

**AGENDA
CITY OF WINDCREST, TEXAS**

SPECIAL CITY COUNCIL MEETING

January 16, 2013

10:00 A.M. – 12:00 P.M.

NOTICE IS HEREBY GIVEN THAT A SPECIAL WINDCREST CITY COUNCIL MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 16th DAY OF JANUARY 2013 STARTING AT 10:00 A.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COUNCIL MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE CITY COUNCIL RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF JANUARY 16, 2013 AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, JANUARY 17, 2013 AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

IT IS ANTICIPATED THAT MEMBERS OF OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES MAY ATTEND THE MEETING IN NUMBERS THAT MAY CONSTITUTE A QUORUM OF SUCH OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES, SO THAT NOTICE IS HEREBY GIVEN THAT THE MEETING IS ALSO A MEETING OF THE OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES WHOSE MEMBERS ARE IN ATTENDANCE. THE MEMBERS OF THE OTHER CITY BOARDS, COMMISSIONS AND COMMITTEES MAY PARTICIPATE IN DISCUSSIONS WHICH OCCUR AT THE MEETING, BUT NO ACTION WILL BE TAKEN BY THE OTHER BOARDS, COMMISSIONS AND COMMITTEES WHOSE MEMBERS ARE IN ATTENDANCE.

Ordinance No. 618 (09/20/10), Repealing Ordinance No. 593

At all City Council, City Commission or City Board meetings, the agenda shall include a "citizens to be heard" item. It is suggested that Citizens wishing to speak during this item sign in on the sign up roster prior to the meeting. During "citizens to be heard" comments, each individual may speak on an agenda item or any other matter affecting the city. In addition to the "citizens to be heard" portion of meetings, a person may make comments on agenda items prior to the vote on the agenda item. A member of the public will have a total of six (6) minutes to be heard during a City Council, City Commission or City Board Meeting. This does not include any responses from the body. The six (6) minutes time limit authorized herein may not be transferred to another speaker in whole or in part. The presiding Officer or his/her designee will assign a Time Keeper to each meeting. The Time Keeper will maintain strict compliance of the six (6) minute rule, stopping speakers who exceed the allotted time. As authorized by Section 551.042 of the Texas Government Code, the Presiding Officer may direct a City Official to make: a statement of specific factual information in response to an inquiry made by a member of the public or of the City Council, or; a recitation of existing policy in response to an inquiry made by a member of the public or the City Council. Any deliberation or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting. Any question posed by a Citizen, Council Member, Board Member or Commission Member for which an answer is not available at a meeting shall be answered by a member of the staff or Presiding Officer at the next regular meeting of the Body, if an answer is reasonably available and prudent. If the information is sensitive, staff will seek advice from the City Attorney.

REQUEST ALL PAGERS AND CELL PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL. CITIZENS ARE ASKED TO REFRAIN FROM TALKING DURING COUNCIL PROCEEDINGS.

Meeting Chair: please remind each participant in your meeting that they must speak into a microphone; the recording is the Official Minutes of your meeting and all who speak must be recorded. All guest speakers and citizens to be heard must speak from podium. Please interrupt speakers during meeting if you recognize that they are not speaking into microphone and have them do so.

I. Call to Order, Pledge of Allegiance, Invocation and Announcements

II. Citizens to be Heard on Subsequent and Non-Subsequent Agenda Items

1. A member of the public will have three (3) minutes to discuss non-subsequent agenda items.
2. A member of the public will have six (6) minutes to discuss subsequent agenda items.
3. City Council may discuss and respond to current and past agendas on subsequent and non-subsequent agenda items by citizens to be heard.

III. Presentations

NONE

IV. Ordinances **"In conjunction with the first reading of an ordinance, a motion should be made to either "reject the proposed ordinance" or "to forward the proposed ordinance to a subsequent City Council meeting for final adoption at its second reading".* *

1. City Council will review, discuss and may take action on Ordinance No. 2013-686 (O), an ordinance amending Chapter 18, miscellaneous offenses, by restoring certain provisions relating to graffiti removal inadvertently repealed in Ordinance No. 603 adopted on October 19, 2009. **Second Reading** (Chief of Police, Al Ballew requested) (Att. 1)

V. Resolutions

1. City Council will review, discuss and may take action on Resolution No. 2013-417 (R), a resolution approving a contract and the fee of IDS Engineering Group for Engineering services for the city's roadway capital improvement program and authorizing the City Manager to issue a request for proposals or bids for the construction of such roadway capital improvements throughout the City of Windcrest. (Rafael Castillo, Jr., City Manager requested) (Att. 2)
2. City Council will review, discuss and may take action on Resolution No. 2013-420 (R), a resolution authorizing the City Manager to execute an interlocal agreement for designation of health authority and authorizing the Mayor to execute a certificate of appointment for the local health authority. (Mayor Alan Baxter requested) (Att. 3)

VI. Discuss & Act

1. City Council will review, discuss and may take action on amending the City of Windcrest Ethics Policy. (Att. 4)

VII. General Announcements & Future Agenda Items Requested

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

IX. Adjournment

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two hours prior to the meeting on January 16, 2013.

By:  , City Secretary

In compliance with the Americans With Disabilities Act, the City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. The City of Windcrest will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please contact Kelly Rodriguez, City Secretary, at 210-655-0022 ext. 2150 or Fax 210-655-8776.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the ____ January, 2013.

____ Title: _____

ORDINANCE NO. 2013 – 686 (O)

AN ORDINANCE AMENDING CHAPTER 18, MISCELLANEOUS OFFENSES, BY RESTORING CERTAIN PROVISIONS RELATING TO GRAFFITI REMOVAL INADVERTENTLY REPEALED IN ORDINANCE NO. 603 ADOPTED ON OCTOBER 19, 2009.

WHEREAS, Ordinance No. 603 adopted on October 19, 2009 inadvertently repealed then existing subsection 18.402 (e) of the Code of Ordinances and adopted a new subsection 18.402 (e); and

WHEREAS, the City Council has determined that the repealed subsection should be restored as a part of the graffiti removal regulations of the city.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Chapter 18, Miscellaneous Offenses, Subchapter 18 .400 of the Code of Ordinances of the City of Windcrest, Texas, is amended by renumbering current subsection 18.402 (e) as new subsection 18.402 (f) and by adopting the following provision as new subsection 18.402 (e):

“(e) It shall be unlawful for any property owner and any occupant of property in the City to permit graffiti markings to exist on the walls or structures on real property owned or occupied by such person after delivery of written notice from the City Administrator or his designee to remove or abate such graffiti. A property owner or occupant of real property shall have ten (10) days from the date of delivery of the notice to remove or abate the graffiti. Delivery of the notice shall mean (1) personal delivery or (2) mailing of the notice by deposit in the United States mail with postage prepaid to the address of the property with graffiti markings. If the property owner or occupant of the property fails to remove or abate the graffiti within ten (10) days of delivery of the notice, such owner or occupant shall be prosecuted as provided in Section 18.403 of this subchapter.”

This ordinance shall become effective five days after its publication.

PASSED and APPROVED this ____ day of _____, 20____.

Alan Baxter, Mayor

ATTEST:

Kelly Rodriguez, City Secretary

APPROVED AS TO FORM:

Michael S. Brenan, City Attorney

RESOLUTION NUMBER 2012-417 (R)

A RESOLUTION APPROVING A CONTRACT AND THE FEE OF IDS ENGINEERING GROUP FOR ENGINEERING SERVICES FOR THE CITY'S ROADWAY CAPITAL IMPROVEMENT PROGRAM AND AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST FOR PROPOSALS OR BIDS FOR THE CONSTRUCTION OF SUCH ROADWAY CAPITAL IMPROVEMENTS THROUGHOUT THE CITY OF WINDCREST.

WHEREAS, on December 13, 2012 the City of Windcrest City Council adopted Resolution 416(R) selecting IDS Engineering Group to provide engineering services for the city's roadway capital improvement program subject to the negotiation by the city manager of a contract for such services; and

WHEREAS, it is the desire of the City Council for IDS Engineering Group, upon execution of a contract for engineering services, to proceed with the development and issuance of a Request for Proposals or Bids for the city's roadway capital improvement program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windcrest, Texas, that:

1. The IDS Engineering Group's fee for engineering services relating to the roadway capital improvements (CIP-001) shall not exceed the fee provided in Exhibit A.
2. The City Manager is hereby authorized to execute a contract with IDS Engineering as provided in Exhibit A for the performance of engineering services relating to the roadway capital improvements (CIP-001).
3. The City Manager is hereby authorized to develop and release a Request for Proposals or Bids for the performance of roadway capital improvements (CIP-001) throughout the City of Windcrest.

DULY PASSED AND APPROVED, on the 7th day of January, 2013, at a regularly scheduled meeting of the City Council of the City of Windcrest, Texas, which meeting was held in compliance with the Open Meetings Act, Tex. Gov't. Code §551.001, et. seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Alan E. Baxter, Mayor

ATTEST

Kelly Rodriguez, City Secretary

APPROVED AS TO FORM

Michael Brennan, City Attorney

CITY OF WINDCREST, TEXAS
ARCHITECTS & ENGINEERING PROFESSIONAL SERVICES CONTRACT

This Contract is between the **City of Windcrest**, a Texas home-rule municipal corporation, (the “City”) and IDS Engineering Group, a Texas corporation (the “Contractor”), whereby the Contractor agrees to provide the City with certain professional services as described herein and the City agrees to pay the Contractor for those services.

