



WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN

PARTICIPATION AGREEMENT

This **WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN PARTICIPATION AGREEMENT** (this "Participation Agreement") dated November 30, 2010, is entered into by the City of Austin, Texas - Water Utility Department, (the "Participant"), and the **WILLIAMSON COUNTY CONSERVATION FOUNDATION**, a Texas non-profit corporation (the "Foundation").

BACKGROUND

Williamson County, Texas, and the Foundation are the permittees under federal Endangered Species Act incidental take permit number TE-181840-0 dated October 21, 2008 (the "Permit"). The Permit authorizes "take" of certain listed species of wildlife occurring in Williamson County in exchange for implementation of the Williamson County Regional Habitat Conservation Plan (the "Plan"). The Foundation/Williamson County administers the Plan, which includes granting participation rights to applicants who enter into participation agreements. Through participation in the Plan, a participant receives authority for incidental "take" of listed species covered by the Permit, in accordance with the terms and conditions of the Permit and this Participation Agreement. Incidental take means take that results from, but is not the purpose of, carrying out an otherwise lawful activity. Participant is the owner of a tract or tracts of land (the "Property") located in Williamson County, Texas, and described on Exhibit "A" to this Participation Agreement.

AGREEMENT

1. **Grant Of Participation Rights And Obligations Of Participant.** The Foundation hereby grants to the Participant the right to participate in the Plan with respect to the Participant's proposed activities on the Property. Exhibit "B" to this Participation Agreement describes the Participant's proposed activities and the species to be covered under this Participation Agreement. The Participant represents and warrants that the activities proposed to be covered under this Participation Agreement will be carried out in full compliance with all applicable laws and regulations. This Participation Agreement covers only those activities described on Exhibit "B". The Participant shall consult with the Foundation before deviating in any material respect from the described activities. This Participation Agreement is entered into subject to all terms and conditions of the Permit, the Plan, and applicable law and regulations, and the Participant assumes and agrees to be bound by all of such terms and conditions, including without limitation those described on Exhibit "C" to this Participation Agreement.

2. **Participation Fee.** The Participant has paid to the Foundation the total sum of \$100.00 (One Hundred and No hundredths Dollars) as the Participant's fee to participate in the Plan with respect to the Participant's proposed activities on the Property.

3. **Right To Inspect.** The Foundation, the County, and the U.S. Fish and Wildlife Service shall have the right to inspect the Property in order to ensure compliance with the terms of this Participation Agreement.

4. **Breach By Participant.** The Foundation shall provide Participant written notice specifying any breach of the terms of this Participation Agreement, and Participant shall have seven (7) days thereafter, or such other length of time the Foundation agrees in writing, to cure said breach. The Foundation, at its sole discretion and for good cause, including without limitation Participant's failure to cure any breach within the applicable timeframe, may terminate this Participation Agreement. Notification of breach and termination of participation rights shall be made by the Foundation to the Participant in writing at the address provided in Section 11.

5. **Participant's Sole Recourse.** In the event that this Participation Agreement is (i) ineffective or deficient with respect to the Property or Participant's proposed activities for any reason, or (ii) terminated in accordance with the terms and provisions of this Participation Agreement, Participant's sole recourse shall be to recover from the Foundation an amount not to exceed the total sum referenced in Section 2 of this Participation Agreement, upon surrender and termination of this Participation Agreement by Participant in writing to the Foundation; provided, Participant shall not be entitled to recover administrative fees from the Foundation.

6. **Covenants Run With The Land; Recordation.** Participant agrees that the covenants provided herein are intended to be binding upon any heirs, successors, and assigns in interest to the Property. Upon any transfer of any ownership interests to all or part of the Property, this Participation Agreement shall not terminate as to the Property, but rather shall continue in full force and effect and shall be fully binding upon any heirs, successors, and assigns in interest to the Property, or any portion thereof. Upon execution of this Participation Agreement by the Foundation and Participant, a Memorandum of Participation Agreement in form substantially the same as Exhibit "D" attached hereto and incorporated herein for all purposes, shall be signed, acknowledged, and recorded by the Participant in the Official Public Records of Williamson County, Texas. The Participant shall promptly provide a copy of the recorded Memorandum of Participation Agreement to the Foundation.

