



**AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This Agreement is made as of April 13, 2010 (the "Effective Date"), by and between

The **Owner:** Williamson County
710 Main Street, Suite 101
Georgetown, Texas 78626

and **Contractor** Westar Construction, Inc.
4500 Williams Dr. Ste 212-PMB 411
Georgetown, TX 78633

for the **Project:** Southwest Regional Park Splash Pad, being located 3005
C.R. 175, Leander, Williamson County, Texas

Project Architect: RVE, Inc.
D/B/A RVi
712 Congress Ave, Suite 300
Austin, Texas 78701

AGREEMENT, this Agreement between Owner and Contractor (hereinafter called "Agreement") is entered into effective as of the date indicated on the immediately preceding page of this document and all attachments (the "Effective Date"), by and between Williamson County a political subdivision of the State of Texas (hereinafter called the "Owner") and Westar Construction, Inc. (hereinafter called "Contractor").

WHEREAS, the Owner desires to retain a Contractor for the Construction of the Southwest Regional Park Splash Pad, being located 3005 C.R. 175, Leander, Williamson County, Texas, as further described in the Contract Documents (hereinafter called the "Project"),

WHEREAS, the Owner desires a Contractor who will render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project, and

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE 1 SCOPE OF WORK

The Contractor has overall responsibility for and shall provide complete construction services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The General Conditions for Williamson County ("General Conditions"), as attached, however, this Agreement shall control in the event of a conflict with those General Conditions;
- c. The Special Conditions as attached (if any), however, this Agreement shall control in the event of a conflict with those Special Conditions;
- d. All Addenda issued prior to the Effective Date of this Agreement;
- e. The "Proposal Documents" as defined by the "Instructions to Proposers or Request for Proposals No. 10WCP904" in the original Request for Proposal No. 10WCP904 documents, however, this Agreement shall control in the event of a conflict with the Proposal Documents;
- f. All Change Orders issued after the Effective Date of this Agreement;
- g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;

- h. The Drawings and Specifications developed or prepared by Owners other consultants, if any, and accepted by the Owner; and
- i. Texas Commission on Environmental Quality Notice of Approval of a Water Pollution Abatement Plan for the Project dated March 5, 2010, which is attached to this Agreement as **Exhibit "A"** and incorporated herein for all purposes.

2.2 The Contract Documents form the entire and integrated Contract and Agreement between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

2.3 The term "Contractor" shall be interchangeable with the terms "Proposer," "Bidder" and "General Contractor" or other similar terms as appropriate in the Contract Documents.

ARTICLE 3 DEFINITIONS

The terms, words and phrases used in the Contract Documents shall have meanings as follows.

3.1 **"Construction Documents"** means, collectively, the Drawings, Specifications, details, accepted and approved Change Orders and other documents prepared by the Project Architect, its consultants and by the Owner's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project that are accepted by the Owner.

3.2 **"Contract Sum"** means the total amount of all compensation payable to the Contractor for the Project and shall not exceed the amount set forth herein below, subject to adjustment as approved by Owner for Additional Services or Change Orders. Any costs that exceed the Contract Sum shall be borne solely by Contractor without reimbursement by Owner.

3.3 **"Final Completion"** means the stage in the progress of the Work when, in the Owner's opinion, the entire Work has been completed, the Contractor's obligations under the Contract Documents have been fulfilled, and the Owner is processing or has made final payment to the Contractor, as evidenced by a Certificate of Acceptance approved by the Owner. The date of Final Completion is a crucial element of the Project. Therefore, the date of Substantial Completion is not subject to change unless due to "force majeure" as defined herein and in any associated Contract Documents or unless agreed to in advance in writing by the parties.

3.4 **"Notice to Proceed"** refers to the written document issued by the Owner following acceptance of the proposal and execution of this Agreement which indicates the date on which the Work is to begin.

3.5 **"Owner"** means Williamson County and includes its designated Owner's Designated Representative.

3.6 **"Owners Designated Representative or ODR"** means the individual described in Article 7.3 herein below.

3.7 **"Owner's Specifications"** means the construction and contract administration requirements and standards as interpreted by Owner.

3.8 **"Project Architect"** means the professional architect employed by the Owner as architect of record for the Project along with their consultants.

3.9 **"Standards and Standard Specifications"** means the construction and design requirements and the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction

3.10 **"Subcontractor"** means a person or entity that has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Project Architect or any person or entity hired directly by the Owner.