ARTICLE I
Scope of Services

- 1.01 In consideration of the compensation stated in paragraph 2.01 herein below, the Contractor agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: Roadway CIP 2013 (the “Project”).

ARTICLE II
Payment

- 2.01 In consideration of the Contractor’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Contractor according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed One Hundred and Twenty Five Thousand and zero/100 Dollars (\$125,000).

ARTICLE III
Time of Performance and Construction Cost

- 3.01 The Contractor shall complete the professional services within the times set forth below. The Contractor shall exercise a degree of care and diligence in the performance of all services under this Contractor in accordance with the professional standards prevailing among Contractors in the location in which Contractor practices, Windcrest, Texas, or San Antonio, Texas, whichever is the higher standard, skilled in design for projects of similar scope, and all of the Contractor services shall be performed as expeditiously as is consistent with said standards and the orderly progress of the Work. All time frames shown exclude review time by the City and other applicable entities.

[Conceptual Design: 56 **calendar days** after the authorization to commence planning]
[Preliminary Project Design: 28 **calendar days** after authorization to commence PPD]
[Final Design: 28 **calendar days** after authorization to commence final design]

- 3.02 All design work and other professional services provided under this Contract must be

completed by the following date: End of construction contractor's warranty period.

- 3.03 **Time is of the essence of this Contract.** The Contractor shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Contractor shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Contractor's services to meet the City's project milestone dates which are included in this Contract. The Contractor's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which Contractor has control shall not be exceeded without written approval from the City.
- 3.04 The Contractor's services consist of all of the services required to be performed by Contractor, Contractor's employees and Contractor's consultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Contractor shall contract and employ at his expense consultants necessary for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by the City.
- 3.05 The Contractor shall designate a principal of the firm reasonably satisfactory to the City who shall, so long as employed by Contractor and acceptable to the City, remain in charge of professional services through completion and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.
- 3.06 Contractor shall be responsible for the coordination of all drawings and design documents relating to Contractor's design and used on the Project, regardless of whether such drawings and documents are prepared by Contractor. Contractor shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Contractor and for their compliance with all currently applicable codes, ordinances, regulations, laws and statutes.
- 3.07 Contractor's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost, represent the Contractor's best judgment as a design professional familiar with the construction industry.
- 3.08 The construction budget for this Project, which is established as a condition of this Contract is \$1,500,000. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE IV

Conceptual Design

- 4.01 Upon the Contractor's receipt from the City of a letter of authorization to commence planning, the Contractor shall meet with the City for the purpose of determining the nature of the Project. The Contractor shall inquire in writing as to the information he believes the City may have in its possession that is necessary for the Contractor's performance. The City shall provide the information within its possession that it can make available to the Contractor. The City shall designate a representative to act as the contact person on behalf of the City.
- 4.02 The Contractor shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal Projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Contractor shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Contractor shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Contractor shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Contractor shall confirm that the Project can be designed and constructed for the dollar amount of the project budget, if applicable.
- 4.03 The Contractor shall prepare a conceptual design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The conceptual design shall contemplate compliance with all currently applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Contractor shall meet with City staff and the City Council to make a presentation of his report.

ARTICLE V Preliminary Design

- 5.01 The City shall direct the Contractor to commence work on the Project design by sending to the Contractor a "letter of authorization" to begin work on the preliminary Project design pursuant to this Contract. Upon receipt of the Letter of Authorization to commence preliminary Project design, the Contractor shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.
- 5.02 The Contractor shall prepare the preliminary design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Contractor shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.
- 5.03 Upon completion of the preliminary design of the Project, the Contractor shall so notify

the City. Upon request the Contractor shall meet with the City staff and City Council to make a presentation of his preliminary design of the Project. The Contractor shall provide an explanation of the preliminary design and cost estimate and shall verify that, to the best of Contractor's belief, the Project requirements and construction can be completed within the project budget and schedule.

ARTICLE VI

Final Design

- 6.01 The City shall direct the Contractor to commence work on the final design of the Project by sending to the Contractor a "letter of authorization" to begin work on the final design phase of the Project. Upon receipt of the Letter of Authorization to proceed with final design of the Project, the Contractor shall immediately prepare the final design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The final design of the Project shall comply with all currently applicable laws, statutes, ordinances, codes and regulations.
- 6.02 Notwithstanding the City's approval of the final design, the Contractor shall ensure that the final design will be sufficient and adequate to fulfill the purposes of the Project.
- 6.03 **The Contractor shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's current pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the contractor. The Contractor hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.**
- 6.04 The Contractor shall provide the City with complete contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the final design of the Project, with the submission of the complete contract documents, and upon request of the City, the Contractor shall meet with City Staff and the City Council to present the final design of the Project. The Contractor shall provide an explanation of the final design and cost estimate.

ARTICLE VII

Bid Preparations & Evaluation

- 7.01 The Contractor shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Contractor shall meet with City Staff and the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.

- 7.02 The Contractor shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Contractor shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the final design of the Project, then the Contractor, at his sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the final design of the Project.
- 7.03 Where substitutions are requested by a construction contractor, the Contractor shall review the substitution requested and approve or disapprove such substitutions.

ARTICLE VIII

Construction

- 8.01 The Contractor shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction, or warranty, period described in the construction contract. The Contractor shall have authority to act on behalf of the City only to the extent provided in this Agreement unless modified by written instrument.
- 8.02 The Contractor shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the construction contractor and his subcontractors and to determine if such work is proceeding in accordance with the contract documents. Contractor shall periodically review the as-built drawings for accuracy and completeness, and shall report his findings to the City.
- 8.03 The Contractor shall keep the City informed of the progress and quality of the work. The Contractor shall promptly report to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.
- 8.04 The Contractor shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Contractor's review and approval shall include a determination of whether the work complies with all currently applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.
- 8.05 The Contractor shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Contractor shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.
- 8.06 The Contractor shall issue all instructions of the City to the construction contractor as

well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Contractor shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Contractor shall, within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the Work. Contractor shall receive no additional compensation for providing clarification of the Drawings and Specifications.

- 8.07 The Contractor shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Contractor's recommendation of payment, being based upon the Contractor's on-site inspections and his experience and qualifications as a design professional, shall constitute a recommendation by the Contractor to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Contractor's recommendation for payment.
- 8.08 Upon notification from the construction contractor that the Project is substantially complete, the Contractor shall conduct an inspection of the site to determine if the Project is substantially complete. The Contractor shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Contractor for completion have been completed, the Contractor shall inspect the Project to verify final completion.
- 8.09 The Contractor shall not be responsible for the work of the construction contractor or any of his subcontractors, except that the Contractor shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Contractor's negligent acts or omissions. This provision shall not alter the Contractor's duties to the City arising from the performance of the Contractor's obligations under this Contract.
- 8.10 The Contractor shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.
- 8.11 The Contractor shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.
- 8.12 The Contractor shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.
- 8.13 The Contractor shall assist the construction contractor and City in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by the City.

ARTICLE IX
Change Orders & Documents & Materials

- 9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized personnel of the City. The Contractor shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.
- 9.02 a. When the original contract amount plus all change orders is less than \$50,000, the City Manager or his delegate may approve the written change order provided the change order does not increase the total amount set forth in the contract to more than \$50,000. For such contracts, when a change order results in a total contract amount that exceeds \$50,000, the City Council must approve such change order prior to commencement of the services or work; and
- b. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his delegate may approve the written change order provided the change order does not exceed \$10,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$10,000 or when the sum of all change orders exceeds 25% of the original contract, the City Council must approve such change order prior to commencement of the services or work.
- c. **Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.** If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.
- 9.03 The Contractor shall furnish the City (1) sets of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Contractor shall provide the City (1) sets of reproducible, mylar-record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Contractor. The Contractor shall provide copies of documents, computer files if available, surveys, notes, and tracings used or prepared by the Contractor. The foregoing documentation, the Contractor's work product, and other information in the Contractor's possession concerning the Project shall be the property of the City from the time of preparation. The Contractor shall also furnish one set of digital files representing the final as-built mylars.

