

AGENDA ITEM 35

Consider approving an agreement with Williamson County Conservation Foundation, Inc. regarding mitigation of endangered species.

Commissioner Hays explained that a conservation foundation board with three members would be appointed by the Commissioners' Court to oversee the cave protection plan for Williamson County. The county and the state would fund the foundation.

Charlie Crossfield stated that the Texas Transportation Authority has 3.2 million dollars that would be turned over to the foundation for mitigation. The court would decide how much of the money would be used for parks and how much would stay in the foundation for acquisition of mitigation property and for preservation and maintenance of the caves.

Charlie Crossfield asked Judge Doerfler to put an item on the September 24, 2002 agenda to appoint board members.

Moved: **Commissioner Hays**

Seconded: **Judge Doerfler**

Motion: To approve an agreement with Williamson County Conservation Foundation, Inc., regarding mitigation of endangered species.

Vote: **3 – 0. Commissioner Limmer was absent from the dais.**

< Attachment >

AGREEMENT

This Agreement is by and between the Williamson County Conservation Foundation, Inc. (the "Corporation") and the County of Williamson (the "County").

WHEREAS, the Corporation was created with the specific purpose to act as a fiduciary to the County to further the conservation and recovery of certain listed Karst or cave-dwelling invertebrates in Williamson County, Texas (the "Species"). Additionally, the Corporation shall provide mitigation of impacts to such Species by actions authorized by the U.S. Fish and Wildlife Service (the "Service") and Federal Law; and

WHEREAS, the County desires to utilize the Corporation to enhance and preserve the Species; and

WHEREAS, pursuant to the By-Laws of the Corporation, the County is responsible for appointing the Board of Directors for the Corporation; and

WHEREAS, the County desires to annually supplement the Corporation to further the preservation of the Species;

NOW THEREFORE, IT IS HEREBY AGREED THAT;

The County shall annually supplement the Corporation to ensure that adequate sums are available to operate and maintain a program to preserve the Species.

The Corporation shall utilize the County supplement in accordance with the Corporation's By-Laws. Specifically, the supplement will be used to further the conservation and recovery of certain listed Karst or cave-dwelling invertebrates in Williamson County, Texas.

Dated the ____ day of _____, 2002.

WILLIAMSON COUNTY

By: John C. Doerfler 9-17-02
JOHN DOERFLER, County Judge

WILLIAMSON COUNTY CONSERVATION FOUNDATION, INC.

By: _____
CHARLES CROSSFIELD, President

DRAFT**WILLIAMSON COUNTY KARST
CONSERVATION FUND MEMORANDUM OF UNDERSTANDING**

**between
U.S. Fish and Wildlife Service
and
Williamson County Karst Conservation Foundation**

This Williamson County Karst Conservation Fund Agreement (the "Agreement") is made to be effective as of _____, 2002, by and between the U.S. Fish and Wildlife Service (the "Service") and Williamson County Karst Conservation Foundation (the "Foundation") to establish the Williamson County Karst Conservation Fund (the "Fund").

1.0 PURPOSES AND OBJECTIVES

The Endangered Species Act of 1973, as amended (the Act), prohibits the "take" of Federally listed endangered or threatened species unless authorized by the Secretary of Interior. This authorization requires minimization and mitigation of impacts under Section 10 or under Section 7 of the Act. Williamson County (County) has extensive areas of karst (a geologic formation characterized by honey-combed limestone, caves and sinkholes), which is known to be habitat for three federally listed endangered invertebrate species: the Bone Cave harvestman (*Texella reyesi*), the Coffin Cave mold beetle (*Batrisodes texanus*), and the Tooth Cave mold beetle (*Rhadine persephone*). The Foundation will act as a conservation bank for Williamson County and other entities needing karst mitigation or minimization for impacts of their projects, providing an efficient means to comply with the Act and facilitating these projects. The goal of the Foundation is to contribute to the recovery of the Bone Cave harvestman in the County. This goal will be furthered by a variety of activities, which may include acquisition and preservation of karst preserves. Any such preserves will be managed and monitored in perpetuity for the benefit of the species pursuant to specific agreements among the relevant parties. The Fund may also be used to contribute to the recovery objectives for the Coffin Cave mold beetle, which is only known to occur in Williamson County, and the Tooth Cave mold beetle. Once the recovery objectives are met rangewide, a species can be petitioned for removal from the federal endangered species list. The Foundation plans to acquire and manage suitable preserve lands, acquire and manage existing smaller preserves which do not currently benefit from adequate management and monitoring and engage in educational or scientific activities for the benefit of karst species. These actions can generate conservation credits as determined by the Service which can then be assigned to the County or private entities to meet mitigation or minimization obligations. The Foundation will determine the price of the credits to be sold and will maintain sole discretion in determining whether and to whom credits will be assigned.