7. **Venue And Choice Of Law.** The obligations and undertakings of each of the parties to this Participation Agreement shall be performable in Williamson County, Texas, and this Participation Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Texas.

8. **Entirety Of Agreement And Modification.** This instrument constitutes the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Participation Agreement are of no force of effect. Any oral representations or modifications concerning this Participation Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the party to be charged and expressly approved by an authorized representative of such party.

9. **Non-Assignment**. Participant shall not sell, transfer, or assign all or any part of this Participation Agreement to a party other than a successive owner of all or a portion of the Property without prior written consent of the Foundation.

10. **Successors And Assigns**. This Participation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, as and where authorized pursuant to this Participation Agreement.

11. **Notice**. All notices under this Participation Agreement shall be in writing and shall be deemed to have been properly given, delivered and received (a) as of the date of delivery if personally delivered, or (b) as of the date of deposit in the mail system if sent by United States certified mail, return receipt requested, postage prepaid. For purposes of notices, the addresses of the parties are as follows

PARTICIPANT:

City of Austin – Austin Water Utility Department
c/o Joel Brundrett, P.E.
Public Works Department
505 Barton Springs Drive, Suite 900
Austin, TX 78701
Attn: Foundation Application File No. 20100727
Fax: (512) 453-3316

FOUNDATION:

Williamson County Regional Habitat Conservation Plan
Plan Administrator
350 Discovery Boulevard #207
Cedar Park, Texas 78613
Attn: Foundation Application File No. 20100727
Fax: (512) 260-4237

or to such other address as hereafter shall be designated in writing by the applicable party.

12. **Term Of Participation Agreement**. This Participation Agreement shall terminate upon the expiration or termination of the Permit.

13. **Headings**. The headings at the beginning of the various provisions of this Participation Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Participation Agreement.

14. **Number And Gender Defined**. As used in this Participation Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

EXECUTED AS OF THE LAST DAY SET FORTH BELOW.

FOUNDATION:

By: _____
Print Name: _____
Title: _____
Date: _____

PARTICIPANT:

By: _____
Print Name: _____
Title: _____
Date: _____

Exhibit List:

- Exhibit "A" – Description of Participant's Property, including GPS coordinates/points
- Exhibit "B" – Covered Species and Participant's Proposed Activities Relative to Participation Agreement
- Exhibit "C" – Special Terms and Conditions in Connection with 10(a) Permit #TE - 181840
- Exhibit "D" – Williamson County Regional Habitat Conservation Plan Memorandum of Participation Agreement Relative to U.S. Fish and Wildlife Service Permit

EXHIBIT "A"
TO PARTICIPATION AGREEMENT

Legal Description of Participant's Property, including GPS coordinates/points

**COA Pump Station northwest of the RM 620 and Anderson Mill Road Intersection, 12006
ANDERSON MILL RD CEDAR PARK, TX 78613, a portion of Williamson County
Appraisal District Property ID: R048816 consisting of 0.95 acre for the project area
(that portion located in Williamson County).**

EXHIBIT "B"
TO PARTICIPATION AGREEMENT

Covered Species and Participant's Proposed Activities Relative to Participation Agreement

Provide a summary describing the scope and nature of the proposed activities and uses of the Property. This summary should provide details regarding the proposed development plan, including square footage or acreage of limit of construction (limit of construction is any area within which any type of construction or land disturbance will occur, i.e., area for erosion controls, driveway, utilities). Attach conceptual plan that identifies the foregoing items.

The City of Austin Water Utility Department will construct a new pump station, elevated storage tank, and install 700 feet of water supply line near the intersection of RM 620 and Anderson Mill Road. The site is on property currently owned by the City of Austin. The project site consists of 3.39 acres (out of a total tract size of 7.36 acres) of which 0.95 acres are located in Williamson County.