ARTICLE X
Warranty, Indemnification & Release

- 10.01 As an experienced and qualified design professional, the Contractor shall ensure that the information provided by the Contractor reflects high professional and industry standards, procedures, and performances. The Contractor shall ensure the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. The Contractor will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Contractor, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Contractor, its employees, associates, agents, or subcontractors.
- 10.02 The Contractor shall promptly correct any defective designs or specifications furnished by the Contractor at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Contractor's services hereunder or of the Project itself shall in no way alter the Contractor's obligations or the City's rights hereunder.
- 10.03 In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Contractor shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Contractor shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Contractor shall have ultimate control over the execution of the professional services. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors.
- 10.04 The Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Contractor, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.
- 10.05 Indemnity. The Contractor agrees to indemnify, defend, and hold harmless the City, its officers, employees, and agents (separately and collectively referred to in this paragraph as "Indemnatee"), from and against any and all claims, losses, damages, causes of action, suits, judgments, settlements made by Indemnatee, and**

liability of every kind, including all expenses of litigation, court costs, attorney's fees, and other reasonable costs for damage to or loss of use of any property, for injuries to, or sickness or death of any person, including but not limited to Contractor, any of its subcontractors of any tier, or of any employee or invitee of Contractor or of any such subcontractors, that is caused by, arises out of, related to, or in connection with, the negligence of and/or negligent performance of this Contract by Contractor or by any such subcontractors of any tier, under this Contract.

10.06 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 10.05, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

10.07 Release. The Contractor releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Contractor or its employees and any loss of or damage to any property of the Contractor or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Contractor's work to be performed hereunder. Both the City and the Contractor expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Contractor or its employees. This release shall not if such loss, damage, injury, or death was caused in whole or in part by the City.

ARTICLE XI

Insurance

11.01 The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on Exhibit C.

ARTICLE XII

Use of Drawings, Specifications and Other Documents

12.01 The Drawings, Specifications and other documents prepared by the Contractor and Contractor's consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain

reproducible copies and electronic versions of Contractor's Drawings, Specifications and other documents.

- 12.02 The documents prepared by Contractor may be used as a prototype for other facilities by the City. The City may elect to use the Contractor to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the Contractor is obligated to perform the work for an additional compensation that will fairly compensate the Contractor and its consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect to perform the site adaptation and other architectural services involved in reuse of the prototype, that architect will be entitled to use Contractor's consultants on the same basis that Contractor would have been entitled to use them for the work on the reuse of the prototype, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Contractor will not be responsible for errors and omissions of a subsequent architect. The Contractor shall commit its consultants to the terms of this subparagraph.
- 12.03 In the event of termination of this Agreement for any reason, the City shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.
- 12.04 Only the details of the drawings relating to this Project may be used by the Contractor on other projects, but they shall not be used as a whole without written authorization by the City. The City furnished forms, conditions, and other written documents shall not be used on other projects by the Contractor.

ARTICLE XIII

Termination

- 13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days written notice. Upon the Contractor's receipt of such notice, the Contractor shall cease work immediately. The Contractor shall be compensated for the services satisfactorily performed prior to the termination date.
- 13.02 If, through any cause, the Contractor fails to fulfill its obligations under this Contract, or if the Contractor violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Contractor **five (5)** calendar days written notice to the Contractor. The Contractor will be compensated for the services satisfactorily performed before the termination date.
- 13.03 No term or provision of this Contract shall be construed to relieve the Contractor of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Contractor. The City may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the

Contractor is determined and paid.

ARTICLE XIV Miscellaneous Terms

14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Bexar County, Texas.

14.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of Windcrest
Attn: Rafael Castillo, City Manager
8601 Midcrown Drive
Windcrest, Texas 78239

Contractor:
IDS Engineering Group
Attn: Jeffrey McKinnie, PE
613 NW Loop 410, Suite 550
San Antonio, Texas 78216

14.03 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

14.04 This Contract represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

14.05 This Contract and all rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

14.06 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

14.07 The Contractor, its agents, employees, and subcontractors must comply with all currently applicable federal and state laws, the charter and ordinances of the City of Windcrest, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Contractor must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

- 14.08 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.
- 14.09 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.
- 14.10 **Notice of Indemnification. City and Contractor hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.**

IDS ENGINEERING GROUP

By: 

Printed Name: Timothy E. Buscha, P.E.

Title: Senior Vice President

Date: January 4, 2013

CITY OF WINDCREST

By: _____

City Manager

Date: _____

APPROVED:

City Attorney

Date: _____

Director of Finance

Date: _____

Exhibit A

Scope of Services

Project Limits

- Blue Grass from Fenwick Drive to north of Balfour – 350 lf
- Hickory Hollow from Windrock Drive to Spanish Moss and the full length of Pintail Point and Cattail – total of 1460 feet
- Moorside Drive from Fenway Lane to Fawndale Lane – 600 feet
- North Gap Drive at North Bend Drive – 250 feet
- Parkcrest Drive at Walzem Road – 100 feet

Topographic and Elevation Survey

IDS will prepare a topographic and elevation survey of the Project. Existing utilities will be located by use of publicly available maps, one call service, and surface features.

Right-of-way Resolution and Project Control

The existing right-of-way limits will be determined through abstracting, research, and existing boundary monuments. Horizontal and vertical control points will be provided along the Project at intervals not to exceed 1,000 feet.

Geotechnical Engineering

IDS will obtain a Subsurface Exploration and Pavement Analysis.

Plans, Specification, and Estimates (PS&E)

PS&Es will be prepared and submitted per Articles IV (Conceptual), V (Preliminary), and VI (Final).

Participate in public stakeholder meeting(s) at completion of the Conceptual Design Phase.

The design standards to be used on the Project shall include, but not limited to City of San Antonio Design Standards, the TxDOT Roadway Design Manual and Bridge Design Guideline, the American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets (Green Book), Texas Manual on Uniform Traffic Control Devices (TMUTCD), and the Texas Pollutant Discharge Elimination System (TPDES) Guidelines as appropriate for the most cost effective design.

IDS will coordinate with the Texas Department of Transportation (TxDOT) regarding the intersection of Parkcrest and Walzem Rd (FM 1976). IDS will submit for a driveway permit on behalf of the City to TxDOT.

Bid Phase

IDS will provide Bid Phase services per Article VII.

Construction Phase

IDS will provide Construction Phase services per Article VIII.

Construction Surveying Services

Prior to construction, stake project base line including beginning and ending points, PC's, PT's, PI's, and 1,000 foot intervals. Establish temporary benchmarks within 500 feet of the beginning and ending points of the baseline and at 1,000 foot intervals throughout the project outside of the

proposed construction area. Prepare survey control drawing showing the baseline points established in the field and locations by station and offset to the temporary benchmarks.

Exhibit B

Payment Terms

SELECT ONE:

Compensation is based on **actual** hours of work/time devoted to providing the described professional services. The Contractor will be paid at the rates per service or employee shown below. The City will reimburse the Contractor for **actual**, non-salary expenses at the rate of ten percent (**10%**) above the Contractor's actual costs, or at the rates set forth below. Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract \$125,000).

The Contractor must submit **monthly** invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

IDS Engineering Group Billing Rates

Senior Manager	\$204/hr
Senior Engineer/Project Manager	\$153/hr
Project Engineer/EIT	\$119/hr
Senior Production.....	\$136/hr
Production	\$102/hr
Construction Manager.....	\$119/hr
Construction Observer	\$102/hr
Administrative.....	\$85/hr
Survey Manager/RPLS	\$110/hr
Survey Coordinator	\$85/hr
Survey Crew.....	\$150/hr

Exhibit C

Insurance Requirements

During the term of this Agreement all Contractor's insurance policies shall meet the following requirements:

- I. Standard Insurance Policies Required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Workers' Compensation
 - D. Professional Liability
- II. For each of these policies, the Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.
- III. The Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- IV. General Requirements Applicable to All Policies
 - A. Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
 - B. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a "per occurrence" basis for property damage only.
 - C. "Claims made" policies will not be accepted, except for Professional Liability insurance.
 - D. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Windcrest by certified mail, return receipt requested.
 - E. Upon request, certified copies of all insurance policies shall be furnished to the City.
 - F. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:
 1. that the insurance company is licensed and admitted to do business in the State of Texas

2. that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO
3. all endorsements and coverages according to the requirements of this Contract
4. the form of notice of cancellation, termination, or change in coverage provisions
5. original endorsements affecting coverage required by this Contract.
6. The City of Windcrest, its officials, employees, and volunteers are named as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded the City, its officials, employees, and volunteers.

V. Commercial (General) Liability requirements:

- A. Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- C. Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- F. The City shall be named as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

VI. Business Automobile Liability requirements:

- A. Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- D. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

VII. Workers Compensation Insurance requirements:

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's, or

subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

B. The worker's compensation insurance shall include the following terms:

1. Employer's Liability limits of \$1,000,000 for each accident is required.
2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

C. Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

"A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not

include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
- (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier

or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”*

VIII. Professional Liability Requirements:

- A. Coverage shall be written by a carrier with a “A:VIII” or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$200,000.00. Financial statements shall be furnished to the City of Windcrest when requested.
- C. For “claims made” policies, a two-year extended reporting period shall be required.

Exhibit “D”

Certificate(s) of Insurance



**Susan D. Reed
Criminal District Attorney
Bexar County, Texas**

Mayor, City of Windcrest
8601 Midcrown
Windcrest, Texas 78239

January 8, 2013

Dear Mayor and City Council:

For the last eleven years, we have invited the municipalities located in Bexar County to appointment Dr. Fernando Guerra, director of San Antonio Metropolitan Health District, as their health authority. As you may know, Dr. Guerra recently retired and has been replaced by Dr. Thomas Schlenker; accordingly, we now are requesting that you select Dr. Schlenker as the health authority for City of Windcrest. We believe that having one health authority for the City, County and surrounding municipalities will insure swift action to prevent the potential spread of communicable or infectious agents and save lives. Through our mutual efforts, we can ensure the safety of our community. Pursuant to Texas Health and Safety Code § 121.023, the appointment of Dr. Schlenker will be effective for two years.

