

CAUSE NO. D-1-GN-12-003061

BCAC ACQUISITION, LLC, Plaintiff           §           IN THE DISTRICT COURT OF  
v   §           TRAVIS COUNTY, TEXAS  
CITY OF AUSTIN, Defendant               §           98th JUDICIAL DISTRICT

**MEDIATED SETTLEMENT AGREEMENT**

This Mediated Settlement Agreement (“Agreement”) pertains to the development of property located at 7701 Bee Caves Rd., as further identified herein (“Subject Property”). Having completed the alternate dispute resolution procedure of Mediation, the terms of this Agreement (“Agreement”) are agreed to by: (1) the City of Austin (the “City”) through its Planning & Development Review Department (“PDRD”) and Watershed Protection Department, as represented by legal counsel; and (2) BCAC Acquisition, LLC’s corporate representative and its attorneys (“BCAC”). The City/PDRD and BCAC are collectively referred to as “the Parties.”

1. **Scope of the Agreement.** This Agreement shall apply only to the site plan shown on Exhibit A and the additional technical specifications set forth in Exhibit B.
  
2. **PDRD Recommendation of Settlement Agreement.** PDRD agrees to seek the approval it deems necessary from the Austin City Council for BCAC to obtain administrative approval of a site plan and any other permits necessary to develop the subject property consistent with the terms and conditions set forth in this Agreement and in plan sheets attached hereto as Exhibit A and Exhibit B. The form of the approval from City Council shall be determined by the City at its sole discretion. Subject to City Council approval, the Parties agree to take the additional actions required by this Agreement.
  
3. **Requirements of Exhibits A & B.** Subject to City Council approval, subsequent permitting and development of the Subject Property shall be consistent with the following terms and conditions:
  - a. **Bio-Filtration Pond:** BCAC will construct the bio-filtration pond per the

specifications shown on Exhibit B, and will obtain and maintain a Barton Springs Zone Operating Permit for the pond.

b. Parking Lot: BCAC will pave its parking lots, and runoff will go to the bio-filtration pond shown in Exhibit B. The Bio-filtration pond will be sized to capture at least 1" runoff volume, including Bee Caves Road impervious cover as identified on Exhibit A.

c. Re-vegetation: In concert with its construction of the bio-filtration pond and the paved parking areas, BCAC will re-vegetate to City of Austin "Gro-Green" standards all areas on Exhibit A that are currently disturbed (or become disturbed during the construction) but are not designated for impervious cover on Exhibit A.

d. 40% Buffer: BCAC will leave the 40% buffer area, as identified on Exhibit A, undeveloped and undisturbed.

e. Rainwater Harvesting: BCAC will implement rainwater harvesting for its existing theatre building and will use collected water for landscape irrigation. Rainwater harvesting shall not be required until the Amphitheatre phase is built.

4. Consideration by City Council. The Parties agree that this settlement is contingent upon approval by the Austin City Council. City staff will endeavor to place this on the city council agenda for approval as soon as practicable

5. Consideration Triggered by City Council Approval.

a. If the City Council approves: (1) the City shall rescind the suspension of cultural arts funding previously awarded to One World Theatre on September 27, 2012, and release the previously awarded funds as soon as practicable; and (2) the Plaintiff shall submit fully engineered construction site plans, which will be consistent with Exhibits A and B, to PDRD for review.

b. If the City Council approves and if the City, acting through PDRD, issues a site plan

permit for development of the improvements shown on Exhibit A and Exhibit B: (1) each party shall bear its own attorney's fees and costs, extend mutual releases to one another, and the above-styled case shall be dismissed by BCAC with prejudice; and (2) BCAC shall develop the site in accordance with the site plan permit and this Agreement, unless otherwise agreed by the parties.

c. If the City Council does not approve, or if PDRD does not issue the site plan permit, BCAC may proceed with discovery and trial in this matter and the parties are released from any obligations under this agreement not already performed.