3.11 **"Substantial Completion"** means the stage in the progress of the Work when the Work, or designated portions thereof, may still require minor modifications or adjustments but, in the Owner's opinion, the Work has progressed to the point such that all parts of the Work under consideration are fully operational and usable for intended purposes, as evidenced by a Certificate of Substantial Completion approved by the Owner.

3.12 **"Work"** means provision of all services, labor, materials, supplies, and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents (as such may be modified or amended). The term "reasonably inferable" takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work. The Contractor shall not be entitled to an increase in the Contract Sum due to the absence of any detail or specification the Contractor may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Notwithstanding the above, the Contractor shall not be responsible for design, except incidental designing/detailing as required by the Specifications for shop drawing purposes. Owner is executing a separate general contract with a separate general contractor for the performance of

other different phases of work and improvements in relation to the overall Project. In the event that there is a dispute between the Contractor and Owner's separate third party contractors and subcontractors as to which contractor is required to perform a particular task and/or provide a particular service under the Contract Documents, the parties to the dispute (the Owner, Contractor and the Owner's other separate third party contractors and/or subcontractors) shall meet to discuss such dispute and attempt to resolve the dispute. In the event the parties cannot reach a resolution, the dispute shall be submitted to the Williamson County Commissioners Court. All parties to the dispute will have the opportunity to address the members of the Williamson County Commissioners Court in order to provide such party's contentions to the members of the court. The Williamson County Commissioners Court shall consider the facts and contentions of the parties and have complete authority for the purpose of resolving the dispute. The decision of the Williamson County Commissioners Court shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties to the dispute.

ARTICLE 4 SUBSTANTIAL COMPLETION

4.1 Substantial Completion. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify Owner's Designated Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner's Designated Representative does not consider the Work substantially complete, Owner's Designated Representative will notify the Contractor giving reasons therefore. Failure on the Owner's part to list a reason does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. After satisfactorily completing items identified by Owner's Designated Representative, the Contractor shall then submit another request for Owner's Designated Representative to determine Substantial Completion. If Owner's Designated Representative considers the Work substantially complete, Owner's Designated Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which the Contractor shall finish the punch list, and shall establish responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The certificate of Substantial Completion shall be signed by the Owner and the Contractor to evidence acceptance of the responsibilities assigned to them in such certificate.

4.2 Owner intends to achieve Substantial Completion (as defined in this agreement) for all stages of construction on or before the following completion date:

DATE FOR SUBSTANTIAL COMPLETION: Two Hundred (200) Calendar Days Following the date in which the Notice to Proceed is issued by Williamson County.

Under no circumstances will the time for Substantial Completion exceed this date without a written amendment to this Agreement.

4.3 THE TIMES SET FORTH IN THE CONSTRUCTION DOCUMENTS ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT.

ARTICLE 5 COMPENSATION

5.1 Contract Sum. The Contract Sum for the Project is: ONE MILLION ONE HUNDRED NINETEEN THOUSAND AND NO/100 DOLLARS (\$1,119,000.00). The Contract Sum includes the Contractor's Base Bid, Alternate A, B, and C less a deduction for Alternate D, which are each set forth in Contractor's Proposal.

5.2 Contract Payments. Method and terms of payment of the contract sum shall be in accordance with the Contract Documents.

5.3 Liquidated Damages. For each consecutive calendar day after the date of Substantial Completion that the Work is not substantially completed, the Owner may deduct the amount of:

Five hundred Dollars per day (\$500.00/day)

from any money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages that the Owner will sustain for late completion. The parties stipulate and agree that calculating Owner's actual damages for late completion of the Project would be impractical, unduly burdensome, and cause unnecessary delay and that the amount of daily liquidated damages set forth is reasonable.

ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES

QUALITY OF WORK

6.1 Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Contractor shall render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project. The enumeration of specific duties and obligations performed by the Contractor hereunder shall not be

construed to limit the general undertakings of the Contractor. The obligations of the Contractor hereunder run to and are for the benefit of only the Owner.

6.2 Notwithstanding anything to the contrary contained in this Agreement, Owner and Contractor agree and acknowledge that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

6.3 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

6.4 Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Contractor be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.