Dr. Thomas Schlenker is well-suited to be the health authority for City of Windcrest. He currently serves as the local health authority for the Metropolitan Health District, which includes the City and the unincorporated areas of Bexar County. Dr. Schlenker administers state and local laws relating to public health within the district. In addition, he provides emergency health services within the district, and has an exceptional facility and staff trained to properly handle emergency events involving chemical, nuclear, or biological agents or a naturally occurring catastrophe. He also has authority to impose control measures such as an area quarantine. A quarantine can only be ordered by a properly qualified and appointed health authority after having filed an oath of office and appointment with the Texas Board of Health. Before doing so he must consult with the elected official of that jurisdiction. If a health authority is not properly appointed, the duty would fall to State Officials as opposed to a local authority.

Under state law, the Director of the Metropolitan Health District is permitted to serve as health authority for other jurisdictions pursuant to an interlocal agreement. Dr. Schlenker has agreed to provide emergency services throughout Bexar County, including your municipality, in the event of a catastrophic occurrence. This would allow immediate local response preceding any state or federal involvement. This is similar to other

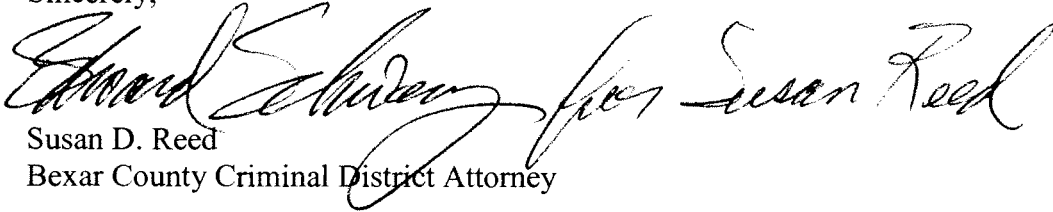
interlocal emergency agreements in existence. To assist you in appointing Schlenker as health authority for emergency purposes, should your jurisdiction choose to do this, we have enclosed an interlocal agreement with two signature pages for City of Windcrest and a list of other cities we hope will participate. Also, please complete the health authority appointment and return it with the interlocal agreement signature pages. We will file the appointment with the Texas Department of State Health Services.

In order to assure your citizens that their emergency health needs will be met, we strongly encourage you to appoint Dr. Schlenker at your next scheduled meeting. Please feel free to contact us at anytime, or you may also have any of your questions or those raised by your staff answered by contacting Ed Schweninger, Chief of the Civil Section of the Criminal District Attorney's Office at 335-2139. Please inform us of your decision in relation to this matter. If your City Council approves the interlocal agreement and the appointment of Dr. Schlenker, please sign the enclosed documents and return them to Mr. Schweninger, Bexar County Criminal District Attorney's Office, 300 Dolorosa, 5th Floor San Antonio, TX 78205. We would appreciate the return of the documents by November 15, 2012.

In order to simplify future reappointments, we have changed the interlocal agreement to automatically renew, if the following conditions are met: Dr. Schlenker continues to serve as the Director of the District, you reappoint him, he takes the oath of office, and all appropriate documentation is filed with the state. We will send you the Certificate of Appointment for your execution every two years.

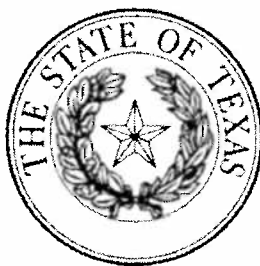
We look forward to your cooperation in ensuring the protection of the health and safety of all residents of Bexar County. Once we have received signatures on the interlocal agreement from all participating cities, and Bexar County Commissioners Court and San Antonio City Council have approved the agreement, we will send conformed documents to all participants.

Sincerely,


Susan D. Reed
Bexar County Criminal District Attorney

Enclosures: Certificate of Appointment
Interlocal Agreement
Signature Pages (2)

cc: Dr. Thomas Schlenker M.D.
San Antonio Metropolitan Health District



Certificate of Appointment

For a

Local Health Authority

I, _____, acting in the capacity as a

(Check the appropriate designation below)

- ☐ Non-physician and the Local Health Department Director
☒ Mayor or Designee
☐ County Judge of Designee
☐ Chairperson of the Public Health District

do hereby certify the physician, Dr. Thomas Schlenker, M.D., who is licensed by the Texas Board of Medical Examiners, was duly appointed as the Local Health Authority for Windcrest, Texas.

Date term of office begins January 1, 2013

Date term of office ends December 31, 2015, unless removed by law.

The Local Health Authority has been appointed and approved by the:

(Check the appropriate designation below)

- ☐ Director, _____
☒ City Council for the City of Windcrest
☐ Commissioners Court for _____ County
☐ Board of Health for the _____ Public Health District

I certify to the above information on this the _____ day of _____, 20__.

Signature of appointing official

(See reverse side for instructions)

STATE OF TEXAS

COUNTY OF BEXAR

§
§
§

**INTERLOCAL AGREEMENT
FOR DESIGNATION OF
HEALTH AUTHORITY**

This Interlocal Agreement (the "Agreement") is entered into under the authority of Government Code Chapter 791 and Health and Safety Code §121.028(c) by and between the County of Bexar, a political subdivision of the State of Texas ("COUNTY"), the City of San Antonio ("SAN ANTONIO"), a Texas Municipal Corporation, acting by and through its City Manager, and the municipalities that are listed and have signed below, all entirely or partially situated within Bexar County, Texas, through their duly authorized City Managers, Boards of Directors, or other lawfully designated representatives (each municipality shall hereinafter be referred to singularly as a "CITY" and collectively as the "CITIES").

RECITALS

COUNTY and SAN ANTONIO are members of the San Antonio Metropolitan Health District (the "District"), a Public Health District under Health and Safety Code Chapter 121, Subchapter E.

The Director of the District, Thomas Schlenker, M.D. ("Dr. Schlenker"), has been designated as the Health Authority to administer state and local laws relating to public health within the jurisdiction of the District, which includes SAN ANTONIO and the unincorporated areas of Bexar County, but does not include the jurisdiction of any of the CITIES.

In order to protect the health and safety of the public throughout Bexar County, to include areas within the jurisdiction of any of the CITIES, each CITY desires to appoint Dr. Schlenker as its Health Authority, in accordance with Government Code Chapter 791.

Accordingly, the parties to this Agreement (collectively, the "Parties") agree as follows:

**ARTICLE I
PURPOSE**

1.01 The purpose of this Agreement is to appoint Dr. Schlenker as the Health Authority for each CITY and to describe the terms and conditions under which he will provide assistance to the CITIES.

**ARTICLE II
TERM**

2.01 This Agreement will begin on the date Dr. Schlenker qualifies as the CITIES' Health Authority by taking the oath of office and will automatically renew thereafter for as long as Dr. Schlenker continues to serve as the Director of the District.

2.02 Any CITY may terminate this Agreement by giving ninety days written notice to SAN ANTONIO and COUNTY. A termination by a CITY is only effective as to that CITY. A copy of this Agreement will be kept on file in the office of the District.

ARTICLE III

DESIGNATION OF HEALTH AUTHORITY

3.01 The CITIES will appoint Dr. Schlenker to serve as their Health Authority pursuant to Health and Safety Code Chapter 121. The position of Health Authority is a public office to which the holdover provision of the Texas Constitution, Article XVI, Section 17, applies. The terms and conditions under which Dr. Schlenker's authority is invoked are more fully described in Article IV below. A copy of the Certificate of Appointment for each CITY is attached to this Agreement as Exhibit "A".

3.02 The CITIES will re-appoint Dr. Schlenker as their Health Authority upon expiration of his two-year term and Dr. Schlenker will qualify to continue serving as the Health Authority for the CITIES by taking the oath of office and by filing all appropriate documentation with the state.

ARTICLE IV

EMERGENCY AND NON-EMERGENCY SERVICES

4.01 In the event of an occurrence anywhere within Bexar County of: a) a chemical, nuclear, or biological agent, or b) a naturally-occurring catastrophe, including but not limited to an infectious disease, (an "Emergency Event") that, in the sole discretion of Dr. Schlenker or his designee, constitutes a civil emergency and places the health and safety of the residents of Bexar County at risk, then Dr. Schlenker shall be the Health Authority permitted to provide emergency assistance anywhere within Bexar County. Upon the occurrence of an Emergency Event, Dr. Schlenker shall have all powers and duties granted to a Health Authority under Health and Safety Code §121.024, including the authority to impose control measures to prevent the spread of disease in accordance with Health and Safety Code Chapter 81.

