NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

## STORM WATER FACILITIES MAINTENANCE COVENANT, LICENSE AND AGREEMENT

THE STATE OF TEXAS \$

COUNTY OF TRAVIS \$

This Agreement ("Agreement") is made by and between Costco Wholesale Corporation, a Washington corporation ("OWNER"), the owner of a tract of land being more particularly described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes ("PROPERTY"), and City of Pflugerville, Texas ("CITY"), collectively referred to herein as the Parties. For purposes of this Agreement, the term OWNER refers to the current owner of the PROPERTY, and the OWNER's successors, heirs, and assigns.

WHEREAS, the OWNER of the PROPERTY possesses full authority to execute deeds, mortgages, and other covenants affecting the PROPERTY and desires to enter into this Agreement, as required by the City of Pflugerville's Code of Ordinances, including without limitation the Unified Development Code and associated Engineering Design and Construction Standards Manual, and the City's Texas Commission on Environmental Quality-issued Municipal Separate Storm Sewer System ("MS4") TPDES General Permit (TXR040000), collectively, the "Regulations"; and

WHEREAS, the OWNER acknowledges and agrees that, in order to ensure perpetual compliance with the Regulations, the PROPERTY must be impressed with certain covenants and restrictions:

WHEREAS, the Regulations generally and specifically require the design, construction and perpetual maintenance of permanent post construction storm water best management practices ("BMPs") developed and included within a Storm Water Management Site Plan ("SWMSP") required as a part of, and incident to, development, and OWNER acknowledges that compliance therewith by virtue of this Agreement and the terms hereof shall enable OWNER to develop the PROPERTY, which is accepted in consideration of this Agreement; and

WHEREAS, the CITY is charged with the responsibility of protecting the public health, safety and welfare through implementation of storm water pollution prevention measures, including ensuring that SWMSPs are developed, and post construction storm water BMPs are implemented and perpetually maintained by property owners.

NOW, THEREFORE, AND IN CONSIDERATION OF, the mutual covenants and obligations herein expressed, the Parties hereto agree as follows:

- 1. <u>RECITALS INCORPORATED.</u> The above Recitals and all terms defined therein are incorporated into this Agreement for all purposes.
- 2. <u>DECLARATION OF COVENANTS AND RESTRICTIONS.</u> It is declared that the OWNER of PROPERTY, shall hold, sell and convey the PROPERTY, subject to the following covenants and restrictions (the "Restrictive Covenants"), which are impressed upon the PROPERTY by this Agreement. OWNER further declares that these Restrictive Covenants shall run with the land, and shall be binding upon the OWNER, its heirs, successors and assigns, and that each contract, deed or conveyance of any kind conveying all or a portion of the PROPERTY will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance. The OWNER shall record this Agreement in the Official Land Records of Travis County, Texas.
- (a) The OWNER covenants, declares and agrees that the OWNER shall perpetually preserve, protect, inspect and maintain the permanent post construction storm water BMPs developed by the OWNER in accordance with the SWMSP for the PROPERTY to ensure that the post construction storm water BMPs are and remain in proper condition in accordance with the SWMSP and the Regulations. The permanent post construction storm water BMPs specifically consist of those provided in **Exhibit B**, attached hereto and incorporated herein.
- (b) The OWNER covenants and declares that OWNER shall maintain and inspect the permanent BMPs in accordance with the "Maintenance and Repair Plan" also provided in **Exhibit B**, and the Regulations. OWNER acknowledges and agrees that the Maintenance and Repair Plan may not be modified without the CITY Development Director's, or designee's, written consent, which shall not be unreasonably withheld, conditioned or delayed. OWNER acknowledges and agrees that the CITY is a beneficiary of OWNER's obligations under this Agreement and that failure to preserve, protect, inspect and maintain the post construction storm water BMPs, after expiration of notice and cure per paragraph (c) below is a breach of this Agreement.
- (c) OWNER covenants and declares that any maintenance or repair needs identified by OWNER through periodic inspection shall be performed by the OWNER within thirty (30) days of discovery by OWNER or notification by the CITY. If maintenance and repair cannot be performed within such 30 day period, the OWNER shall provide CITY with a schedule of activities to be completed, which shall be completed within a reasonable time as agreed to by the Parties. In the event the work is not performed within the specified time, the OWNER acknowledges and agrees that the CITY, or its employees, agents or contractors, may enter the PROPERTY and complete the required maintenance, as determined necessary in the CITY's sole discretion, at the OWNER's sole cost and expense. The OWNER shall reimburse the CITY for the costs incurred for the maintenance of the post construction storm water BMPs within 30 days after demand.

