA Act") and Title 43, Part 1, Chapter 26 of the Texas Administrative Code.
- E. CTRMA is in the process of developing certain property in Williamson County as a turnpike, designated as US Highway 183A, and that development may have an adverse impact on GCWs.
- F. CTRMA (and/or its predecessor) and the Service have completed consultation under Section 7 of the Endangered Species Act and the Service has issued a biological opinion for the US 183A turnpike project.
- G. To satisfy the terms and conditions of the Service's biological opinion, CTRMA desires to purchase Mitigation Credits from HP and HP desires to sell Mitigation Credits to CTRMA.
- H. CTRMA is allowed to mitigate an adverse environmental impact pursuant to the RMA Act, and may purchase Mitigation Credits pursuant to Title 23 USC Section 133.

AGREEMENT

IN CONSIDERATION of the premises above and other good and valuable consideration, HP and CTRMA agree as follows:

1. Sale/Purchase of Mitigation Credits. HP shall sell to CTRMA and CTRMA shall purchase from HP the following number of Mitigation Credits upon the terms and conditions below:

1.1. Number of Mitigation Credits. **75.0 Mitigation Credits** shall be sold by HP and purchased by CTRMA.

1.2. Purchase Price. The purchase price of the Mitigation Credits shall be **\$5,250 per Mitigation Credit**, for a total of \$393,750.00 (the "Purchase Price").

1.3. Closing. The closing of this transaction (the "Closing") shall be conducted as follows:

A. Closing Date. The date of Closing (the "Closing Date") shall be at the earlier of the following dates:

1. At a mutually acceptable time and date on or before August 2, 2004; or
2. At 10:00 a.m. on Monday, August 2, 2004.

B. Location. The Closing shall be held at a mutually acceptable location or, if no location is mutually acceptable, then at the offices of Ikard & Golden, P.C., 106 E. Sixth Street, Suite 500, Austin, Texas 78701.

C. Items Delivered. At Closing, HP shall deliver to CTRMA an Assignment of Mitigation Credits that is substantially similar to Exhibit F of the Conservation Bank Agreement as shown on Exhibit A attached to this Agreement and any other instruments reasonably requested by CTRMA to effectively vest in CTRMA all of HP's right, title, and interest in and to the Mitigation Credits. CTRMA shall deliver the Purchase Price in cash or other immediately available funds to HP.

2. Representations and Warranties. The following representations and warranties are made as of the effective date of this Agreement and the Closing Date and shall survive Closing:

2.1. HP's. HP represents and warrants that HP has full authority to enter into and perform its obligations under this Agreement and no other person or entity, including the Service, must approve or ratify this Agreement to be effective.

2.2. CTRMA's. CTRMA represents and warrants that CTRMA has full authority to enter into and perform its obligations under this Agreement and no other person, board, committee, council, or entity must approve or ratify this Agreement to be effective.

3. General.

3.1. Notice. Any notice or other communication given under this Agreement shall be in writing and shall be deemed to have been given (i) when delivered by hand with receipt acknowledged, (ii) on the next business day following confirmation of a fax transmission, or (iii) on the 5th day after deposit in the United States mail, registered or certified with postage prepaid, return receipt requested. Each notice shall be delivered using the following information:

To HP:

Hickory Pass, L.P.
D.H. Johnston, General Partner
1803 Brookhaven Drive
Austin, Texas 78704
Phone: (512) 472-4542
Fax: (512) 472-3669

To CTRMA:

CTRMA
Attn: Executive Director
US 183-A Project Office
13640 Briarwick Drive, Suite 200
Austin, Texas 78729
Phone: (512) 996-9778
Fax: (512) 996-9784

3.2. Parties Bound. The terms and provisions of this Agreement shall be binding upon the parties, their heirs, personal representatives, successors, and assigns.

3.3. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the sale and purchase of mitigation credits and no other agreement, statement, or promise made by any party, or to any employee, officer, partner or agent of any party, which is not contained in this Agreement, shall be binding or valid.

3.4. Modification. This Agreement is not subject to modification except in a writing signed by all parties and any attempted modification not in compliance with this requirement is void.

3.5. Further Assurances. HP and CTRMA shall cooperate to take and complete any other reasonable or necessary actions to fulfill the parties' intent as expressed by this Agreement.

3.6. Interpretation.

A. Headings. All titles, headings, and captions used in this Agreement have been inserted for reference purposes only and shall not in any way affect the meaning and interpretation of its provisions.

B. Gender, Tense. Pronouns, nouns, and terms used in this Agreement shall include the masculine, feminine, neuter, singular and plural forms wherever appropriate to the context.

C. Including. "Including" is used to list examples and is not used by way of limitation.

D. May. "May" is used to indicate that an action or inaction is permissible but not required.

E. No Presumption. This Agreement shall be deemed to be drafted equally by both parties after consultation with each party's attorney.

3.7. Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be awarded attorney's fees and costs.

3.8. Multiple Originals. This Agreement is being executed as two original documents so that each party may have an original. Both documents shall be considered original and shall be interpreted as one and the same document.

3.9. Applicable Law. This Agreement shall be governed by and construed according to Texas law.

EXECUTED by each party on the date stated below its signature.

HP:

Hickory Pass, L.P.,
A Texas limited partnership

By: [Signature]

Name: D.H. Johnston

Title: General Partner

Date: JUNE 25, 2004

CTRMA:

Central Texas Regional Mobility Authority

By: _____

Name: _____

Title: _____

Date: _____, 2004

HICKORY PASS RANCH CONSERVATION BANK ASSIGNMENT OF MITIGATION CREDITS

THIS ASSIGNMENT OF MITIGATION CREDITS (this "Assignment") is made by Hickory Pass, L.P., a Texas limited partnership (the "Owner"), for the benefit of Central Texas Regional Mobility Authority (the "Credit Purchaser").

BACKGROUND

- A. The Owner entered into that certain Hickory Pass Ranch Conservation Bank Agreement (the "Agreement"), dated effective April 1, 2002, by and among the Owner and U.S. Fish and Wildlife Service ("USFWS").
- B. The Agreement provides for the Hickory Pass Ranch Conservation Bank and the creation and use of Mitigation Credits for mitigation by 3rd party credit purchasers.
- C. The Agreement also provides that USFWS will accept a Mitigation Credit purchased by 3rd party credit purchasers as the functional equivalent of 1 acre of off-site mitigation for adverse biological impacts to the Golden-Cheeked Warbler and their habitat caused by development.
- D. The Owner desires to sell and the Credit Purchaser desires to purchase Mitigation Credits for the purposes set forth in the Agreement.

ASSIGNMENT

IN CONSIDERATION OF \$10 and other good and valuable consideration, the Owner and the Credit Purchaser agree as follows:

1. **Number of Credits.** The Owner hereby transfers and assigns to the Credit Purchaser the following number of Mitigation Credits: **75.0 (Seventy Five)**.
2. **Credit Purchaser.** The Credit Purchaser's name, address, and telephone number are:

**Central Texas Regional Mobility Authority
US 183-A Project Office
13640 Briarwick Drive, Suite 200
Austin, Texas 78729
Phone: (512) 996-9778
Fax: (512) 996-9784**

3. **Project Name & Location.** The Mitigation Credits shall be used by the Credit Purchaser as mitigation for the following project and its location: **US 183A (Turnpike), Williamson County, Texas.**

Effective _____, 2004.

OWNER:

HICKORY PASS, L.P.,
a Texas limited partnership

By: _____
Name: D.H. Johnston
Title: General Partner

CREDIT PURCHASER:

Central Texas Regional Mobility Authority

By: _____
Name: _____
Title: _____