2.0 AUTHORITY

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This Agreement is entered into under the authority of the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661–666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) et seq., and the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., as amended (“ESA”), which authorize the Service to provide assistance to, and cooperate with, State and private organizations in activities that provide for the management, conservation, and protection of fish, wildlife, and plant resources. Under the ESA, the Service is responsible for the listing and recovery of listed species, and cooperating with State and Federal agencies to achieve recovery of listed species. In addition, pursuant to Section 6 of the ESA, the Service is authorized to enter into cooperative agreements with any State that establishes and maintains an adequate and active program for the conservation of endangered species and threatened species.

3.0 PARTIES**3.1 U.S. Fish and Wildlife Service**

The U.S. Fish and Wildlife Service’s mission is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The U.S. Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service manages the 93-million-acre National Wildlife Refuge System that encompasses more than 535 national wildlife refuges. The Service also operates 66 national fish hatcheries, 64 fishery resource offices, and 78 ecological services field stations. The Service enforces Federal wildlife laws, including the ESA.

a. Foundation

The Foundation is a non-profit Texas corporation formed for the purpose of creating, operating, and maintaining the Williamson County Karst Conservation Fund and implementing associated Conservation Actions as described in Section 6.0 hereof and Appendix A [insert document title]. The Foundation coordinates its activities with Williamson County, Texas, which has entered into a letter of understanding with the Service dated June 20, 2001, outlining procedures for reviewing, authorizing, and mitigating potential impacts of Williamson County projects on species listed as endangered or threatened under the ESA.

4.0 DEFINITIONS

The following terms as used in the Agreement shall have the meanings set forth below:

“Agreement” means this Agreement and all exhibits attached hereto.

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"Conservation Action" shall have the meaning set forth in Section 6.0 below.

"Conservation Credit" means a unit of exchange for compensatory mitigation created under this Agreement through the implementation of Conservation Actions. Conservation Credits will be available for assignment to Williamson County and third parties for the purposes of mitigating impacts to the Species authorized by separate actions of the Service.

"Conservation Easement" means a conservation easement established to conserve biological resources in perpetuity, and which imposes certain habitat management obligations with respect to the property described therein.

"Consultation" means any conferences or consultations, formal or informal, conducted among one or more federal agencies, the Service, and/or applicants pursuant to Section 7 of the ESA (16 U.S.C. § 1536).

"Credit Purchaser" refers to any third-party purchaser or assignee of one or more Conservation Credits, which could include Williamson County, Texas.

"ESA" means the Federal Endangered Species Act (16 U.S.C. § 1531 et seq.), and all regulations promulgated pursuant to that Act.

"Habitat Conservation Plan" and "HCP" mean conservation plans and/or incidental "take" permits prepared and/or issued pursuant to Section 10(a) of the ESA (16 U.S.C. § 1539(a)).

"Habitat Credits" shall have the meaning described in Section 7.1 hereof.

"Management Credits" shall have the meaning described in Section 7.1 hereof.

"Parties" shall mean the Foundation and the Service.

"Program Credits" shall have the meaning described in Section 7.1 hereof.

"Service" means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.

"Service Area" means Williamson County, Texas. Within the Service Area, impacts to the Species may be mitigated through the use of Conservation Credits consistent with this Agreement. Impacts occurring outside the Service Area can be mitigated through the use of Conservation Credits only with the prior written approval of the Service.

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"Species" means karst invertebrate species listed as endangered under the ESA and occurring in Williamson County, Texas, currently including the Bone Cave harvestman (*Texella reyesi*), Coffin Cave mold beetle (*Batrisodes texanus*), Tooth Cave ground beetle (*Rhadine persephone*), and such other species as the Service and the Foundation from time to time agree in writing should be added to the list of species covered by this Agreement.

5.0 TERM OF AGREEMENT

This Agreement shall become effective upon being executed by the Parties. This Agreement shall remain in effect, unless sooner terminated in accordance with Section 4.0 hereof, for five (5) years; provided, however, that obligations with respect to specific Conservation Actions will continue, in some instances perpetually, in accordance with the agreement of the Parties specific to such Conservation Actions pursuant to Section 6.0 hereof.