OWNER further acknowledges and agrees that failure to reimburse CITY for all such costs shall be deemed a breach of this Agreement and will subject OWNER to all actions at law or in equity as the CITY may deem prudent, including

without limitation, the placement of a judicially enforceable lien on the PROPERTY to secure the payment of all CITY costs incurred.

- (d) Notwithstanding anything in this Agreement to the contrary, OWNER acknowledges and agrees that the CITY is under no obligation to maintain or repair said post construction storm water BMP's, and in no event shall this Agreement be construed to impose any such obligation, duty or liability upon the CITY.
- 3. <u>EASEMENT RESERVATION.</u> OWNER hereby reserves a perpetual access and maintenance easement to all post construction storm water BMPs shown on the SWMSP for the purpose of inspection, repair and perpetual maintenance as reasonably necessary as provided herein.
- 4. <u>LICENSE.</u> OWNER hereby GRANTS, SELLS AND CONVEYS TO CITY A NON-EXCLUSIVE IRREVOCABLE LICENSE OVER, UPON, ACROSS AND THROUGHOUT THE PROPERTY FOR ACCESS, INSPECTION AND MAINTENANCE OF THE POST CONSTRUCTION STORM WATER BMPs, AS APPLICABLE AND REASONABLY NECESSARY, UNTIL SUCH TIME AS THIS AGREEMENT IS MODIFIED, AMENDED OR TERMINATED AS PROVIDED HEREIN.
- 5. INDEMNIFICATION. In the event of the OWNER's failure to maintain the post construction storm water BMPs or OWNER's creation of a hazard, and the City's subsequent maintenance of the post construction storm water BMPs, the OWNER, whether one or more, shall be jointly and severally liable to the City for any reasonable expenses incurred by the City while maintaining the post construction storm water BMPs and, TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS, OWNER, AND ITS HEIRS, SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, SAVE HARMLESS, AND DEFEND THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS FROM AND AGAINST ANY AND ALL DEMANDS, LIABILITIES, CLAIMS, PENALTIES, FORFEITURES, SUITS, AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT, AND REASONABLE ATTORNEY'S FEES), WHICH CITY MAY HEREAFTER INCUR. BECOME RESPONSIBLE FOR, OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURIES TO ANY PERSON, DESTRUCTION OR DAMAGE TO ANY PROPERTY, CONTAMINATION OF OR ADVERSE EFFECTS ON THE ENVIRONMENT, OR ANY VIOLATION OF GOVERNMENTAL LAWS, REGULATIONS, OR RULES NOT RESULTING FROM THE CITY'S OWN NEGLIGENCE, BUT TO THE EXTENT CAUSED BY THE OWNER'S BREACH OF ANY WARRANTY, TERM OR PROVISION OF THIS AGREEMENT, OR ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE OWNER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN THE PERFORMANCE, OR OMISSION, OF ANY ACT CONTEMPLATED BY THIS AGREEMENT.

### 6. GENERAL PROVISONS.

- (a) Severability. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this Agreement shall remain in full effect.
- (b) Non-Waiver. If at any time the CITY fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
- (c) Modification and Amendment. The Restrictive Covenants and License provided by this Agreement may be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Real Property Records of Travis County, Texas, executed, acknowledged, and approved by (a) the Director of Planning of the City of Pflugerville, or successor department; (b) by the owner(s) of the property subject to the modification, amendment or termination at the time of such modification, amendment or termination, and (c) any mortgagees holding first lien security interests on any portion of the PROPERTY.
- (d) Attorney's Fees. In the event the CITY brings an action or proceeding to enforce the terms hereof or declare rights hereunder, and is determined to be the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, CITY shall be entitled to reasonable attorneys' fees, costs and expert witness fees as the court shall determine. The term "Prevailing Party" shall mean a party who substantially obtains or defeats the relief sought, as the case may be, by the entering of a judgment or arbitration award in such party's favor.
- (e) Estoppel. Within 20 days of a written request by either OWNER or the CITY, the non-requesting party agrees to provide to the requesting party or to any prospective lender or purchaser of OWNER an estoppel certificate stating: (i) whether such party knows of any default under this Agreement (or if any circumstance or event exists which, with the passage of time or giving of notice, or both, may constitute a default under this Agreement) and specifying the nature thereof; (ii) whether, to such party's knowledge, this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (iii) whether, to such party's knowledge, this Agreement as of that date is in full force and effect.
- (f) Governing Law. This Agreement and all rights and obligations created hereby will be governed by the laws of the State of Texas and venue shall be located in Travis County, Texas.
- (f) Entire Agreement. This Agreement, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and the exhibits attached hereto. The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any party.