COORDINATION OF THE WORK

6.5 Contractor shall cooperate with the Project Architect and ODR and endeavor to further the interests of the Owner and the Project. Contractor shall complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule. Within ten (10) calendar days following the complete execution of this Agreement, Contractor shall submit a proposed Project Schedule to Owner for review. The Contractor's proposed Project Schedule shall set forth the Contractor's plan for milestone dates and completion of various phases of the Project. The Contractor's schedule must take into account the phases and portions of work that is being performed by the Owner's other third party contractors and subcontractors. Within ten (10) calendar days from the Contractor's submittal of its proposed Project Schedule, Owner shall notify the Contractor of any necessary revisions that it may require to the proposed Project Schedule. If Owner does not require any revisions, the Project Schedule shall be signed by Owner and Contractor as an addendum to this Agreement and acknowledged by the Owner's other separate third general contractor.

6.6 The Owner anticipates executing a separate general contract with a separate general contractor for the performance of other different phases of work and improvements in relation to the overall Project. The Contractor shall afford to the Owner and its third party contractors and subcontractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate Contractor's work with theirs so that the entire Project can be completed in an expeditious and economical manner. The

Contractor shall also cooperate, by any means possible, with the Owner and its third party contractors and subcontractors so that the entire Project can be completed in an expeditious and economical manner.

6.7 Contractor shall designate a representative authorized to act on the Contractor's behalf with respect to the Project. Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interest of Owner. The Contractor agrees to provide an on-site, full-time superintendent for the duration of the Project.

6.8 Contractor shall review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.

6.9 Contractor shall visit the site and inspect the existing facilities, systems and conditions to insure an accurate understanding of the existing conditions as required.

6.10 Contractor shall, at Owner's request, attend public meetings and hearings concerning the development and schedule of the Project. Contractor shall also attend periodic meetings during the Project with Owner and Owner's third party contractors and subcontractors in order to assess progress in relation to the Work conducted by Contractor and Owner's third party contractors and subcontractors; as well as to review and revise, as allowed by Owner, the Project Schedules of both Contractor and Owner's third party contractors and subcontractors.

6.11 Contractor shall review all Drawings, Specifications, and other Construction Documents as they are developed by the Owner and/or its Project Architect and advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

6.12 Contractor shall review the Construction Documents for compliance with all applicable laws and code requirements and with Williamson County requirements.

6.13 Contractor shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.

6.14 Contractor shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

6.15 Contractor shall consult with and make recommendations to the Owner on the acquisition schedule for fixtures and equipment, and coordinate the Owner's purchase

and installation of such items with the Owner as may be required to meet the Contractor's Project Schedule.

6.16 Contractor shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to the Owner in writing at least ten (10) days before entering into any subcontract. Contractor shall not use any Subcontractor to which Owner has a reasonable objection. Following Owner acceptance of a Subcontractor, that Subcontractor shall not be changed without Owner's written consent, which shall not be unreasonably withheld.

6.17 Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations and with the requirements of an Owner controlled insurance program, if any.

6.18 Contractor shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents.

CONSTRUCTION WORK

6.19 Construction shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner and shall continue until Final Completion of all Work. The Contractor shall construct the Work in strict accordance with the Construction Documents and Owner's Specifications within the time required by the Project Schedule approved by Owner.

6.20 The Contractor hereby agrees to make any and all changes, furnish the materials and perform the Work which may be required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents, without nullifying this Agreement. **NO ALTERATIONS OR CHANGES SHALL BE MADE, HOWEVER, EXCEPT UPON THE WRITTEN ORDER OF THE OWNER, OR ITS AUTHORIZED REPRESENTATIVE.**

6.21 Contractor shall organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work.

6.22 Contractor shall designate in writing a representative who is responsible for the day-to-day management of the Work. The designated representative shall be the Owner's primary contact during the Work and shall be available as required for the benefit of the Project and the Owner. The designated representative shall be

authorized to act on behalf of and bind the Contractor in all matters related to the Work including, but not limited to, execution of Change Orders and Applications for Payment.

6.23 Contractor shall attend Owner's regularly scheduled Project progress meetings and fully advise the Owner's Designated Representative of the Project status including schedule, costs, quality and changes.

6.24 Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

6.25 Contractor shall assist in obtaining building permits and obtain special permits for permanent improvements, as required by law or the Construction Documents. Assist Owner or Project Architect in obtaining all approvals required from authorities having jurisdiction over the Project.

6.26 Contractor shall coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Construction Documents.

6.27 Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Contractor shall keep the Owner informed of the progress and quality of the Work.

6.28 Contractor shall promptly correct any defective Work at Contractor's sole expense, unless the Owner specifically agrees to accept the Work.

6.29 Contractor shall warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents. The Contractor shall be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner.

6.30 Regarding Record Documents and the Owner's Project Closeout Specification, the Contractor shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.

