



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: August 1, 2016

MEMO TO: Bonnie Thomson Carter, Chair
Planning and Restoration Committee

Agenda Item# 9.7

S. Michael Rummel, Chair
Finance and Administrative Committee

FROM: Randall L. Seebach
Director of Planning and Land Preservation

RECOMMENDATION: Recommend approval of a Resolution approving an Agreement with the Big Sag Wetland Conservancy, Inc. for the purchase of wetland credits in the amount of \$57,225.00 for the Everett Road Trail Connection at Captain Daniel Wright Woods Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections; Leadership

FINANCIAL DATA: This project was approved as part of the adopted FY 2016/2017 Capital Improvement Plan in the amount of \$1,500,000.00. This portion of the project was estimated at \$65,000.00. The actual cost of \$57,225.00 will be charged to account 35304100-803200-65101.

BACKGROUND: The proposed Everett Road Trail Connection is part of an overall effort to connect the Captain Daniel Wright Woods Forest Preserve to existing public trail networks that currently end at the Riverwoods Road roundabout. The project includes approximately 0.83 mile of 10'-wide asphalt trail and two maintenance access gates.

Construction of the trail will result in the unavoidable impact of 0.545 acre of wetland. In order to satisfy U.S. Army Corps of Engineers' permit requirements, 0.545 acre of new wetland is required to be created or purchased through a wetland mitigation bank. District staff has determined that the most efficient method of satisfying this requirement is to purchase 0.545 acre of wetland credits, thus avoiding future maintenance and monitoring costs and performance guarantees. These certified wetland credits are in the Fox River Watershed and owned by the Big Sag Wetland Conservancy, Inc. Currently there are no wetland credits available for purchase in the Des Plaines River Watershed.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Corporate Counsel

PRESENTER: Randall L. Seebach

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR AUGUST MEETING
AUGUST 9, 2016**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING AND RESTORATION COMMITTEE** and **FINANCE AND ADMINISTRATIVE COMMITTEE** present herewith, "A Resolution Approving an Agreement with the Big Sag Wetland Conservancy, Inc. for the purchase of wetland credits for the Everett Road Trail Connection," and request its adoption.

PLANNING AND RESTORATION COMMITTEE:

Date: 8/1/16 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

FINANCE AND ADMINISTRATIVE COMMITTEE

Date: 8/4/2016 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING AN AGREEMENT WITH
THE BIG SAG WETLAND CONSERVANCY, INC. FOR THE PURCHASE OF
WETLAND CREDITS FOR THE EVERETT ROAD TRAIL CONNECTION**

WHEREAS, the Lake County Forest Preserve District (the "District") owns property on which it desires to construct a new trail known as the Everett Road Trail Connection (the "Project"); and

WHEREAS, construction of the Project will unavoidably impact 0.545 acre of wetland within the Des Plaines River Watershed; and

WHEREAS, the U.S. Army Corps of Engineers' (USACE) Regional Permit 3 Program (the "Permit Program") requires that the District either create 0.545 acre of new wetland or purchase an equal amount of wetland credits through a wetland mitigation bank (the "Wetland Credits"); and

WHEREAS, it is more efficient to purchase the Wetland Credits than it is to create 0.545 acre of new wetlands; and

WHEREAS, currently there are no Wetland Credits available for purchase within the Des Plaines River Watershed and therefore District staff has negotiated an agreement with the Big Sag Wetland Conservancy, Inc. to purchase Wetland Credits in the Fox River watershed in the form attached hereto (the "Agreement") and has recommended that the District enter into the Agreement with The Big Sag Conservancy, Inc.; and

WHEREAS, it is in the best interest of the District to enter into the Agreement with The Big Sag Conservancy, Inc. in substantially the form attached hereto, to purchase Wetland Credits;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2. Approval of the Agreement. The Agreement is hereby approved in substantially the form attached hereto. The Executive Director of the District is hereby authorized and directed to execute the Agreement in substantially the form attached hereto.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2016

AYES:

NAYS:

APPROVED this _____ day of _____, 2016

ATTEST:

Ann B. Maine, President
Lake County Forest Preserve District

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit _____

WETLAND CREDIT PURCHASE AGREEMENT

This **WETLAND CREDIT PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of this 9th day of August, 2016, by and between The Big Sag Wetland Conservancy, Inc., an Illinois not-for-profit corporation ("Seller") and Lake County Forest Preserve District ("Purchaser").

WHEREAS, Purchaser will discharge of clean, non-toxic fill material into wetlands located in Lake County, Illinois to be impacted by the proposed project identified as: Everett Road Trail Connection, Mettawa, Illinois (the "Project").

WHEREAS, Purchaser is required to compensate for the discharges into wetlands associated with the Project, and elects to do so by purchasing specific off-site Lake County Watershed Wetland Credits from Seller.

WHEREAS, Purchaser represents that it is required to purchase a total of 0.545 acres of certified wetland credits in order to compensate for proposed impacts to wetlands resulting from development of the Project in Lake County, Illinois.

WHEREAS, Seller represents that Seller has sufficient credit acres available for sale.

WHEREAS, Purchaser represents that the applicable regulatory agencies associated with the Project require compensatory wetland replacement from an approved off-site wetland bank at a ratio of 1.0 to 1.0, and that Purchaser is satisfied that 0.545 acres from Seller is sufficient.