Executed and effective on this 4 day of January, 2018 OWNER: Costco Wholesale Corporation, a Washington corporation Name: THE STATE OF WISHIN § COUNTY OF \_ corporation. Ulanda Jorgensen Typed or Printed Name of Notary

My Commission Expires:

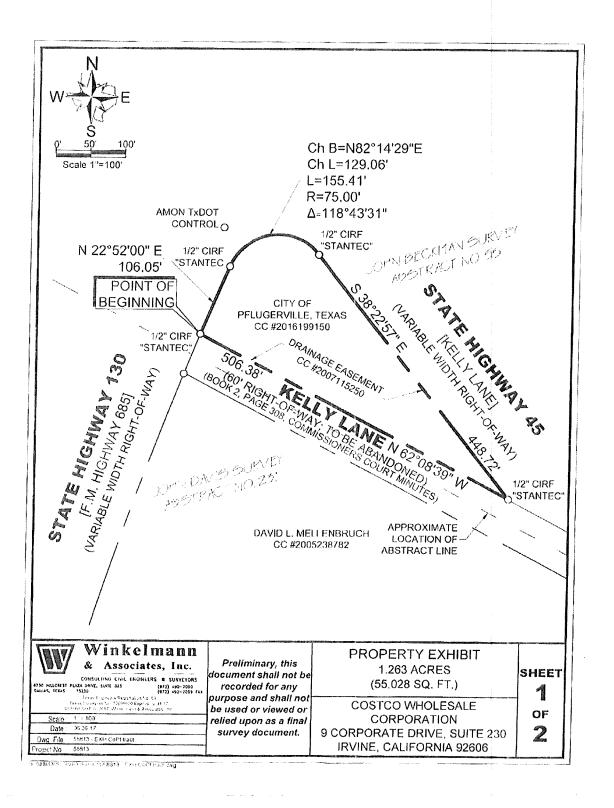
7-09-2021



The City of Pflugerville does hereby accept the above described license in accordance with the terms of this Agreement.

CITY OF PFLUGERVILLE, TEXAS
By: City Manager City of Pflugerville
ATTEST:
Karen Thompson, City Secretary

# EXHIBIT A PROPERTY LEGAL DESCRIPTION



### PROPERTY DESCRIPTION

STATE OF TEXAS
COUNTY OF TRAVIS

BEING a tract of land situated in the JOHN BECKMAN SURVEY, ABSTRACT NO. 55, in the City of Pflugerville, Travis County, Texas, and being all of a tract of land described in deed to the City of Pflugerville, Texas as recorded in County Clerk's Instrument No. 2016199150, Official Public Records, Travis County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for the Southwesterly corner of said City of Pflugerville, Texas tract on the Easterly right-of-way of State Highway 130 [Farm to Market 685], a variable width right-of-way, at its intersection with the Northerly right-of-way of Kelly Lane, a 60-foot right-of-way (Book 2, Page 308, Commissioners Court Minutes);

THENCE North 22 deg 52 min 00 sec East, along the Easterly right-of-way of said State Highway 130 and the Westerly line of said City of Pflugerville, Texas tract, a distance of 106.05 feet to a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for corner at the Westerly end of radial corner clip at the intersection of the Easterly right-of-way of State Highway 130 with the Southwesterly right-of-way of State Highway 45 [Kelly Lane], a variable width right-of-way, said point being the beginning of a curve to the right having a radius of 75.00 feet, a central angle of 118 deg 43 min 31 sec, a chord bearing of North 82 deg 14 min 29 sec East, and a chord length of 129.06 feet;

THENCE along said radial corner clip and said curve to the right, an arc distance of 155.41 feet to a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for corner on the Southwesterly right-of-way of said State Highway 45;

THENCE South 38 deg 22 min 57 sec East, along the Southwesterly right-of-way of said State Highway 45 and the Northeast line of said City of Pflugerville, Texas tract, a distance of 448.72 feet to a 1/2-inch iron rod with a pink plastic cap stamped "STANTEC" found for corner at the intersection of said State Highway 45 with the Northerly right-of-way of said Kelly Lane (Book 2, Page 308, Commissioners Court Minutes):

THENCE North 62 deg 08 min 39 sec West, along the Northerly line of said Kelly Lane and the Southwesterly line of said City of Pflugerville, Texas tract, a distance of 506 38 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 55,028 square feet or 1.263 acres of land, more or less. Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 22nd day of June, 2017, utilizing a G.P.S. measurement (NAD 83, GRID) from the City of Pflugerville Monument Nos. 113 & 114.