6.0 CONSERVATION ACTIONS

The Foundation and the Service will cooperatively identify and approve Conservation Actions that the Foundation may wish, in the Foundation's discretion, to undertake for the benefit of the Species and the creation of Conservation Credits. Conservation Actions can include, without limitation, funding and/or direct implementation of karst preserve acquisition (through fee title, conservation easement, or other legal mechanism); operation, management, and adaptive management of karst preserves so acquired or of other karst areas currently lacking an established operations, management, and adaptive management program; monitoring, scientific study, and public education; and funding of environmental survey reports and other activities necessary to implement other Conservation Actions. At such time as the Foundation agrees to take a Conservation Action approved by the Service, the Service and the Foundation will enter into a "Conservation Action Agreement" specifying the nature of the Conservation Action, the duration of the Foundation's obligations with respect to the Conservation Action, the number, type, and Species applicability of Conservation Credits created by the Conservation Action, and such other terms and conditions relating to the Conservation Action to which the Parties may agree. The Foundation will be responsible for keeping detailed, well-ordered records of the various Conservation Actions it may undertake and shall provide to the Service at least annually written reports regarding the status of all Conservation Actions.

7.0 CONSERVATION CREDITS

As a result of the benefits accruing to the Species and their habitats due to Conservation Actions undertaken by the Foundation, the Service may, in separate Conservation Action

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Agreements, acknowledge the creation of Conservation Credits for the use, sale, or assignment of the Foundation to mitigate impacts to the Species authorized by a Consultation or Habitat Conservation Plan (HCP). The Service may, in accordance with, and to the extent authorized in, any applicable Consultation or HCP, accept utilization by the Foundation or Credit Purchasers of Conservation Credits as providing mitigation for impacts to the Species. After Service approval, the Service agrees to honor the number, type, and value of Conservation Credits, conveyed or purchased pursuant to this Agreement. Amendments or changes to the number, type, and value of Conservation Credits assigned or purchased under this Agreement shall be made in accordance with Section 9.0 hereof. The Service may, to the extent consistent with Federal law, Consultations, HCPs, or generally, the conservation and recovery of the Species, inform individuals, corporations, governmental, and other interested parties wishing to assist with Conservation Actions for the Species regarding the option to contribute funds to the Foundation for such purposes. Conservation Credits may be used for mitigation of impacts to Species and their habitats only within the Service Area. Impacts occurring outside the Service Area can be mitigated through the use of Conservation Credits only with the prior written approval of the Service. In general, it is anticipated that the Conservation Credits created under this Agreement and subsequent Conservation Action Agreements will be described as follows:

7.1 Conservation Credit Categories

Conservation Credits shall be based on the types of Conservation Actions undertaken by the Foundation and the number of Credits generated by an action must be approved by the Service. The types of Conservation Credits available under this Agreement shall include: (1) Habitat Credits; (2) Management Credits; and (3) Program Credits. Habitat Credits are defined as a category of Conservation Credits based on Conservation Actions that fund and/or directly implement new karst preserve acquisition (through fee title, conservation easement, or other legal mechanism). Management Credits are defined as a category of Conservation Credits based on Conservation Actions that provide long-term operation, management, adaptive management, and maintenance of karst preserves or other karst areas currently lacking an established operations, management, and adaptive management program. Program Credits are defined as a category of Conservation Credits based on Conservation Actions designed to promote scientific study and public education. A Conservation Action will not generate more than one type of Conservation Credit for the same action.

a. HABITAT CREDITS

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Habitat Credits shall be determined by the quality of the karst preserves acquired by, or with funding provided by, the Foundation. Each karst preserve acquired by the Foundation shall be placed by the Service into one of three separate "biological value" categories based on the biological significance of the karst preserve to the Species and their habitats. The three biological values categories shall include: high quality karst preserves; moderate quality karst preserves; and low quality karst preserves.

b. MANAGEMENT CREDITS

Management Credits shall be determined by the Service according to the number of Species caves and/or the number of acres for which the Foundation provides long-term preserve operation, management, monitoring, adaptive management, and maintenance. Management Credits may only be earned for the management of pre-existing preserves that do not currently have adequate long-term management in place.

c. PROGRAM CREDITS

Program Credits shall be determined by the agreement of the parties on a case-by-case basis with respect to Conservation Actions undertaken by the Foundation designated to promote scientific study and public education with respect to the species.

All Conservation Credits shall be specific to one or more Species, as approved by the Service. Once a Conservation Credit is utilized with respect to any one or more co-located Species to which it pertains, it cannot be used again with respect to any other Species.