COMMISSIONING & WARRANTY RESPONSIBILITIES

6.31 Contractor shall provide commissioning, starting and check-out services for the systems installed in the project prior to completion and acceptance. To the extent applicable, operation manuals and instructions will be provided to the Owner, the systems will be demonstrated and training provided to Williamson County's operators upon completion and prior to acceptance.

6.32 Contractor shall provide warranty services for the Work for a full eighteen months following Final Completion and acceptance. Just before the warranty period expires, Contractor shall attend an on-site meeting with the Owner and Project Architect to ensure that all warranty issues have been identified and properly remedied.

6.33 Contractor shall provide a written warranty period service plan that includes monthly site visits by an individual capable of making minor repairs and coordinating subcontractor warranty work.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY - WATER POLLUTION ABATEMENT PLAN

6.34 Contractor hereby acknowledges and affirms that it has read the enclosed Texas Commission on Environmental Quality Notice of Approval of a Water Pollution Abatement Plan for the Project dated March 5, 2010, which is attached to this Agreement as Exhibit "A" and incorporated herein for all purposes; and that it understands the terms and conditions set forth therein. Contractor hereby agrees to comply with all terms and conditions of the said Notice of Approval of a Water Pollution Abatement Plan for the Project at all times during its performance of the Work under this Agreement.

ARTICLE 7 OWNER'S RESPONSIBILITIES

7.1 The Owner Project Architect for the Project is as follows:

RVE, Inc.
D/B/A RVi
712 Congress Ave, Suite 300
Austin, Texas 78701

7.2 INTENTIONALLY OMITTED.

7.3 The Owner will identify a person as its Owner's Designated Representative ("ODR") who is authorized to act in the Owner's behalf with respect to the Project. The ODR shall examine the documents submitted by the Contractor and shall render decisions on behalf of the Owner to the extent allowed by Texas law.

7.4 The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

7.5 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Contractor's services and of the Work.

7.6 The Owner may designate one or more construction inspectors who shall be given access to the Work as requested or needed. The provision of inspection services by Owner shall not reduce or lessen Contractor's responsibility for the Work. Contractor is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

7.7 Owner shall have the right to reject any defective Work on the Project. Should Contractor refuse or neglect to correct any such Work within a reasonable time after notice, Owner may have the Work corrected and recover all expenses incurred from Contractor on demand.

7.8 Owner shall furnish to the Contractor the number of Construction Document sets as required by this Agreement.

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

8.1 The Construction Documents and any other documents prepared by the Project Architect, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by the Contractor are instruments of service and shall remain the property of the Owner whether the Project for which they are made is executed or not. The Contractor and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. The Contractor and its Subcontractors shall not use the Construction Documents on any other projects.

8.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project is authorized.

ARTICLE 9 TIME

9.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT.

9.2 Unless otherwise approved in writing, the Owner and the Contractor shall perform their respective obligations under the Contract Documents as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

ARTICLE 10 BONDS AND INSURANCE

10.1 Performance Bond. Upon execution of this Agreement, Contractor shall provide a Performance Bond in the amount of 100% of the Contract Sum. The surety for a Performance Bond shall meet the same requirements as set forth for Performance Bonds in the General Conditions. The Performance Bond shall be in the same form as the Performance Bond provided in the Request for Proposals in the original Proposal Documents.

10.1.1 Payment Bond. Upon execution of this Agreement, Contractor shall provide a Payment Bond in the amount of 100% of the Contract Sum, as security for the true and faithful payment in full of all subcontractors and persons performing labor, services, materials, machinery, and fixtures in connection with the Work. The surety for a Payment Bond shall meet the same requirements as set forth for payment bonds in the General Conditions. The Payment Bond shall be in the same form as the Payment Bond provided in the Request for Proposals in the original Proposal Documents.

10.1.2 Warranty and Maintenance Bond. Upon execution of this Agreement, Contractor shall provide a Warranty and Maintenance Bond in the amount of 100% of the Contract Sum, as security for the true and faithful performance of all warranties set forth in the Contract Documents. The Warranty and Maintenance Bond shall be in the same form as the Warranty and Maintenance Bond provided in the Request for Proposals in the original Proposal Documents.

10.2 The Contractor shall not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner, as required by the General Conditions. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor. Prior to commencing any work under this Agreement, Contractor shall provide evidence of the insurance coverage as required by the General Conditions.

10.3 The Contractor shall not cause or allow any of its required insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If the Contractor fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Contractor.