WHEREAS, Purchase represents that Purchaser's Project (SMC #14-84-107; ACOE LRC 2016-00080) is located in the Des Plaines River Watershed, Lake County, Illinois, and Seller represents that it operates the Big Sag Wetland Mitigation Bank within the Squaw Creek/Fox River Watershed, located in Lake County, Illinois pursuant to authority provided by Lake County SMC and the United States Army, Corps of Engineers.

NOW, THEREFORE, for and in consideration of the promise to pay and the payment of the Purchase Price hereinafter described, by Purchaser to Seller, and the mutual promise, covenants and

conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1) **RECITALS:** The foregoing recitals shall not be construed as mere recitals but as a description of the consideration for this Agreement and are hereby incorporated by this reference.

2) **PURCHASE PRICE:** Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller a total sum of FIFTY-SEVEN THOUSAND TWO HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$57,225.00) for .0545 acres of Seller's Wetland Mitigation Credits (i.e., 0.545 acres X \$105,000/acres). The Purchase Price shall be paid in the following manner:

a.) **INITIAL PAYMENT:** Upon the execution and delivery of this Agreement, Purchaser shall pay to Seller 10% of the Purchase Price in cash or equivalent acceptable to the Seller, which initial payment shall be a non-refundable payment, to be applied as a credit to the Purchase Price in the event that the Purchaser completes the sale as herein provided (otherwise, at Seller's sole discretion, the 10% initial payment will be kept as liquidated damages, and not as a penalty, to cover Seller's risks with the regulatory authorities and the payment of the costs incurred in pursuing this Agreement).

b.) **FINAL PAYMENT:** Within thirty (30) days of the date of this Agreement, Purchaser shall pay to Seller the balance of the Purchase Price (\$57,225.00 less the Initial Payment of \$5,722.50 = \$51,502.50). Upon receipt of the final payment, Seller shall notify the United States Army Corps of Engineers that Purchaser has completed the

purchase of 0.545 credit acres from Seller, and Seller shall deliver to Purchaser a Certificate documenting the purchase that is the subject of this Agreement.

3) **SELLER'S PERFORMANCE:** Upon completion of the sale and purchase contemplated by this Agreement, Seller shall perform its obligations under Permit LRC-2001-21098, and Purchaser shall have no obligation to perform any of the responsibilities or assume any liabilities of Seller under Permit LRC-2001-21098 or any other agreement between the Seller and the United States Army Corps of Engineers regarding the construction, operation or maintenance of the permitted wetland mitigation bank from which the purchased credits are related.

4) **NOTICES:** Notices required or permitted hereunder shall be sufficient upon delivery if property addressed, and accomplished by overnight courier, by United States certified mail, return receipt requested, or by electronic mail, delivered as follows:

To Seller:

The Big Sag Wetland Conservancy, Inc.
160 Sports Club Drive
Hainesville, Illinois 60030
Attn: Mr. Robert W. Howden, Jr.
Phone: 847.945.9588
rwhowdenjr@att.net

With copy to

Greensfelder, Hemker & Gale, P.C.
200 West Madison
Suite 3300
Chicago, Illinois 60606
Attn: Mr. William J. Anaya
Phone: 312.345.5002
wanaya@greensfelder.com

If to Purchaser:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, Illinois 60048
Attn: Mr. Michael Haug
Phone: 847.968.3275
mhaug@lcfpd.org

5) **PRIOR AGREEMENTS:** This Agreement supersedes all prior understandings, negotiations and agreements (if any) between the parties hereto relating to the subject matter of the Agreement, whether written or oral, and this Agreement may be amended only by a written instrument executed by both Seller and Purchaser.

6) **APPLICABLE LAW:** This Agreement shall be governed and interpreted by the laws of the State of Illinois, subject to the requirements of applicable federal and local law and regulation affecting wetland credit sales. Changes in federal, state or local laws which may otherwise impact this Agreement shall be enforced retroactively after execution of this Agreement.

7) **SUCCESSORS AND ASSIGNS:** This Agreement shall inure to the benefit of and bind Seller and Purchaser and their respective successors and assigns. Neither party hereto shall have authority to assign any interest in this Agreement without the prior written approval of the other party.

8) **CONTRACT ACCEPTANCE:** This Agreement is void if not executed by the parties and a fully executed copy is delivered to Seller on or before August 12, 2016, and if this Agreement is timely delivered, the Agreement shall terminate pursuant to its terms if full payment is not received by Seller by 5:00 PM, Chicago time, on or before September 9, 2016. This time limitations shall be extended only upon written approval by all parties to this agreement.

9) **TIME IS THE ESSENCE:** Time is the essence of this Agreement.

10) **NO THIRD PARTY BENEFICIARY:** No individual or entity is an intended third party beneficiary of this Agreement. Only the parties specifically mentioned and described as Seller

and Purchaser may enforce the terms herein described, and only for their respective interests and benefit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

SELLER:

The Big Sag Wetland Conservancy, Inc.



By: Stephen Torres
Its: President

PURCHASER:

Lake County Forest Preserve District

By: _____

Its: _____

Attest: _____