7.2 Impact Categories

In general it is anticipated that the Service will evaluate the number and type of Conservation Credits appropriate to mitigate impacts to one or more of the Species based on the type and magnitude of impacts. Project impacts may be categorized as: (1) low magnitude; (2) moderate magnitude; (3) high magnitude; and (4) total. Total impacts mean impacts that result in the destruction of an identified cave or karst feature inhabited or expected to be inhabited by one or more of the Species.

8.0 CERTAIN OBLIGATIONS OF THE PARTIES

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The Service will:

- a. Appoint an individual, the Project Officer, who will represent the Service in carrying out its obligations under this Agreement.
- b. Coordinate and cooperate with the Foundation regarding determining and implementing specific Conservation Actions to be undertaken.
- c. Work with the Foundation to assure proper coordination with other appropriate Federal and State agencies, including without limitation the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the Texas Natural Resources Conservation Commission, and the Texas Parks and Wildlife Department.
- d. Subject to Congressional appropriations, continue to support Species recovery objectives.

8.2 Foundation Obligations

The Foundation will:

- a. Appoint an individual, the Project Officer, who will represent the Foundation in carrying out its obligations under the Agreement.
- b. Establish a restricted account for the Fund, which shall be used solely for the conservation purposes of ~~the Foundation~~ this MOU; ~~and~~ the foundation shall also be responsible for the acceptance of moneys and management of the Fund. The Foundation will ensure accurate and complete accounting and documentation according to standard accounting practices for all activities related to the Fund.
- c. Use the Fund for Conservation Actions in accordance with this Agreement.

9.0 DATABASE FOR CONSERVATION CREDIT TRANSACTIONS

A database shall be established by the Foundation in the following manner for purposes of tracking the use and sale of Conservation Credits. Until such time as the Service has been

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notified in writing that all Conservation Credits have been used and the last annual report has been received by the Service, the Foundation shall be responsible for maintaining a database (the "Ledger") that shall include a numerical accounting of all Conservation Credits sold or used, the balance of Conservation Credits remaining, and the amount of any endowment funds, and for each individual sale, resale, or use of a Conservation Credit(s), shall state the number of Conservation Credits sold or used, the name, address, and telephone number of the entity purchasing/using the Conservation Credits, and the local jurisdiction in which the impacting project occurs. The Foundation shall make the Ledger available to the Service for inspection upon request. Upon each sale or use of Conservation Credits according to Section 6.0 above, the Foundation shall deliver to the Service an updated accounting of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits. This information shall be sent to the Service within thirty (30) days after each purchase/use of Conservation Credits. The Foundation shall, on or before ~~March 15th~~ December 31 [see Section 10.0] of each year, deliver to the Service a report covering the prior calendar year that contains all of the information described above. Upon termination of this MOU, the Foundation shall provide the Service a final accounting of all Credits accrued and sold or used.

10.0 FINANCIAL ADMINISTRATION

The Foundation will have primary responsibility for administering the Fund. Contributions and payments to the Fund will be held and used to implement Conservation Actions. The Foundation will establish a restricted account for the Fund and will be responsible for the management of the Fund. The Foundation may use the Fund for all reasonable and actual expenses incurred in connection with the satisfaction of its obligations under this Agreement as agreed in the individual Conservation Action Agreements, such as expenses incurred in purchasing preserve sites by fee title or conservation easement. The Foundation will ensure accurate and complete accounting and documentation for all activities related to the Fund. Money held by the Fund will be invested in a manner to ensure a balance between immediate liquidity and investment potential. All investment income shall remain in the Fund. The Foundation may in its discretion charge an administrative fee in an amount determined by the Foundation to those contributing to the Fund. Such an administration fee shall not be considered a reasonable or actual expense of the fund as provided above, but shall be an amount in addition to contributions and payments to the Fund. The Foundation will furnish an annual report to the Service on or about December 31 of each year this Agreement is in effect, detailing all income, disbursements, administrative fees, and other activities associated with the Fund.

D R A F T**11.0 AMENDMENT, TERMINATION AND RENEWAL**

Amendments to this Agreement may be proposed by either Party in writing but shall not become effective until being reduced to a written instrument and being signed by the duly authorized representative of each Party.

This Agreement may be terminated by any Party upon 30 days written notice to the other Party, provided however, that the Parties' respective agreements and obligations relative to Conservation Actions previously undertaken shall survive the termination of this Agreement and will remain binding upon the Parties hereto in accordance with this Agreement and any further agreements, such as a Conservation Action Agreement, specific to such Conservation Actions. If the agreement is terminated, the Fund shall immediately transfer to the Service or its designated recipient any and all monies in the Fund that are dedicated to the conservation of the Species and their habitats. In the event of termination, the parties shall meet to determine what outstanding debts or reimbursable expenses remain to be paid and make arrangements necessary for the payment of those outstanding expenses. Additionally, the parties shall meet to resolve any outstanding matters relating to ongoing transactions.