10.4 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

10.5 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

ARTICLE 11 INDEMNITY

11.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR AND ITS AGENTS, PARTNERS, EMPLOYEES, AND

CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, REPRESENTATIVES OF THE OWNER AND THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, ITS VARIOUS DEPARTMENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL CLAIMS. DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE SERVICES OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE, EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

11.2 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 12 SPECIAL WARRANTIES

12.1 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

12.2 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

12.3 Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, that is duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is

a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

12.4 Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of the Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.

12.5 Except for the obligation of Owner to pay Contractor the Contract Sum pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 13 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

ARTICLE 14 TERMINATION

14.1 Termination for Cause. If either party commits an Event of Breach (a breach of any of the covenants, terms and/or conditions of this Agreement), the non-breaching party shall deliver written notice of such Event of Breach to the breaching party. Such notice must specify the nature of the Event of Breach and inform the breaching party that unless the Event of Breach is cured within seven (7) business days of receipt of the notice, additional steps may be taken to terminate this Agreement. If the breaching party begins a good faith attempt to cure the Event of Breach within seven (7) business

days, then and in that instance, the seven (7) business day period may be extended by the non-breaching party, so long as the breaching party continues to prosecute a cure diligently to completion and continues to make a good faith attempt to cure the Event of Breach. If, in the opinion of the non-breaching party, the breaching party does not cure the breach within seven (7) business days or otherwise fails to make any diligent attempt to correct the Event of Breach, the breaching party shall be deemed to be in breach and the non-breaching party may, in addition to seeking the remedies available hereunder and under the law, terminate this Agreement.

14.2 Termination for Convenience. The Owner may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to Contractor. In the event of such termination, it is understood and agreed that only the amounts due to Contractor for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Owner's termination of this Agreement for convenience.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Assignment; Successors and Assigns. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

15.2 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

15.3 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Williamson County where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

15.4 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

15.5 Interpretation. In the event of any dispute over the meaning or application of any provision of the Contract Documents, the Contract Documents shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of the Contract Documents.

15.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

15.7 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

15.8 Records. Contractor agrees that Owner or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Contractor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees that Owner shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Owner shall give Contractor reasonable advance notice of intended audits.

15.9 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

15.10 No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Owner, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Owner does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

15.11 Current Revenues. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

15.12 Compliance with Laws. Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

15.13 Sales and Use Tax Exemption. Owner is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes under Texas Tax Code Ann. § 151.309, as amended.

15.14 Texas Public Information Act. To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Owner, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any information or data furnished to Owner whether or not the same are available to the public. It is further understood that Owner, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Owner, its officers and employees shall have no liability or obligation to Contractor for the disclosure to the public, or to any person or persons, of any software or a part thereof, or other items or data furnished to Owner by Contractor in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

15.15 Force Majeure. If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

15.16 Equal Opportunity in Employment. The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

15.17 Reports of Accidents. Within 24 hours after Contractor becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Contractor), whether or not it results from or involves any action or failure to act by the Contractor or any employee or agent of the Contractor and which arises in any manner from the performance of this Agreement, the Contractor shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Contractor shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Contractor, its agents, employees, or representatives, or received by it or them, in connection with any

matter before any court arising in any manner from the Contractor's performance of work under this Agreement.

15.18 Relationship of the Parties. Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

15.19 Appropriation of Funds by Owner. Owner believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Contractor understands and agrees that the Owner's payment of amounts under this Agreement is contingent on the Owner receiving appropriations or other expenditure authority sufficient to allow the Owner, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.

15.20 Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

15.21 Entire Agreement. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE OWNER HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

ARTICLE 16 NOTICES

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended, as set out below or sent by U. S. Mail to the designated representative of the Contractor or Owner for whom it is intended, as set out below. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner.

If to Owner:

Williamson County Judge (or successor)
710 Main Street, Suite 101
Georgetown, Texas 78626

with copy to: Honorable Jana Duty (or successor)
Williamson County Attorney
405 M.L.K. Street, Box #7
Georgetown, Texas 78626

And with copy to: Jim Rodgers
Williamson County Parks
and Recreation Director
350 Discovery Blvd.
Cedar Park, Texas 78613

If to Contractor: Westar Construction, Inc.
4500 Williams Dr. Ste 212-PMB 411
Georgetown, TX 78633

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

Party Representatives

The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Jim Rodgers
Williamson County Parks
and Recreation Director
350 Discovery Blvd.
Cedar Park, Texas 78613
Phone (512) 260-4263
Fax (512) 260-4284