6750 HELCREST FURA BROY, SERIE 323 (97) 453-7093 04LAS, TERAS 75750 (97) 450-7093 FAE	Preliminary, this document shall not be recorded for any purpose and shall not	PROPERTY EXHIBIT 1.263 ACRES (55,028 SQ. FT.)	SHEET <b>2</b>
Scale   N/A     Data   95 to 17     Dwg Fije   98813   EXH CoPt mat     Project No   58913	be used or viewed or relied upon as a final survey document.	COSTCO WHOLESALE CORPORATION 9 CORPORATE DRIVE, SUITE 230 IRVINE, CALIFORNIA 92606	of 2



CONSULTING CIVIL ENGINEERS \* SURVEYORS 6750 HILLCREST PLAZA DR., STE. 325 DALLAS, TX 75230 (972) 490-7090 FAX (972) 490-7099 TEXAS REGISTRATION No. 89 TEXAS REGISTRATION SURVEYORS REGISTRATION No. 100866-00

### EXHIBIT B MAINTENANCE AND REPAIR PLAN FOR PERMANENT BMP'S

The permanent post construction storm water BMPs addressed by this Maintenance and Repair Plan include the following, as shown on the Storm Water Management Site Plan (SWMSP)

- 1. SOD Bottom and Side Slopes
  - Mow, at a minimum, every two weeks in growing season.
  - Mow as needed in non-growing season.
  - Reseed and irrigate any areas that do not have sufficient vegetative cover (90% or more with no bare areas larger than 10 square feet)
- 2. Concrete flume at bottom
  - Review siltation if any, monthly.
  - Remove and Dispose of any silt offsite.
- 3. Outlet Structure and Rip Rap
  - Review siltation if any, monthly.
  - Remove and Dispose of any siltation offsite.
  - Replace Rip Rap if needed.
- 4. Chain Link Fencing
  - Review for and dispose of any Deloris in fencing.
- 5. Survey pond every 5 years to ascertain grading remains per original approved grading plan and regrade / revegetate as necessary to maintain approved detention volumes.
- 6. The owner shall provide an annual report to the City's Development Services Center on or before December 31<sup>st</sup> of each subsequent year especially detailing the inspection and maintenance obligations undertaken to maintain the facilities during the current calendar year.

Owner Contact Information: Therese Garcia

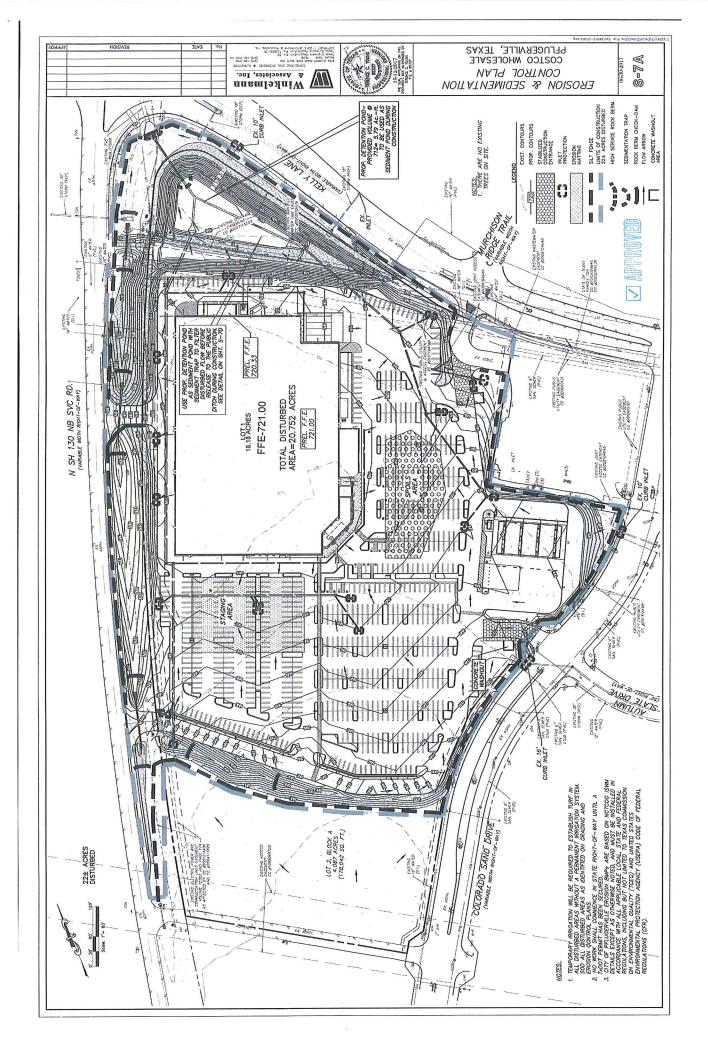
Costco Wholesale

Real Estate Manager / Legal Property Management

999 Lake Drive

Issaguah, WA 98027

(425) 416-5158



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Ecotion & Sedimentation Control Notion Control Notion

1. The owner or operator of this sile next develop a maintenance plan for the structural stormwater controls and submit it before a Temporary Certificate of Cocupany's granted Decumentation of maintenance performed must be made available for review by the small 1854.