Identify which of the following species are covered by this Participation Agreement.

<u> X </u>	Yes	<u> </u>	No	Golden-cheeked warbler
<u> X </u>	Yes	<u> </u>	No	Black-capped vireo
<u> X </u>	Yes	<u> </u>	No	Bone Cave harvestman
<u> X </u>	Yes	<u> </u>	No	Coffin Cave mold beetle

EXHIBIT "C"
TO PARTICIPATION AGREEMENT

Special Terms and Conditions in Connection
with 10(a) Permit #TE - 181840

1. On property covered by this Participation Agreement, vegetation clearing activities within 300 feet of habitat will be conducted outside the GCWA or BCVI breeding seasons, as applicable, unless breeding season surveys performed by an Endangered Species Act section 10(a)(1)(A)-permitted biologist indicate that no GCWA or BCVI are present within 300 feet of the desired activity, or as otherwise approved on a case-by-case basis by the Service. The breeding season for the GCWA is March 1 to August 1. The breeding season for the BCVI is March 15 to September 1.
2. Construction activities within, or within 300 feet of, GCWA or BCVI habitat may be conducted year round as long as such construction follows permitted clearing, as referenced above, in a reasonably prompt and expeditious manner indicating continuous activity.
3. Clearing and construction activities authorized under the Permit shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt.
4. Upon locating a dead, injured, or sick GCWA or BCVI or any other endangered or threatened species in connection with road construction and other activities conducted by Participant that are covered by the Permit, Participant is required to contact the U.S. Fish and Wildlife Service's Law Enforcement Office, in Georgetown, Texas, (512) 863-5972, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, Participant and their contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN

**MEMORANDUM OF PARTICIPATION AGREEMENT RELATIVE TO
U.S. FISH AND WILDLIFE SERVICE PERMIT (Permit No. TE-181840-0)**

STATE OF TEXAS

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KNOW ALL PERSONS BY THESE PRESENTS

§

COUNTY OF WILLIAMSON

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This WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN MEMORANDUM OF PARTICIPATION AGREEMENT RELATIVE TO U.S. FISH AND WILDLIFE SERVICE PERMIT (Permit No. TE-181840-0) (this “Memorandum”) is made and executed by CITY OF AUSTIN – WATER UTILITY DEPARTMENT, (“Participant”), effective as of the 30th day of November, 2010.

WITNESSETH:

1. **Permit.** Williamson County, Texas, and the Foundation are the permittees under federal Endangered Species Act incidental take permit number TE-181840-0 dated October 21, 2008 (the “Permit”). The Permit authorizes “take” of certain listed species of wildlife occurring in Williamson County in exchange for implementation of the Williamson County Regional Habitat Conservation Plan (the “Plan”). The Foundation/Williamson County administers the Plan, which includes granting participation rights to applicants who enter into participation agreements. Through participation in the Plan, a participant receives authority for incidental “take” of listed species covered by the Permit, in accordance with the terms and conditions of the Permit and the participation agreement entered into by the participant.
2. **Participation Agreement; Grant of Participation Rights and Obligations of Participant.** Participant is the owner of a tract or tracts of land (the “Property”) located in Williamson County, Texas, and described on Exhibit “A” to this Memorandum. Participant and the Foundation entered into the Williamson County Regional Habitat Conservation Plan Participation Agreement dated January 20, 2009 (“Participation Agreement,” Foundation Application File No. 20081204-1). Under the Participation Agreement, the Foundation granted to the Participant the right to participate in the Plan with respect to the Participant’s proposed activities on the Property. The Participation Agreement describes the Participant’s proposed activities and the species to be covered under the Participation Agreement. The Participant also agreed under the Participation Agreement to assume and agree to be bound by all terms and conditions of the Permit, the Plan, and all applicable laws and regulations, including without limitation those terms and conditions specifically set forth as an exhibit to the Participation Agreement.