**6. Other Consideration Triggered by City Council Approval & Issuance of a Site Plan Permit:**

BCAC agrees that:

a. The parking lot paving and bio-filtration pond shall be completed not later than three years from the date PDRD issues a site plan permit.

b. Upon PDRD issuance of the site plan permit, Plaintiff agrees to repair current erosion and sediment controls and remove at least 1-foot of sediment in the existing pond. If the pond re-fills with sediment during construction, Plaintiff agrees to remove at least 1-foot of sediment from the pond at the time the pond is determined to be full.

c. BCAC shall not occupy its proposed commercial kitchen, paved parking, or other proposed new structure until the bio-filtration pond is completed and functioning. BCAC agrees that the bio-filtration pond shall comply with specifications described in Exhibit "B" attached.

d. Rainwater harvesting shall not be required until Amphitheatre phase is built.

e. The site plan permit shall expire if not completed in ten years after PDRD issues the site plan permit.

f. In the event that the City's Land Development Code conflicts with the requirements of this Agreement or would otherwise prevent construction of the site plan shown

on Exhibit A and Exhibit B, this Agreement shall control. Where no such conflict exists, development of the project shall conform to the City's Land Development Code.

7. **Mediation Fees.** Mediation fees shall be divided equally between the parties.

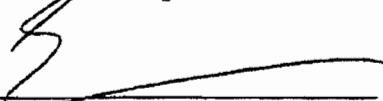
8. **Disputes as to form of documents.** Any disputes as to form of dismissal and release documents contemplated under this Agreement shall be referred to Claude E. Ducloux for assistance as to form.

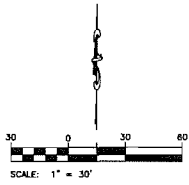
SIGNED and AGREED on this \_\_\_\_ day of March 2013.

