



WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN

PARTICIPATION AGREEMENT

This **WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN PARTICIPATION AGREEMENT** (this "Participation Agreement") dated _____, 2009 is entered into by the City of Round Rock, Texas and the Williamson County Road Bond Program (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 \$401,300.00 (Four hundred one thousand three 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 or 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 Round Rock, Texas
c/o City of Round Rock Administration Department
221 East Main Street
Round Rock, Texas 78664

AND

Williamson County Road Bond Program
c/o Williamson County
710 Main, Ste. 101
Georgetown, Texas 78626
Attn: Foundation Application File No. 20090319
Fax: (512) 943-1662

FOUNDATION:

Williamson County Regional Habitat Conservation Plan
Plan Administrator
350 Discovery Boulevard #207
Cedar Park, Texas 78613
Attn: Foundation Application File No. 20090319
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: _____

PARTICIPANTS:

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

By:  _____
Print Name: _____
Title: _____
Date: 10-15-09

Exhibit List:

- Exhibit "A" – Description of Participant's Property, including, as available, 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

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

Property is identified as a 120-foot wide Right-of-Way for Wyoming Springs between RM 620 and Brightwater Road, Round Rock, Williamson County, Texas. Files outlining the limits of the project are also held in WCCF offices, Williamson County, Texas and are available in shape file format (*.shp) in the offices of Williamson County GIS. Identifying GPS points are a part of files in the WCCF office.

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.

Property is identified as a 120-foot wide Right-of-Way for Wyoming Springs between RM 620 and Brightwater Road, Round Rock, Williamson County, Texas. Files outlining the limits of the project are also held in WCCF offices, Williamson County, Texas and are available in shape file format (*.shp) in the offices of Williamson County GIS and identifying GPS points are in the files of the WCCF.

The City of Round Rock, in cooperation with the County of Williamson, is developing a project to widen Wyoming Springs Drive from RM 620 to Brightwater Boulevard in southern Williamson County. The proposed improvements would widen the existing two-lane roadway to the ultimate four-lane major arterial divided (MAD-4) roadway. The proposed improvements would include constructing within the existing rights-of-way the final two lanes of the four-lane divided roadway, raised medians, curb and gutter, safety improvements at Fern Bluff Elementary School, sidewalks, bicycle accommodations and drainage. The proposed improvements are intended to increase capacity of an existing roadway and reduce congestion. The area of disturbance is approximately 12.9 acres. The project was developed in accordance with all applicable rules and regulations.

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

☐ Yes	☐ No	Golden-cheeked warbler
☐ Yes	☐ No	Black-capped vireo
☒ Yes	☐ No	Bone Cave harvestman
☒ Yes	☐ 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

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 the City of Round Rock, Texas and the Williamson County Road Bond Program ("Participant"), effective as of the _____ day of _____ 2009.

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 "B" to this Memorandum. Participant and the Foundation entered into the Williamson County Regional Habitat Conservation Plan Participation Agreement dated _____, 2009 ("Participation Agreement," Foundation Application File No. 20090319). 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:



Attn: Foundation Application File No. 20090319

Phone: (512) _____

FOUNDATION:

Williamson County Regional Habitat Conservation Plan
Plan Administrator

350 Discovery Boulevard #207

Cedar Park, Texas 78613

Attn: Foundation Application File No. 20090319

Phone: (512) 260-4226

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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:

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

(Four pages following.)

EXHIBIT B
TO MEMORANDUM OF PARTICIPATION AGREEMENT

Description of Participant's Property

Property is identified as a 120-foot wide Right-of-Way for Wyoming Springs between RM 620 and Brightwater Road, Round Rock, Williamson County, Texas. Files outlining the limits of the project are also held in WCCF offices, Williamson County, Texas and are available in shape file format (*.shp) in the offices of Williamson County GIS.