4.02 A CITY may consult with Dr. Schlenker regarding the remediation or abatement of a condition that threatens the public health in that CITY but is not an Emergency Event. However, no services shall be performed in that CITY by Dr. Schlenker or the District without prior written authorization from that CITY sent to the address set forth in section 5.01 of this Agreement.

ARTICLE V

COMPENSATION

5.01 If Dr. Schlenker provides services to a CITY in accordance with Article IV Sections 4.01 or 4.02, that CITY shall reimburse SAN ANTONIO on behalf of the District for those services actually rendered in accordance with Government Code Chapter 791.011(e) to the address set forth below:

San Antonio Metropolitan Health District
Accounting Division Attn: Accounting Division
332 W. Commerce
San Antonio, Texas 78205

Compensation for the services shall be payable only out of current revenues available to that CITY.

ARTICLE VI REPRESENTATIONS

6.01 Each CITY represents that it has, through resolution or other official action, designated Dr. Schlenker as Health Authority and authorized him, or his designee, to provide emergency assistance as described in this Agreement.

ARTICLE VII SEVERABILITY

7.01 If any provision of this Agreement is found to be invalid, all other provisions will nevertheless remain in effect.

ARTICLE VIII GOVERNING LAW

8.01 This Agreement will be governed by the laws of the State of Texas, and all obligations of the Parties under this Agreement are performable in Bexar County, Texas. In any legal action arising from this Agreement, the laws of Texas will apply.

ARTICLE IX
MULTIPLE COUNTERPARTS

9.01 For the convenience of the Parties, this Agreement has been executed in counterpart copies, which are in all respects identical and each of which will be deemed to be complete in itself so that any one may be introduced in evidence or used for any other purpose without the production of the other counterparts.

EXECUTED THIS _____ DAY OF _____, 2012.

COUNTY OF BEXAR:

NELSON W. WOLFF
County Judge

Date: _____

ATTEST:

GERARD RICKHOFF
County Clerk

APPROVED AS TO CONTENT:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

APPROVED AS TO LEGAL FORM:

BY: _____
KELSEY MENZEL
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FINANCIAL CONTENT:

SUSAN YEATTS
County Auditor

DAVID SMITH
County Manager

HEALTH AUTHORITY:

THOMAS SCHLENKER, M.D.
Director
San Antonio Metropolitan Health District

Date: _____

CITY OF SAN ANTONIO:

APPROVED AS TO LEGAL FORM:

ERIK WALSH
Deputy City Manager

Date: _____

MICHAEL D. BERNARD
City Attorney for the City of San Antonio

Date: _____

CITY OF WINDCREST:

By: _____

Its: _____

Date: _____

CITY OF WINDCREST:

By: _____

Its: _____

Date: _____

List of other cities that may participate to select health authority

City of Alamo Heights
City of Balcones Heights
City of Castle Hills
City of China Grove
City of Converse
City of Elmendorf
City of Fair Oaks Ranch
City of Grey Forest
City of Helotes
City of Hill Country Village
City of Hollywood Park
City of Kirby
City of La Coste
City of Leon Valley
City of Live Oak
City of Lytle
City of Olmos Park
City of Schertz
City of Selma
City of Shavano Park
City of Somerset
City of St. Hedwig
City of Terrell Hills
City of Universal City
City of Von Ormy

RESOLUTION NO. 2013 – 420 (R)

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN
INTERLOCAL AGREEMENT FOR DESIGNATION OF HEALTH
AUTHORITY AND AUTHORIZING THE MAYOR TO EXECUTE A
CERTIFICATE OF APPOINTMENT FOR THE LOCAL HEALTH
AUTHORITY

WHEREAS, Bexar County and the City of San Antonio have agreed to the appointment of Dr. Thomas Schlenker, MD as the Health Authority for the county and city and have recommended that the other municipalities in Bexar County appoint Dr. Schlenker, MD as their health authority to provide emergency health care administration county wide, including the prevention of the potential spread of communicable or infectious agents, and response to catastrophes involving chemical, nuclear or biological agents and naturally occurring disasters; and

WHEREAS, it would be in the public interest of the citizens of Windcrest to enter into such an agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that the City Manager is authorized to execute an Interlocal Agreement for Designation of Health Authority appointing Dr. Thomas Schlenker, MD as the Local Health Authority for the City of Windcrest and authorizing the Mayor to execute a Certificate of Appointment confirming such appointment.

PASSED AND APPROVED this 16th day of January, 2013.

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

THE CITY OF WINDCREST ETHICS CODE

DIVISION 1: DECLARATION OF POLICY

SECTION 1-01 STATEMENT OF PURPOSE

It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. Such confidence depends not only on the conduct of those who exercise official power, but on the availability of aid or redress to all persons on equal terms and on the accessibility and dissemination of information relating to the conduct of public affairs. For the purpose of promoting confidence in the government of the City of Windcrest and thereby enhancing the city's ability to function effectively, this code of ethics is adopted. The code establishes standards of conduct, disclosure requirements, and enforcement mechanisms relating to city officials and employees and others whose actions inevitably affect public faith in city government, such as former city officials and employees, candidates for public office, persons doing business with the city, and lobbyists. By prohibiting conduct incompatible with the city's best interests and minimizing the risk of any appearance of impropriety, this code of ethics furthers the legitimate interests of democracy.

Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of Windcrest to enforce the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in City Government, each city official must not only adhere to the principles of ethical conduct set forth in this code and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.

SECTION 1-02 DEFINITIONS

As used in this code of ethics, the following words and phrases have the meaning ascribed to them in this Section, unless the context requires otherwise or more specific definitions set forth elsewhere in this code apply

- (a) *Acceptance*. A written or verbal indication that someone agrees; "Acceptance" of an offer of subsequent employment or business opportunities includes legally binding contracts and all informal understandings that the parties expect to be carried out. An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed.
- (b) *Affiliated*. Business entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent business entity.
- (c) *Affinity*. Relationship by "affinity" (by marriage) is defined in Sections 573.024 and 573.025 of the Texas Government Code.
- (d) *Before the City*. Representation or appearance "before the city" means before the City Council; before a board, commission, or other city entity; or before a city official or employee. Representation "before the city" does not include representation before a board where members of said board are not wholly appointed by the City Council.
- (e) *Benefit*. "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

- (f) *Entity*. "Entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.
- (g) *Candidate*. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:
 - (1) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution;
 - (2) the filing of an application for a place on a ballot;
 - (3) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;
 - (4) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication; and
 - (5) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure.
- (h) *City*. "City" means the City of Windcrest.
- (i) *Code of Ethics*. "Code of ethics," "ethics code," or "this code" means Divisions 1 through 6 of this Chapter, its amendment(s) and/or enhanced definitions.
- (j) *"Complainant"* means an individual who has filed a sworn complaint with the City Secretary.
- (k) *Confidential Government Information*. "Confidential government information" includes all information held by the city that is not available to the public under the Texas Public Information Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, unless disclosure is permitted under the Open Meetings Act.
- (l) *Consanguinity*. Relationship by "consanguinity" (by blood) is defined in Sections 573.022 and 573.023 of the Texas Government Code.
- (m) *Discretionary Contract*. "Discretionary contract" means any contract other than those which by law must be awarded on a low or high qualified bid basis. Discretionary contracts do not include those contracts subject to Section 252.022(a)(7) of the Texas Local Government Code or those contracts not involving an exercise of judgment or choice.
- (n) *Economic Interest*. "Economic interest" includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than de minimis value. Service by a city official or employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization.

Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question

participates in the management of the fund. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or official owns less than 10% of the voting stock or shares of the entity and the value of the stock is less than \$15,000.

- (o) *Employee.* The term “employee” or “city employee” is any person listed on the City of Windcrest payroll as an employee, whether part-time or full-time.
- (p) *Former City Official or Employee.* A “former city official” or “former city employee” is a person whose city duties terminate on or after the effective date of this code.
- (q) *Gift.* “Gift” means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.
- (r) *Indirect Ownership.* A person “indirectly owns” an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.
- (s) *Intentionally.* A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
- (t) *Knowingly.* A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.
- (u) *Official.* The term “official” or “city official” includes the following persons:
 - The Mayor;
 - Members of the City Council;
 - Municipal Court Judges;
 - The City Manager;
 - Deputy City Manager; Reserved
 - Assistant City Managers; Reserved
 - Assistants to the City Manager; Reserved
 - City Secretary;
 - Deputy City Secretary; Reserved
 - Assistant City Secretary;
 - Municipal Court Clerk;
 - All department heads and assistant department heads;
 - Internal Auditor and all assistant internal auditors; Reserved; and

Members of all boards, commissions, committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be advisory only in nature, who are appointed by City Council or who are designated in the by-laws or organization papers of the entity to serve on behalf of the city; and board members of any entity who are appointed by the City Council to such board membership.
- (v) *Official Action.* “Official action” includes:
 - (1) any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official or employee’s duties, and

- (2) any failure to act, if the official or employee is under a duty to act and knows that inaction is likely to affect substantially an economic interest of the official or employee or any person.
- (w) *Official Information.* “Official information” includes information gathered pursuant to the power or authority of city government.
- (x) *Ownership.* Ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund. Ownership of stock in a publicly traded corporation does not constitute ownership for purposes of this code if the employee or official owns less than 10% of the voting stock or shares of the entity and the value of the stock is less than \$15,000.
- (y) *Partner.* Someone who engages in an activity or undertaking with another; “Partner” includes partners in general partnerships, limited partnerships, and joint ventures. One who shares or takes part with another especially in a venture with shared benefits and shared risks.
- (z) *Personally and Substantially Participated.* “Personally and Substantially Participated” means to have taken action as an official or employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action. The fact that the person had responsibility for a matter does not by itself establish that the person “personally and substantially participated” in the matter.
- (aa) *Recklessly.* A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.
- (bb) *Representation.* “Representation” is a presentation of fact – either by words or by conduct – made to induce someone to act. Representation does not include appearance as a witness in litigation or other official proceedings.
- (cc) *Respondent* means an individual identified in a sworn complaint to have allegedly violated the Ethics Code.
- (dd) *Solicitation.* “Solicitation” of subsequent employment or business opportunities includes all forms of proposals and negotiations relating thereto.