3. **Notice.** Participant desires to execute this Memorandum and to have it filed of record in the Official Public Records of Williamson County, Texas, providing public and record notice to all persons as to the existence of the Participation Agreement. Further information regarding the Participation Agreement may be obtained by contacting the following:

PARTICIPANT:

City of Austin – Austin Water Utility Department
c/o Joel Brundrett, P.E.
Public Works Department
505 Barton Springs Drive, Suite 900
Austin, TX 78701
Attn: Foundation Application File No. 20100727
Fax: (512) 453-3316

FOUNDATION:

Williamson County Regional Habitat Conservation Plan
Plan Administrator
350 Discovery Boulevard #207
Cedar Park, Texas 78613
Attn: Foundation Application File No. 20100727
Phone: (512) 260-4226

[Remainder of page intentionally blank]

EXECUTED as of the effective date first written above.

PARTICIPANT:

By: _____

Print Name: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS §

§

COUNTY OF §

This instrument was acknowledged before me on _____, 20__, by _____
_____, _____ of _____, a _____
_____, on behalf of said _____.

NOTARY PUBLIC, State of Texas

Print Name: _____

My Commission Expires:

Exhibits:

“A” -- U.S. Fish and Wildlife Service Permit No. TE-181840-0

“B” -- Description of Participant’s Property

After Recording, Return To:

Williamson County Regional Habitat Conservation Plan
Plan Administrator
350 Discovery Boulevard #207
Cedar Park, Texas 78613

EXHIBIT A
TO MEMORANDUM OF PARTICIPATION AGREEMENT

U.S. Fish and Wildlife Service Permit No. TE-181840-0

Consisting of Four (4) pages following



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/97)

1. PERMITTEE

The County of Williamson
301 SE Inner Loop
Georgetown, Texas 78626
Phone: 512/943-1550
e-mail: dgattis@wilco.org

Williamson County Conservation Foundation
350 Discovery Boulevard
Cedar Park, Texas 78613
Phone: 512/733-5380
Email: lbirkman@wilco.org

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER
TE-181840-0

4. RENEWABLE
[☒] YES
[] NO

5. MAY COPY
[☒] YES
[] NO

6. EFFECTIVE
10/16/2008

7. EXPIRES
10/16/2038

8. NAME AND TITLE OF PRINCIPAL OFFICER: (if #1 is a business)
Mr. Daniel A. Gattis, County Judge (County) or successor.
Lisa Birkman, President, Williamson County Conservation Foundation, Williamson County Commissioner (Foundation) or successor.

9. TYPE OF PERMIT:
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED: Williamson County, Texas.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER APPLICABLE FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (copy enclosed).

12. REPORTING REQUIREMENTS

Annual report due each January 1 throughout the life of the permit.

ISSUED BY:

Bob Miller

TITLE

Deputy Regional Director

Acting

DATE

10/21/08

- E. Permittee(s) are authorized to "Take" the following species: Bone Cave harvestman, Coffin Cave mold beetle, golden-cheeked warbler (GCWA), and black-capped vireo (BCVI) in Williamson County, Texas incidental to activities including, but not limited to, road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing.
- F. For GCWA, the loss of up to 6,000 acres of potential GCWA habitat is authorized over the life of the Permit. These impacts will be mitigated by a combination of purchasing mitigation credits from Hickory Pass Conservation Bank and/or other nearby conservation banks or by creating GCWA preserves.
- G. For BCVI, the loss of up to 4,267 acres of potential BCVI habitat is authorized over the life of the Permit. These impacts are mitigated primarily through habitat restoration, habitat management, enhancement of existing protected BCVI habitat, or an alternate, Service-approved mitigation program.
- H. On parcels covered by Participation Agreements, vegetation clearing activities within, or within 300 feet of, habitat will be conducted outside the GCWA or BCVI breeding seasons, as applicable, unless breeding season surveys performed by an Endangered Species Act section 10(a)(1)(A)-permitted biologist indicate that no GCWA or BCVI are present within, or within 300 feet of, the desired activity, or as otherwise approved on a case-by-case basis by the Service. The breeding season for the GCWA is March 1 to August 1. The breeding season for the BCVI is March 15 to September 1.
- I. Construction activities within, or within 300 feet of, GCWA or BCVI habitat may be conducted year round as long as such construction follows permitted clearing, as referenced above, in a reasonably prompt and expeditious manner indicating continuous activity.
- J. For Bone Cave harvestman and Coffin Cave mold beetle, up to 210 caves occupied by one or both species are authorized to be impacted. These impacts will be mitigated by acquiring and managing 9 to 15 karst fauna areas (KFAs), a minimum of three KFAs in each of the karst fauna regions occupied by the covered species.
- K. Clearing and construction activities authorized under this Permit shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt.
- L. The Service agrees that Williamson County or the Foundation may enter into "Participation Agreements" covering land within the Permit area. Participation