The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Mark Williamson
Westar Construction, Inc.
4500 Williams Dr. Ste 212-PMB 411
Georgetown, TX 78633
Phone (512) 990-7175
Fax (512) 233-0691

The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

WILLIAMSON COUNTY, TEXAS

By: _____

Printed Name: DAN A. GATTI

Title: County Judge

ATTEST:

By: _____

Printed Name: NANCY E. RISTER

Title: County Clerk

WESTAR CONSTRUCTION, INC., A
TEXAS CORPORATION

By: _____

Printed Name: MARK WILLIAMSON

Title: PRESIDENT

ATTEST:

By: _____

Printed Name: LAMONT NAJARETIE

Title: SECRETARY



EXHIBIT "A"
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
NOTICE OF APPROVAL OF
WATER POLLUTION ABATEMENT PLAN

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



COPY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 5, 2010

Mr. Jim Rodgers
Williamson County Parks Department
350 Discovery Blvd., Suite 207
Cedar Park, Texas 78613

Re: Edwards Aquifer, Williamson County
NAME OF PROJECT: Williamson County Regional Park Phase Two; 3005 County
Road 175; Round Rock, Texas
TYPE OF PLAN: Request for Approval of a Water Pollution Abatement Plan (WPAP);
30 Texas Administrative Code (TAC) Chapter 213 Edwards Aquifer
Edwards Aquifer Protection Program ID No. 11-10010601 Investigation No. 794334;
Regulated Entity No. RN104584131

Dear Mr. Rodgers:

The Texas Commission on Environmental Quality (TCEQ) has completed its review of the WPAP application for the referenced project submitted to the Austin Regional Office by Urban Design Group on your behalf of the Williamson County Parks Department on January 6, 2010. Final review of the WPAP submittal was completed after additional material was received on February 18, 2010. As presented to the TCEQ, the Temporary and Permanent Best Management Practices (BMPs) and construction plans were prepared by a Texas Licensed Professional Engineer to be in general compliance with the requirements of 30 TAC Chapter 213. These planning materials were sealed, signed, and dated by a Texas Licensed Professional Engineer. Therefore, based on the engineer's concurrence of compliance, the planning materials for construction of the proposed project and pollution abatement measures are hereby approved subject to applicable state rules and the conditions in this letter. The applicant or a person affected may file with the chief clerk a motion for reconsideration of the executive director's final action on this Edwards Aquifer protection plan. A motion for reconsideration must be filed no later than 23 days after the date of this approval letter. *This approval expires two (2) years from the date of this letter unless, prior to the expiration date, more than 10 percent of the construction has commenced on the project or an extension of time has been requested.*

REPLY TO: REGION 11 • 2800 S. INTERSTATE HWY. 35, STE. 100, • AUSTIN, TEXAS 78704-5700 • 512-339-2929 • FAX 512-339-3795

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: www.tceq.state.tx.us

printed on recycled paper using soy-based ink

Mr. Jim Rodgers

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PROJECT DESCRIPTION

The proposed 4.8 acre project is for the construction of structures/rooftops that total 5,038 square feet that include a water play area, pavilions, and a restroom facility. The project will also include parking and other paved surfaces that total 60,462 square feet. Treatment by engineered vegetated filter strips will be used for stormwater runoff. The total amount of impervious cover shall be 1.5 acres (31.3 percent of the entire area).

Project wastewater will be disposed of by conveyance to the existing City of Round Rock Wastewater Treatment Plant.

PERMANENT POLLUTION ABATEMENT MEASURES

To prevent the pollution of stormwater runoff originating on-site or upgradient of the site and potentially flowing across and off the site after construction, engineered filter strips designed using the TCEQ technical guidance document, Complying with the Edwards Aquifer Rules: Technical Guidance on Best Management Practices (2005). The approved measures meet the required 80 percent removal of the increased load in total suspended solids caused by the project.

GEOLOGY

According to the geologic assessment included with the application, the surface geologic unit is the Edwards Formation. The Edwards Formation appears light gray, often dolomitic with vuggy honeycombed textures and shallow marine fossils. The Austin Regional Office site investigation of February 24, 2010, revealed tall grasses, shrubs, and live oak trees. There were no sensitive features noted in the assessment and none were found during the investigation.