DIVISION 2: PRESENT CITY OFFICIALS AND EMPLOYEES

SECTION 2-01 CONFLICTS OF INTEREST

- (a) **General Rule.** To avoid the appearance and risk of impropriety, a city official or employee shall not take any official action that he or she knows is likely to affect the economic interests of:
 - (1) the official or employee;

- (2) his or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
 - (3) his or her outside client;
 - (4) a member of his or her household;
 - (5) the outside employer of the official or employee or of his or her parent, child (unless the child is a minor), spouse, or member of the household (unless member of household is a minor);
 - (6) a business entity in which the official or employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest as that term is defined in Section 1-02;
 - (7) a business entity which the official or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest as defined in Section 1-02;
 - (8) a business entity or nonprofit entity for which the city official or employee serves as an officer or director or in any other policy making position; other than non-profit boards to which the official or employee is appointed by the City Council or city management as a non-voting member to represent the best interests of the city; or
 - (9) a person or business entity with whom, within the past twelve months:
 - (A) the official or employee, or his or her spouse, directly or indirectly has
 - (i) solicited an offer of employment for which the application is still pending,
 - (ii) received an offer of employment which has not been rejected, or
 - (iii) accepted an offer of employment; or
 - (B) the official or employee, or his or her spouse, directly or indirectly engaged in negotiations pertaining to business opportunities, where such negotiations are pending or not terminated.
- (b) **Recusal and Disclosure.** A city official or employee whose conduct would otherwise violate Subsection (a) must recuse himself or herself. From the time that the conflict is, or should have been recognized, he or she shall:
- (1) immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and
 - (2) promptly file with the City Secretary the appropriate form for disclosing the nature and extent of the prohibited conduct.

In addition:

- (3) a supervised employee shall promptly bring the conflict to the attention of his or her supervisor, who will then, if necessary, reassign responsibility for handling the matter to another person; and
- (4) a member of a board shall promptly disclose the conflict to other members of the board and shall not be present during the board's discussion of, or voting on, the matter.

(c) **Definitions.** For purposes of this rule:

- (1) An action is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof; and
- (2) The term *client* includes business relationships of a highly personalized nature, but not ordinary business-customer relationships.

SECTION 2-02 UNFAIR ADVANCEMENT OF PRIVATE INTERESTS

(a) **General Rule.** A city official or employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official who represents to a person that he or she may provide an advantage to that person based on the official's position on a board or commission violates this rule.

(b) **Special Rules.** The following special rules apply in addition to the general rule:

- (1) **Acquisition of Interest in Impending Matters.** A city official or employee shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the city.
- (2) **Reciprocal Favors.** A city official or employee may not enter into an agreement or understanding with any other person that official action by the official or employee will be rewarded or reciprocated by the other person, directly or indirectly.
- (3) **Appointment of Relatives.** A city official or employee shall not appoint or employ or vote to appoint or employ any relative within the third degree of consanguinity or affinity or any member of his or her household to any office or position of employment within the city.
- (4) **Supervision of Relatives.** No official or employee shall be permitted to be in the line of supervision of a relative within the third degree of consanguinity or third degree of affinity or any member of his or her household. Department heads are responsible for enforcing this

policy. If an employee, by reason of marriage, promotion, reorganization, or otherwise, is placed into the line of supervision of a relative, one of the employees will be reassigned or other appropriate arrangements will be made for supervision.

- (c) **Recusal and Disclosure.** A city official or employee whose conduct would otherwise violate this Section shall adhere to the recusal and disclosure provisions provided in Section 2-01(b) of Division 2 (Conflicts of Interest).

SECTION 2-03 GIFTS

(a) **General Rule.**

- (1) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:

(A) that reasonably tends to influence or reward official conduct; or

(B) that the official or employee knows or should know is being offered with the intent to influence or reward official conduct.

A city official or employee may accept a public award or reward for meritorious service of professional achievement, provided that the award or reward is reasonable in light of the occasion and it is not prohibited under the Texas Penal Code Section 36.08.

- (2) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, from:

(A) any individual or entity doing or seeking to do business with the City; or

(B) public relations firm; or

(C) any person or entity seeking action or advocating on zoning or platting matters before a city body,

save and except for

i) items received that are of nominal value; or

ii) meals in an individual expense of \$25 or less at any occurrence, and no more than a cumulative value of \$500 in a single calendar year from a single source.

Doing business with the city includes, but is not limited to, individuals and entities that are parties to a discretionary contract, individuals and entities that are subcontractors to a discretionary contract, and partners and/or parents and/or subsidiary business entities of any individuals and entities that are parties to a discretionary contract and individuals or entities that seek or have low-bid contracts with the city.

(b) **Special Applications.** Subsection (a)(2) does not include:

- (1) a gift to a city official or employee relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and recipient;
- (2) advancement for or reimbursement of reasonable expenses for travel in connection with official duties authorized in accordance with city policies.
- (3) a public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion and it is not prohibited under the Texas Penal Code Section 36.08;
- (4) a loan from a lending institution made in its regular course of business on the same terms generally available to the public;
- (5) a scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants;
- (6) any solicitation for civic or charitable causes;
- (7) admission to an event in which the city official or employee is participating in connection with his or her spouse's position;
- (8) ceremonial and protocol gifts presented to city officials from a foreign government or international or multinational organization and accepted for the City of Windcrest;
- (9) admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the sponsor of the event, and unsolicited by the City official or employee, if attending or participating in an official capacity, including:
 - (A) the official or employee participates in the event as a speaker or panel participant by presenting information related to matters before the City; or
 - (B) the official or employee performs a ceremonial function appropriate to that individual's position with the City; or
 - (C) attendance at the event is appropriate to the performance of the official duties or representative function of the official or employee;
- (10) admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the City official or employee;

- (11) admission to training or education program, including meals and refreshments furnished to all attendees, if such training is related to the official or employee's official duties and the training is in the interest of the City.
- (c) **Campaign Contribution Exception.** The general rule stated in Subsection (a) does not apply to a campaign contribution made pursuant to the Texas Election Code.
- (d) **Gifts to Closely Related Persons.** A city official or employee shall take reasonable steps to persuade:
 - (1) a parent, spouse, child, or other relative within the second degree of consanguinity or affinity, or
 - (2) an outside business associatenot to solicit, accept, or agree to accept any gift or benefit:
 - (3) that reasonably tends to influence or reward the city official's or employee's official conduct, or
 - (4) that the official or employee knows or should know is being offered with the intent to influence or reward the city official's or employee's discharge of official duties.
- (e) **Definitions.**
 - (1) For purposes of this rule, a person is an "outside business associate" if both that person and the city official or employee own, with respect to the same business entity:
 - (A) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (B) ten (10) percent or more of the fair market value of the business entity.
 - (2) For purposes of this rule, a "sponsor" of an event is the person or persons primarily responsible for organizing the event or sponsoring a table or tables. A person who simply contributes money or buys tickets to an event is not considered a sponsor.
 - (3) A "source" is the individual or entity that funds an expenditure or series of expenditures. Expenditures made by multiple agents of the same source are deemed to be expenditures from a single source.
 - (4) Any item of "nominal value" is an item with a fair market value of \$25 or less.

SECTION 2-04 CONFIDENTIAL INFORMATION

- (a) **Improper Access.** A city official or employee shall not use his or her position to obtain official information about any person or entity for any purpose other than the performance of official duties.

- (b) **Improper Disclosure or Use.** A city official or employee shall not intentionally, knowingly, or recklessly disclose any confidential information gained by reason of said official's or employee's position concerning the property, operations, policies or affairs of the city. This rule does not prohibit:
- (1) any disclosure that is no longer confidential by law; or
 - (2) the confidential reporting of illegal or unethical conduct to authorities designated by law.