  
\_\_\_\_\_  
Plaintiff's Representative

  
\_\_\_\_\_  
City of Austin Representative

\_\_\_\_\_  
Plaintiff's Attorney

  
\_\_\_\_\_  
Assistant City Attorney

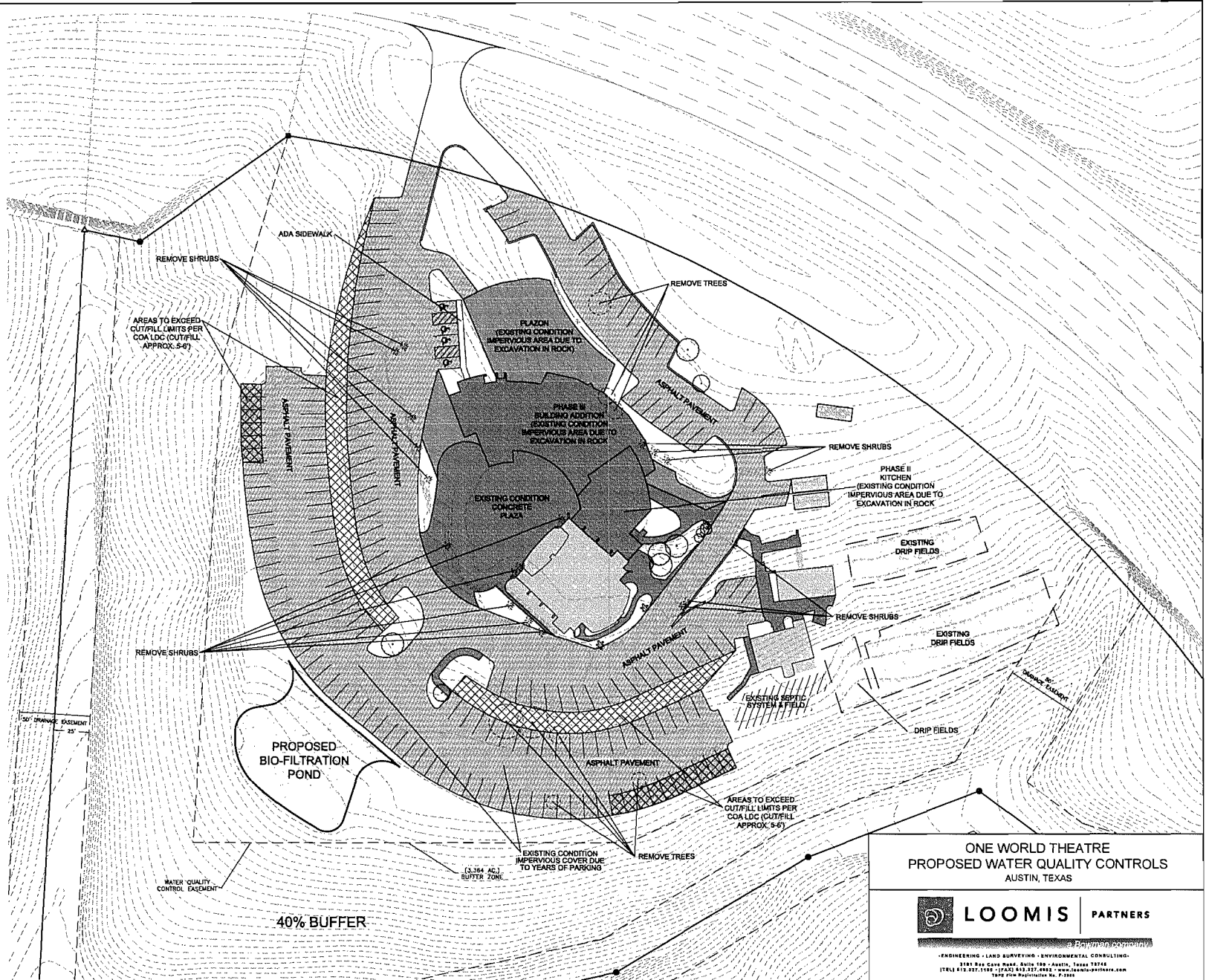


LEGEND	
	PAVEMENT IC = 1.60 AC
	CONCRETE IC = 0.04 AC
	EX CONDITION CONCRETE IC = 0.26 AC
	EXISTING BUILDINGS IC = 0.17 AC
	EXISTING CONDITION IC = 0.16 AC
	BUILDING ADDITION = 0.22 AC
	DRIP FIELDS = 0.25 AC

TOTAL PROPOSED I.C. + WASTEWATER DISPOSAL AREA = 2.70 AC. (32%)

TOTAL NUMBER OF PARKING SPACES = 184

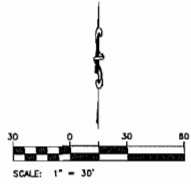
- NOTES:
1. NO ADDITIONAL HARD SURFACE AS INDICATED CAN BE CONSTRUCTED PRIOR TO CONSTRUCTION OF THE BIO-FILTRATION POND.
  2. THE SITE DOES NOT CONTAIN NOR IS IT PART OF ANY 64+ ACRE DRAINAGE AREAS.
  3. NO ADDITIONAL TREE REMOVAL WILL BE ALLOWED.
  4. CURRENT SITE CONDITIONS WILL BE CONSIDERED AS EXISTING SITE CONDITIONS.



ONE WORLD THEATRE  
PROPOSED WATER QUALITY CONTROLS  
AUSTIN, TEXAS



ENGINEERING - LAND SURVEYING - ENVIRONMENTAL CONSULTING  
3181 Bas Cove Road, Suite 100 - Austin, Texas 78746  
TEL: 817.227.1987 FAX: 817.227.9882 www.loomis-partners.com  
Toll Free Registration No. P-288



**LEGEND**

- I.C. TO BE CAPTURED TREATED
- NON - I.C. TO BE CAPTURED AND TREATED
- BIOFILTRATION POND AREA

AREA OF WQ CAPTURE = 4.444 AC.  
 I.C. IN WQ CAPTURE AREA = 3.062 AC.  
 PERCENT I.C. = 68.9%

**Drainage Area Data**

Drainage Area to Control (DA)	4,552 ac.
Drainage Area Impervious Cover (IC)	68.9 %
Additional Capture Required (enables 1 for year)	1
PERCENT I.C. = 63.5%	1.00 in.