SPECIAL CONDITIONS

- I. The holder of the approved Edwards Aquifer WPAP must comply with all provisions of 30 TAC Chapter 213 and all best management practices and measures contained in the application.
- II. Intentional discharges of sediment laden stormwater during construction are not allowed. If dewatering excavated areas and/or areas of accumulated stormwater becomes necessary, the discharge shall be filtered through appropriately selected temporary best management practices. These may include vegetative filter strips, sediment traps, rock berms, silt fence rings, etc.
- III. This approval does not authorize the installation of temporary aboveground storage tanks on this project. If the contractor desires to install a temporary aboveground storage tank for use during construction, an application to modify this approval must be submitted and

Mr. Jim Rodgers
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approved prior to installation. The application must include information related to tank location and spill containment.

STANDARD CONDITIONS

1. Pursuant to Chapter 7 Subchapter C of the Texas Water Code, any violations of the requirements in 30 TAC Chapter 213 may result in administrative penalties.

Prior to Commencement of Construction:

2. All contractors conducting regulated activities at the referenced project location shall be provided a copy of this notice of approval. At least one complete copy of the approved WPAP and this notice of approval shall be maintained at the project location until all regulated activities are completed.
3. Modification to the activities described in the referenced WPAP application following the date of approval may require the submittal of a plan to modify this approval, including the payment of appropriate fees and all information necessary for its review and approval prior to initiating construction of the modifications.
4. The applicant must provide written notification of intent to commence construction, replacement, or rehabilitation of the referenced project. Notification must be submitted to the Austin Regional Office no later than 48 hours prior to commencement of the regulated activity. Written notification must include the date on which the regulated activity will commence, the name of the approved plan and program ID number for the regulated activity, and the name of the prime contractor with the name and telephone number of the contact person. The executive director will use the notification to determine if the approved plan is eligible for an extension.
5. Temporary erosion and sedimentation (E&S) controls, i.e., silt fences, rock berms, stabilized construction entrances, or other controls described in the approved WPAP, must be installed prior to construction and maintained during construction. Temporary E&S controls may be removed when vegetation is established and the construction area is stabilized. The TCEQ may monitor stormwater discharges from the site to evaluate the adequacy of temporary E&S control measures. Additional controls may be necessary if excessive solids are being discharged from the site.
6. All borings with depths greater than or equal to 20 feet must be plugged with non-shrink grout from the bottom of the hole to within three (3) feet of the surface. The remainder of the hole must be backfilled with cuttings from the boring. All borings less than 20 feet must be backfilled with cuttings from the boring. All borings must be backfilled or

plugged within four (4) days of completion of the drilling operation. Voids may be filled with gravel.

During Construction:

7. During the course of regulated activities related to this project, the applicant or agent shall comply with all applicable provisions of 30 TAC Chapter 213, Edwards Aquifer. The applicant shall remain responsible for the provisions and conditions of this approval until such responsibility is legally transferred to another person or entity.
8. If any sensitive feature (caves, solution cavities, sink holes, etc.) is discovered during construction, all regulated activities near the feature must be suspended immediately. The applicant or his agent must immediately notify the Austin Regional Office of the discovery of the feature. Regulated activities near the feature may not proceed until the executive director has reviewed and approved the methods proposed to protect the feature and the aquifer from potentially adverse impacts to water quality. The plan must be sealed, signed, and dated by a Texas Licensed Professional Engineer.
9. All water wells, including injection, dewatering, and monitoring wells must be in compliance with the requirements of the Texas Department of Licensing and Regulation under Title 16 TAC Chapter 76 (relating to Water Well Drillers and Pump Installers) and all other locally applicable rules, as appropriate.
10. If sediment escapes the construction site, the sediment must be removed at a frequency sufficient to minimize offsite impacts to water quality (e.g., fugitive sediment in street being washed into surface streams or sensitive features by the next rain). Sediment must be removed from sediment traps or sedimentation ponds not later than when design capacity has been reduced by 50 percent. Litter, construction debris, and construction chemicals shall be prevented from becoming stormwater discharge pollutants.
11. The following records shall be maintained and made available to the executive director upon request: the dates when major grading activities occur, the dates when construction activities temporarily or permanently cease on a portion of the site, and the dates when stabilization measures are initiated.
12. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and construction activities will not resume within 21 days. When the initiation of stabilization measures by the 14th day is precluded by weather conditions, stabilization measures shall be initiated as soon as practicable.