SECTION 2-05 REPRESENTATION OF PRIVATE INTERESTS

- (a) **Representation Before the City by a Member of the Board.** A city official or employee who is a member of a board or other city body shall not represent any person, group, or entity:
- (1) before that board or body;
 - (2) before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
 - (3) before a board or other city body which has appellate jurisdiction over the board or body of which the city official or employee is a member, if any issue relates to the official's or employee's official duties.
- (b) **Representation Before the City by City Officials and Employees.**
- (1) **General Rule.** A city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
 - (2) **Exception for Board Members.** The rule stated in subsection b(1) does not apply to a person who is classified as a city official only because he or she is an appointed member of a board or other city body.
- (c) **Prestige of Office and Improper Influence.** In connection with the representation of private interests before the city, a city official or employee shall not:
- (1) assert the prestige of the official's or employee's city position for the purpose of advancing private interests; or
 - (2) state or imply that he or she is able to influence city action on any basis other than the merits.

(d) **Representation in Litigation Adverse to the City.**

- (1) **Officials and Employees (Other than Board Members).** A city official or employee, other than a person who is classified as an official only because he or she is an appointed member of a board or other city body, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city.
- (2) **Board Members.** A person who is classified as a city official only because he or she is an appointed member of a board or other city body shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to interests of the city and the matter is substantially related to the official's duties to the city.

SECTION 2-06 CONFLICTING OUTSIDE EMPLOYMENT

- (a) **General Rule.** A city official or employee shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (b) **Special Application.** The following special rule applies in addition to the general rule: A city official or employee shall not provide services to an outside employer related to the official's or employee's city duties.
- (c) **Other Rules.** The general rule stated above applies in addition to all other rules relating to outside employment of city officials and employees, including requirements for obtaining prior approval of outside employment as applicable.

SECTION 2-07 PUBLIC PROPERTY AND RESOURCES

A city official or employee shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies or time while on city duty for private purposes (including political purposes), except:

- (a) pursuant to duly adopted city policies, or
- (b) to the extent and according to the terms that those resources are lawfully available to the public.

SECTION 2-08 POLITICAL ACTIVITY

Limitations on the political activities of city officials and employees are imposed by state law, the City Charter, and city personnel rules and are incorporated into this provision by reference. In addition, the following ethical restrictions apply:

- (a) **Influencing Subordinates.** A city official or employee shall not, directly or indirectly, induce or attempt to induce any city subordinate of the official or employee:

- (1) to participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue, or
- (2) to refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this rule.

- (b) **Paid Campaigning.** A city official or employee shall not accept any thing of value, directly or indirectly, for political activity relating to an item pending on the ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. Any thing of value does not include a meal or other item of nominal value the city official or employee receives in return for providing information on an item pending on the ballot.
- (c) **Official Vehicles.** A city official or employee shall not display or fail to remove campaign materials on any city vehicle under his or her control.

Limitations on the use of public property and resources for political purposes are imposed by Section 2-07 of Division 2 (Public Property and Resources).

SECTION 2-09 ACTIONS OF OTHERS

- (a) **Violations by Other Persons.** A city official or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate any provision in this code of ethics.
- (b) **Using Others to Engage in Forbidden Conduct.** A city official or employee shall not violate the provisions of this code of ethics through the acts of another.

SECTION 2-10 PROHIBITED INTERESTS IN CONTRACTS

- (a) No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee. Any willful violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council shall render the contract involved voidable by the City Manager or the Council.
- (b) **Financial Interest.** An officer or employee is presumed to have a prohibited "financial interest" in a contract with the city, or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
 - (1) the officer or employee;

- (2) his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - (3) a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
 - (A) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (B) ten (10) percent or more of the fair market value of the business entity; or
 - (4) a business entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
 - (A) a subcontractor on a city contract;
 - (B) a partner; or
 - (C) a parent or subsidiary business entity.
- (c) If an officer or employee has or may potentially have a presumed prohibited financial interest in a contract with the city, or in the sale to the city of land, materials, supplies or service under subsection (b), the officer or employee may apply to the City Attorney for a determination and decision on whether the officer or employee has an actual direct or indirect financial interest in that contract or transaction.
- The City Attorney will make this assessment using a standard of “clear and convincing” evidence at a hearing. A request for such a determination cannot be made confidentially. The hearing must be posted two weeks in advance clearly stating the officer or employee with the presumed prohibited financial interest, the contract or transaction at issue, and the individual or business entity that is the party to the contract or transaction at issue.
- (d) Any contract or transaction already in place at the time the individual becomes an officer or employee subject to the prohibitions in this section may remain in place until the contract expires or the transaction is completed without creating a prohibited financial interest for the officer or employee.
- (e) Definitions. For purposes of enforcement under the provision of this Section:
- (1) a city “employee” is any employee of the city.
 - (2) a city “officer” is:
 - (A) the Mayor or any Council member;
 - (B) a Municipal Court Judge;
 - (C) a member of any board or commission which is more than advisory in nature.

SECTION 2-11 CITY COUNCIL CONTRACT PERSONNEL

- (a) A member of the City Council who, in the course of official duties, has direct supervisory authority over contract personnel shall make reasonable efforts to ensure that the conduct of contract personnel is compatible with the obligations imposed on city officials and employees by this code of ethics.
- (b) Contract personnel employed by a member of the city council shall comply with all obligations imposed by this code of ethics on city employees. Contract personnel, though, may not engage in political activity using City resources or during duty hours.
- (c) All contracts for administrative services between a member of the City Council and independent contractors shall contain a provision requiring the independent contractor to comply with all requirements imposed by this code on city employees.

SECTION 2-12 PERSONS REQUIRED TO REPORT VIOLATIONS; TIME TO REPORT; PLACE TO REPORT

- (a) A City official or employee who has knowledge of a violation of any of the provisions of this Ethics Code shall report this violation as provided below within a reasonable time after the person has knowledge of a violation. A City official or employee shall not delegate to, or rely on, another person to make the report. Any City official or employee who has knowledge that a violation of the Ethics Code has been committed and intentionally fails to report such violation is subject to the penalties herein.
- (b) A report made under this Section shall be made to:
 - (1) the City Secretary who shall promptly forward the report to the Mayor and City Councilmembers.
- (c) A report shall state:
 - (1) the name of the City official or employee who believes that a violation of a provision of the Ethics Code has been or may have been committed;
 - (2) the identity of the person or persons who allegedly committed the violation;
 - (3) a statement of the facts on which the belief is made; and
 - (4) any other pertinent information concerning the alleged violation.

DIVISION 3: FORMER CITY OFFICIALS AND EMPLOYEES

SECTION 3-01 CONTINUING CONFIDENTIALITY

A former city official or employee shall not use or disclose confidential government information acquired during service as a city official or employee. This rule does not prohibit:

- (a) any disclosure that is no longer confidential by law; or
- (b) the confidential reporting of illegal or unethical conduct to authorities designated by law.

Section 3-02 Subsequent Representation of Private Interests.

- (a) **Representation of Private Interests Before the City by a Former Board Member.** A person who was a member of a board or other city body shall not represent any person, group, or entity for a period of two (2) years after the termination of his or her official duties:
 - (1) before that board or body;
 - (2) before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
 - (3) before a board or other city body which has appellate jurisdiction over the board or body of which the former city official or employee was a member, if any issue relates to his or her former duties.
- (b) **Representation of Private Interests Before the City by Former City Officials and Employees.** A former city official or employee shall not represent for compensation any person, private group, or private entity, other than himself or herself, or his or her spouse or minor children, before the city for a period of two (2) years after termination of his or her official duties. This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member of a board or other city body. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- (c) **Improper Representation of Influence.** In connection with the representation of private interests before the city, a former city official or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.
- (d) **Representation in Litigation Adverse to the City.** A former city official or employee shall not, absent consent from the city, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city and the matter is one in which the former city official or employee personally and substantially participated prior to termination of his or her official duties.

SECTION 3-03 PRIOR PARTICIPATION IN THE NEGOTIATION, AWARD OR ADMINISTRATION OF CONTRACTS

A former city official or employee shall not, within two (2) years of the termination of official duties for the city, perform work on a compensated basis relating to a discretionary city contract, if he or she personally and substantially participated in the negotiation, award or administration of the contract.

A former city official or employee, within two (2) years of termination of official duties, must disclose to the City Secretary immediately upon knowing that he or she will perform work on a compensated basis relating to a discretionary city contract for which he or she did not personally and substantially participate in its negotiation, award or administration. This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member of a board or other city body.

SECTION 3-04 PROHIBITED INTEREST IN DISCRETIONARY CONTRACTS

(a) **Impermissible Interest in Discretionary Contract or Sale.** This Subsection applies only to contracts or sales made on a discretionary basis, and does not apply to contracts or sales made on a competitive bid basis. Within one (1) year of the termination of official duties, a former city officer or employee shall neither have a financial interest, direct or indirect, in any discretionary contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of any land, materials, supplies, or service. Any violation of this Section, with the knowledge, expressed or implied, of the individual or business entity contracting with the Council shall render the contract involved voidable by the City Manager or the Council. A former city officer or employee has a prohibited "financial interest" in a discretionary contract with the city, or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- (1) the former officer or employee;
- (2) his or her parent, child, or spouse;
- (3) a business entity in which the former officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
 - (A) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (B) ten (10) percent or more of the fair market value of the business entity; or
- (4) a business entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
 - (A) a subcontractor on a city contract;
 - (B) a partner; or
 - (C) a parent or subsidiary business entity.