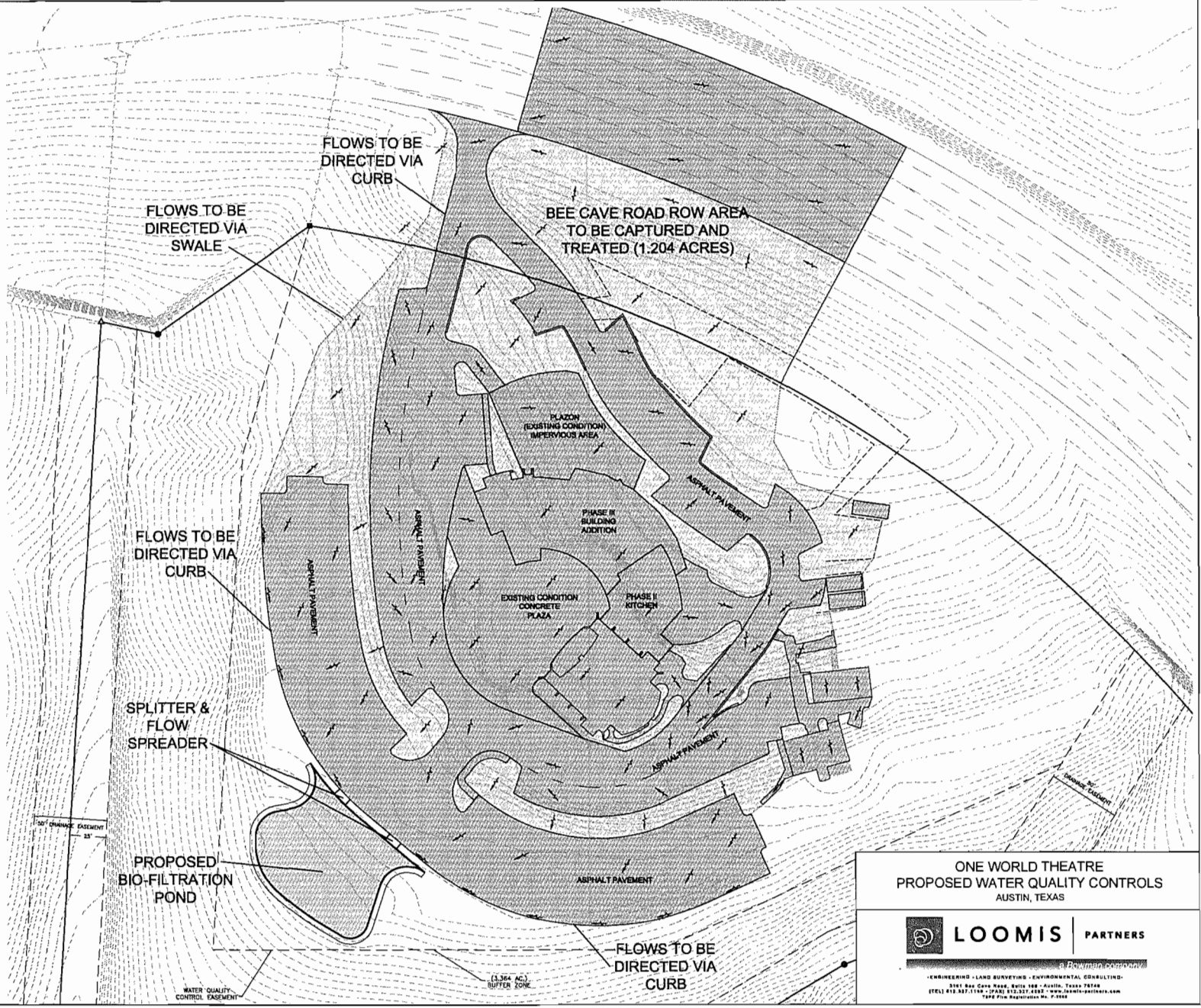
**Drainage Area Data**

	Required	Provided
The Water Quality Control is to be PARTIAL SEDIMENTATION FILTRATION		

WATER QUALITY VOLUME (WQV=CD*DA*3630)	18132 cf.	19500 cf.
Maximum Ponding Depth above Sand Bed (ft)	3.0	3.0
Sedimentation Pond Area	1300 sf.	1300 sf.
Sedimentation Pond Volume (min. 20% of WQV)	3228 cf.	3900 cf.
Filtration Pond Area (WQV/(4+1.33H))	2216 sf.	2500 sf.
Filtration Pond Volume	12805 cf.	13800 cf.

**NOTES:**

- NON HARD SURFACE AREAS CONTRIBUTING TO BE REVEGETATED PER CDA STANDARD "GROW GREEN" 689.3 NATIVE REVEGETATION.
- RUNOFF FROM ALL CONTRIBUTING AREAS AS INDICATED ON THIS EXHIBIT SHALL BE DIRECTED TO THE BIO-FILTRATION POND. NO RUNOFF FROM CONTRIBUTING IMPERVIOUS COVER AREAS WILL BYPASS THE WATER QUALITY CONTROLS.



**ONE WORLD THEATRE  
 PROPOSED WATER QUALITY CONTROLS  
 AUSTIN, TEXAS**

**LOOMIS PARTNERS**

AN RAINWATER COMPANY

•ENGINEERING • LAND SURVEYING • ENVIRONMENTAL CONSULTING•

2001 Bee Cave Road, Suite 100 • Austin, Texas 78748

(TEL) 817-537-1700 • (FAX) 817-537-5282 • www.loomispartners.com

TYPE PLAN Registration No. 7-1988