This Agreement may be renewed by written agreement of both parties.

12.0 NOTICES AND PROJECT OFFICERS

For purposes of this Agreement, the following individuals shall be the Project Officers for this Agreement. Notices to be given hereunder shall be made in writing and may be given by delivering the same in person, by mail, or by telecopy (facsimile). Notices shall be effective only if and when received at the address of the party to be notified.

If to the Service:

Name: _____
 Title: _____
 U.S. Fish and Wildlife Service
 Austin Ecological Service Field Office
 10711 Burnet Road, Suite 200
 Austin, TX 78758
 (512) 490-0057
 Fax (512) 490-0974

If to the Foundation:

Name: _____
 Title: _____

[address, phone, fax]

13.0 ENTIRE AGREEMENT

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This Agreement contains the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement shall be binding or valid.

14.0 INTERPRETATION AND HEADINGS

The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against any Party. Headings of the paragraphs of this Agreement are for the purposes of convenience only and the words contained in such headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

15.0 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 shall be void.

16.0 SUCCESSORS AND ASSIGNS

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

18.0 ATTORNEYS FEES

If any action at law or equity including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

19.0 NO PARTNERSHIPS

This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.

20.0 FEDERAL APPROPRIATIONS

The duty of the Service to carry out its obligations under this Agreement shall be subject to the availability of federal appropriated funds.

21.0 NON-EXCLUSIVITY

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This Agreement is not and should not be considered an exclusive arrangement between the Service and the Foundation.

22.0 REVIEW

This Agreement will be cooperatively reviewed by the Service and the Foundation after one (1) year and thereafter on an as needed basis.

23.0 PRESS RELEASES

The Foundation will obtain prior approval of all press releases, published advertisements, or other statements intended for the public that refer to this Agreement or to the Service, the Department of the Interior, or the name or title of any employee of the Department of the Interior in connection with this Agreement.

D R A F T

Executed to be effective as of the date first specified above.

U.S. Fish and Wildlife Service

Williamson County Karst Conservation
Foundation

By: _____

By: John C. Daefler

Title: _____

Title: County Judge

Date: _____

Date: 9-17-02

[Please include a title page for each Appendix and Exhibit]

AGENDA ITEM 36

Consider approving professional services contract for mitigation of Lake Creek flood control projects.

Moved: **Judge Doerfler**

Seconded: **Commissioner Boatright**

Motion: To approve a professional services contract with Hall/Bargainer, Inc., in the amount of \$13,345 for mitigation of Lake Creek flood control projects.

Vote: 4 - 0

< Attachment >

Contract No. 267-0207

1 of 9 Pages

ATTACHMENT A

WORK AUTHORIZATION NO. 1

This Work Authorization is made pursuant to the terms and conditions of the Agreement entered into by and between Williamson County, Texas, a political subdivision of the State of Texas, (*the "County"*) and *Hall/Bargainer, Inc., planners & landscape architects*, 400 W. Main, Suite 220, Round Rock, Texas 78664 (*the "Landscape Architect"*).

Part1. The *Landscape Architect* will provide the following Landscape Architectural services:

Scope of Work

Consultant shall facilitate the mitigation planting for two portions of the Lake Creek Area Trails and Open Space Project as referenced above in Williamson County, Texas(Please see items A and B below). It is the Consultants intent to work in effective cooperation with the Client to achieve an appropriate and efficient implementation procedure for all mitigation projects.

- I.) Lake Creek Channel shall be mitigated as approved by a Letter Of Permission (LOP) granted by the United States Army Corp of Engineers (USACE) project number 199800464.
- II.) Lake Creek Tributary II shall be mitigated as approved by an LOP granted by USACE project number 200100525.

All work shall be done in accordance with the conditions set forth in the above referenced LOP's. This work authorization shall include but is not limited to:

1. Tree Availability research
2. Planting specifications & Maintenance guidelines
3. Bid Negotiations & Pre-Construction Meeting

Part 2. The maximum amount payable for services under this Work Authorization without modification is \$13,345

Part 3. Payment to the *Landscape Architect* for the services established under this Work Authorization shall be made in accordance with the Agreement.

Part 4. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate upon the completion of the Basic Services, unless extended by a Supplemental Work Authorization.