SWPPP is required for submittal and review at least 3 days prior to the scheduling of a pre-con. A lubtice of Intent (NOI) must be submitted to the TCEQ for any site that is a minimum of 5 acres; or, any site that meets the criteria of a larger common plan of development.

An initial site inspection must be conducted by the City of Pflugerville to verify that all erosion and sediment controls have been properly installed per the plan. Approval by the City must be given before construction can begin.

4. All erosion and sediment controls must be properly maintained por the SWP3 plan throughout the duration of the project. Any off-site discharge must be immediately addressed, ESPECIALLY TRASH AND SEDIMENTS.

5. Install the following Inlet marker at every inlet: Almetak 4" DISC "No Dumping Durins to create" flatner, SOF A-400-401-418. Alminimum, Symbol: Fish, Color: blue, Use Almetel maria specifications for surface whathere for all ynitiating Contact the City of Philipper Previous for surface whathere for all ynitiating Department for markers).

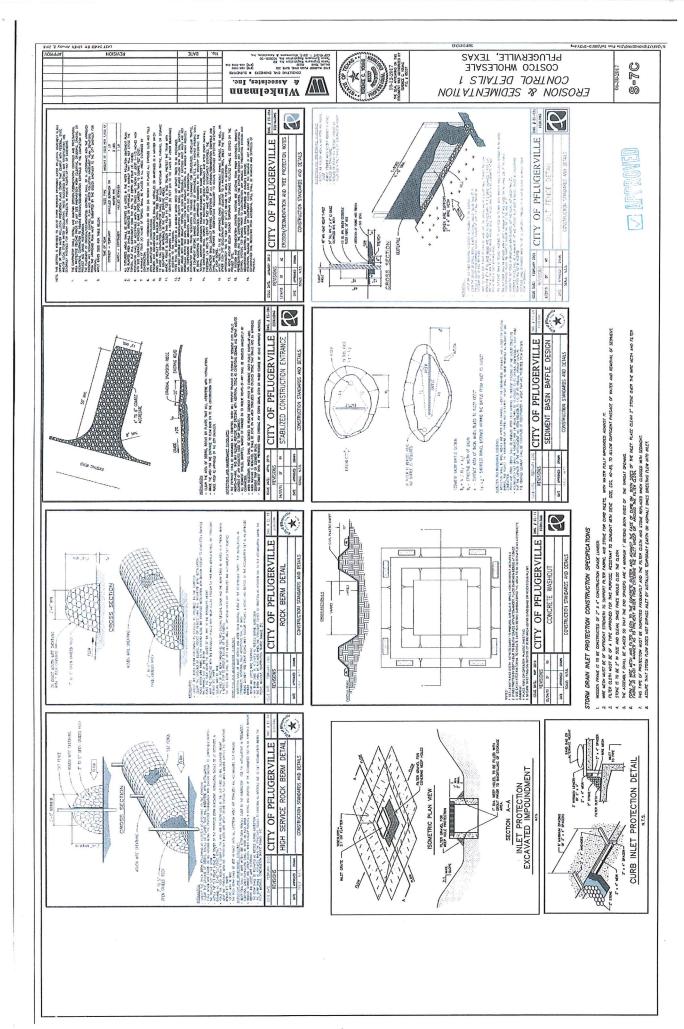
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& Associates, Inc.

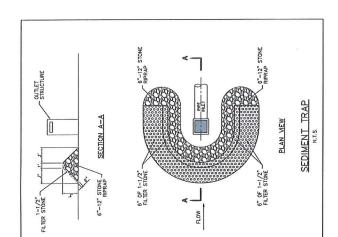
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6. All districted areas must be re-vegetated. A minimum uniform coverage of 90% or more, at a height of 15 finches and no bis ensure grotest than 10 eq. ft. is pranount before or emporary Contricted or Occupancy. It is highly recommended that re-registration is initiated early in order to meet the city's stabilization standards before the final walk-through.

Sod, or a combination of Hydra-seed / mulch with a geo textile must be used for the stabilization of slopes or vegetated drainage ways.



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