Agreements will stipulate that the Participant will be bound by and comply with those terms and conditions of this Permit applicable to the Participant's land and the Participant shall benefit from the authorization granted in this Permit. So long as this Permit remains in effect and a Participant is in compliance with the Participation Agreement, that Participant shall be deemed, with respect to that Participant's property covered by the Participation Agreement, to have the full benefits and authorities of this Permit with respect to that Participant's property. The Service agrees that a breach by a Participant of its obligations under a Participation Agreement will not be considered a violation by the Permittee, or any other Participant, of this Permit. In the event a Participant has materially breached its Participation Agreement then the Service, Williamson County, or the Foundation may terminate that Participation Agreement.

- M. Upon locating a dead, injured, or sick GCWA or BCVI or any other endangered or threatened species in connection with road construction and other activities conducted by Williamson County that are covered by this Permit, Permittees and/or Participant, as applicable, shall contact the U.S. Fish and Wildlife Service's Law Enforcement Office, in Georgetown, Texas, (512) 863-5972, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, Williamson County, the Foundation, and their contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- N. Conditions of this Permit shall be binding on, and for the benefit of Williamson County and the Foundation.
- O. If during the tenure of this Permit authorized impacts are exceeded such that there may be an increase in the anticipated take of any covered species, Williamson County or the Foundation shall contact the Service and obtain authorization and/or amendment of the Permit before entering into participation agreements or commencing any other activities which might result in unauthorized impacts.
- P. Williamson County or the Foundation shall submit on January 1 of each year the Permit is in effect an Annual Report describing participation agreements entered into and conservation and management actions undertaken. The report will summarize the results of the biological monitoring and adaptive management process and findings. The Annual Report must include the locations of surveys, a description of any deviations from required survey protocols, personnel used, and documentation of all survey results as required in the protocols for the particular endangered species. In addition, the annual

report will review existing management and highlight areas where change in management approach may be needed and where prioritized research needs are reviewed. A copy of the annual report shall be submitted to the U.S. Fish and Wildlife Service Field Office 10711 Burnet, Suite 200, Austin, Texas 78758; and to the U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.

- Q. The No Surprises Rule, found at 50 C.F.R. 17.22(b)(8) and 17.32(b)(8), is applicable to this Permit. Pursuant to the No Surprises Rule, the Service has determined that the RHCP adequately addresses the GCWA, BCVI, Bone Cave Harvestman, and Coffin Cave mold beetle.
- R. Acceptance of the Permit serves as evidence that Williamson County and the Foundation understand and agree to abide by the terms of the Permit and all applicable sections of Title 50 CFR Parts 13 and 17 pertinent to issued permits.

----END OF PERMIT # TE-181840-0----

EXHIBIT B
TO MEMORANDUM OF PARTICIPATION AGREEMENT

Legal Description of Participant's Property

COA Pump Station northwest of the RM 620 and Anderson Mill Road Intersection, 12006 ANDERSON MILL RD CEDAR PARK, TX 78613, a portion of Williamson County Appraisal District Property ID: R048816 consisting of 0.95 acre for the project area (that portion located in Williamson County).