After Completion of Construction:

Mr. Jim Rodgers

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13. The applicant shall be responsible for maintaining the permanent BMPs after construction until such time as the maintenance obligation is either assumed in writing by another entity having ownership or control of the property (such as without limitation, an owner's association, a new property owner or lessee, a district, or municipality) or the ownership of the property is transferred to the entity. The regulated entity shall then be responsible for maintenance until another entity assumes such obligations in writing or ownership is transferred. A copy of the transfer of responsibility must be filed with the executive director through the Austin Regional Office within 30 days of the transfer. A copy of the transfer form (TCEQ-10263) is enclosed.
14. Upon legal transfer of this property, the new owner(s) is required to comply with all terms of the approved Edwards Aquifer protection plan. If the new owner intends to commence any new regulated activity on the site, a new Edwards Aquifer protection plan that specifically addresses the new activity must be submitted to the executive director. Approval of the plan for the new regulated activity by the executive director is required prior to commencement of the new regulated activity.
15. There are no known wells on the site. All water wells, including injection, dewatering, and monitoring wells must be in compliance with the requirements of the Texas Department of Licensing and Regulation under Title 16 TAC Chapter 76 (relating to Water Well Drillers and Pump Installers) and all other locally applicable rules, as appropriate.
16. An Edwards Aquifer protection plan approval or extension will expire and no extension will be granted if more than 50 percent of the total construction has not been completed within ten years from the initial approval of a plan. A new Edwards Aquifer protection plan must be submitted to the Austin Regional Office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.
17. At project locations where construction is initiated and abandoned, or not completed, the site shall be returned to a condition such that the aquifer is protected from potential contamination.

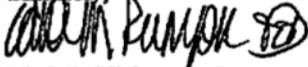
Mr. Jim Rodgers

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If you have any questions or require additional information, please contact Mr. Jerrett Kramer of the Edwards Aquifer Protection Program of the Austin Regional Office at (512) 339-2929.

Sincerely,



Mark R. Vickery, P.G.

Executive Director

Texas Commission on Environmental Quality

MRV/wjk

Enclosures: Deed Recordation Affidavit, TCEQ-0625
Change in Responsibility for Maintenance on Permanent BMPs, TCEQ

cc: Ms. Leia Novosad, Urban Design Group
Mr. Joe M. England, P.E., County Engineer, Williamson County
Mr. Danny Halden, P.E., City Engineer, City of Round Rock
Mr. Paulo C. Pinto, B.S., R.S., Director of Environmental Services, Williamson
County and Cities Health District
TCEQ Central Records, Austin, Texas

**Change In Responsibility for Maintenance
on Permanent Best Management Practices and Measures**

The applicant is no longer responsible for maintaining the permanent best management practice (BMP) and other measures. The project information and the new entity responsible for maintenance is listed below.

Customer: _____

Regulated Entity Name: _____

Site Address: _____

City, Texas, Zip: _____

County: _____

Approval Letter Date: _____

BMPs for the project: _____

New Responsible Party: _____

Name of contact: _____

Mailing Address: _____

City, State: _____ Zip: _____

Telephone: _____ FAX: _____

Signature of New Responsible Party Date

I acknowledge and understand that I am assuming full responsibility for maintaining all permanent best management practices and measures approved by the TCEQ for the site, until another entity assumes such obligations in writing or ownership is transferred.

If you have questions on how to fill out this form or about the Edwards Aquifer protection program, please contact us at 210/490-3088 for projects located in the San Antonio Region or 512/338-2828 for projects located in the Austin Region.

Individuals are entitled to request and review their personal information that the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, contact us at 512/238-3282.

Deed Recordation Affidavit
Edwards Aquifer Protection Plan

THE STATE OF TEXAS §

County of _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ who, being duly sworn by me, deposes and says:

- (1) That my name is _____ and that I own the real property described below.
- (2) That said real property is subject to an EDWARDS AQUIFER PROTECTION PLAN which was required under the 30 Texas Administrative Code (TAC) Chapter 213.
- (3) That the EDWARDS AQUIFER PROTECTION PLAN for said real property was approved by the Texas Commission on Environmental Quality (TCEQ) on _____.

A copy of the letter of approval from the TCEQ is attached to this affidavit as Exhibit A and is incorporated herein by reference.

- (4) The said real property is located in _____ County, Texas, and the legal description of the property is as follows:

LANDOWNER-AFFIANT

SWORN AND SUBSCRIBED TO before me, on this _____ day of _____, _____.

NOTARY PUBLIC

THE STATE OF _____ §

County of _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (s)he executed same for the purpose and consideration therein expressed.

GIVEN under my hand and seal of office on this _____ day of _____, _____.

NOTARY PUBLIC

Typed or Printed Name of Notary

MY COMMISSION EXPIRES: _____