- (b) **Exception: Prior Employment or Status.** Notwithstanding subsection (a) of this Section 3-04 (Discretionary Contracts) and Section 3-03 (Prior Participation in Negotiation, Award or Administration of Contracts), a former city official or employee may upon leaving official duties return to employment or other status enjoyed immediately prior to commencing official city duties.
- (c) **Definitions.** For purposes of this Section:
- (1) A “former city employee” is any person who, prior to termination of employee status was an employee of the city.
 - (2) A “former city officer” is any person who, immediately prior to termination of official duties, was:
 - (A) the Mayor or a member of City Council;
 - (B) a Municipal Court Judge; or
 - (C) a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the city.
 - (3) The term “contract” means any discretionary contract other than a contract for the personal services of the former city official or employee.
 - (4) The term “service” means any services other than the personal services of the former official or employee.

DIVISION 4: PERSONS DOING BUSINESS WITH THE CITY

SECTION 4-01 PERSONS SEEKING DISCRETIONARY CONTRACTS

- (a) **Disclosure of Parties, Owners, and Closely Related Persons.** For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and this code of ethics, an individual or entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract on a form provided by the city:
- (1) the identity of any individual who would be a party to the discretionary contract;
 - (2) the identity of any entity that would be a party to the discretionary contract and the name of:
 - (A) any individual or entity that would be a subcontractor on the discretionary contract; and
 - (B) any individual or entity that is known to be a partner or a parent entity of any individual or entity who would be a party to the discretionary contract, or any subsidiary entity that is anticipated to be involved in the execution of the contract; and

- (3) the identity of any lobbyist, attorney or consultant employed for purposes relating to the discretionary contract being sought by any individual or entity who would be a party to the discretionary contract.

An individual or entity seeking a discretionary contract is required to supplement this filing on a form provided by the city in the event there is any change in the information required of the individual or entity under this subsection. The individual or entity seeking a discretionary contract must supplement this filing before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

- (b) **Political Contributions.** Any individual or entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract, on a form provided by the city, all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or entity whose identity must be disclosed under Subsection (a).

Indirect contributions by an individual include, but are not limited to, contributions made by an individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made by the officers, owners of the entity seeking the contract, and attorneys, consultants or registered lobbyists of the entity hired or retained to assist an individual or entity seeking a contract.

Indirect contributions do not include contributions by owners of a business entity who hold less than 5% of the fair market value or voting stock of the entity.

Political contributions made in the preceding 24 months to any individual who is a former councilmember must be disclosed, unless:

- (1) the contributions were made in connection with a campaign or officeholder account not associated with a city office; and
 - (2) the former officeholder has terminated the campaign treasurer appointment and filed the final campaign finance report with the Office of the City Secretary at the time the contract was in the solicitation process or under consideration for approval by the city; and
 - (3) the former member is not or was not serving in a city office at the time the contract was in the solicitation process or under consideration for approval by the city.
- (c) **Briefing Papers and Open Records.** Briefing papers prepared for the city council concerning any proposed discretionary contract to be considered for ordinance or resolution action shall reveal the information disclosed in compliance with Subsections (a) and (b), and that information shall constitute an open record available to the public.

SECTION 4-02 DISCLOSURE OF ASSOCIATION WITH CITY OFFICIAL OR EMPLOYEE

- (a) **Disclosures During Appearances.** A person appearing before a city board or other city body shall disclose to it any known facts which, reasonably understood, raise a question as to whether any member of the board or body would violate Section 2-01 of Division 2 (Conflicts of Interest) by participating in official action relating to a matter pending before the board or body.
- (b) **Disclosures in Proposals.** Any individual or business entity seeking a discretionary contract with the city shall disclose, on a form provided by the city, any known facts which, reasonably understood, raise a question as to whether any city official would violate 2-01 of Division 2 (Conflicts of Interest) by participating in official action relating to the discretionary contract.
- (c) **Disclosure of Benefit.** If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any city official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, he or she shall disclose that fact in a signed writing to the city official, employee, or body that has been requested to act in the matter, unless the interest of the city official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary.
- (d) **Definition.** For purposes of this rule, facts are “reasonably understood” to “raise a question” about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

SECTION 4-03 PROHIBITED CONTACTS DURING CONTRACT SOLICITATION PERIOD

A person or entity who seeks or applies for a city contract or any other person acting on behalf of such person or entity, is prohibited from contacting city officials and employees regarding such a contract after a Request for Proposal (RFP), Request for Qualification (RFQ) or other solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with city officials and employees, such contact will be done in accordance with procedures incorporated into the solicitation document. Violation of this provision by respondents or their agents may lead to disqualification of their offer from consideration.

DIVISION 5: LOBBYISTS

SECTION 5-01 GUIDANCE BY REFERENCE

The City of San Antonio, Texas Ethics Code contains provisions defining, monitoring and regulating the conduct of lobbyists. Even though such provisions are not included in this code, they are recommended as a guide to monitoring lobbyists.

DIVISION 6: MEMBERS OF THE PUBLIC AND OTHERS

Division 6 (Members of the Public and Others) applies to current and former city officials and employees, persons doing business with the city, and lobbyists, as well as to members of the public and any other person (including business entities and nonprofit entities).

SECTION 6-01 FORMS OF RESPONSIBILITY

No person shall intentionally or knowingly induce, attempt to induce, conspire with, aid or assist, or attempt to aid or assist another person to engage in conduct violative of the obligations imposed by Divisions 2 (Present City Officials and Employees), 3 (Former City Officials and Employees) and 4 (Persons Doing Business with the City) of this ethics code.

DIVISION 7: FINANCIAL DISCLOSURE

SECTION 7-01 FINANCIAL DISCLOSURE REPORT

(a) Persons Required to File Disclosure Form.

- (1) **City Officials and City Employees.** No later than thirty (30) days after accepting appointment or assuming the duties of office, and annually thereafter, the city officials defined in Section 1-02(u) of Division 1 (Definitions), are required to file with the City Secretary a complete sworn financial disclosure report. Any employee (i) utilized in evaluating or purchasing equipment, vehicles or any other purchases who also has contact with contractor(s) who provide such equipment or vehicles, or (ii) utilized in providing input to any contract or composing specifications of equipment or vehicles or other purchases, who also has contact with contractor(s) who provide such services, equipment or vehicles, is required to file with the City Secretary a complete sworn financial disclosure report.
- (2) **Exception.** Candidates for City Council and City officials required to file financial disclosure statements pursuant to Local Government Code Chapter 145 shall file financial disclosure statements in compliance with the Local Government Code in place of filing statements required by this code of ethics. Such officials shall also complete an addendum to the statement disclosing information required by this code of ethics, but not required under the Local Government Code. The addendum shall be prepared by the Office of the City Secretary. Deadlines for filing the financial disclosure documents shall be governed by Chapter 145 of the Local Government Code.

(b) The City Secretary shall prepare and provide the financial disclosure reports required by this division.

(c) Any city official or employee who, in connection with his or her official duties, accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Secretary, before embarking on the travel, a disclosure statement identifying:

- (1) the name of the sponsor;
 - (2) the places to be visited; and
 - (3) the purpose and dates of the travel;
 - (4) the estimated amount of the expenses to be paid.
- (d) Acceptance of a trip or excursion by City Manager, City Secretary, Assistant City Secretary, and all department heads and assistant department heads must receive prior written approval of the City Manager. Other personnel must receive written approval by their department head after obtaining concurrence of the City Manager.

DIVISION 8: ETHICS REVIEW

SECTION 8-01 GUIDANCE BY REFERENCE

The City of San Antonio, Texas Ethics Code contains provisions for the establishment of an ethics review board. Even though such provisions are not included in this code, such provisions may serve as a guide for City Council consideration of ethics violations.

SECTION 8-02 COMPLAINTS

- (a) **Filing.** Any person who believes that there has been a violation of this ethics code may file a sworn complaint with the City Secretary to allege such violations.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in an ethics complaint is subject to criminal prosecution for perjury or civil liability for the tort of abuse of process.

Assistance. The City Secretary shall provide information to persons who inquire about the process in order to file a complaint.

- (b) **Form.** A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements the matters required by the City Secretary.
- (c) **Review by the Mayor and Respondents.** A copy of a complaint shall be promptly forwarded by the City Secretary to the Mayor and City Council. The Mayor shall review the complaint for compliance with the filing requirements of Section 8-02(b) within 5 business days of receipt from the Office of the City Secretary. If the complaint does not substantially comply with the filing requirements, the Mayor shall return the complaint to the complainant with a letter explaining the defects in the complaint.
- (d) The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:

- (1) that, within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
- (2) that failure to file a response does not preclude the City Council from adjudicating the complaint;
- (3) that a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within seven (7) days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
- (4) that the complainant(s) or respondent(s) may request a hearing; and;
- (5) that city officials and employees have a duty to cooperate with the City Council.

Upon receipt, the City Secretary shall forward the response to the Mayor and City Council.

(e) Frivolous Complaint.

- (1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
- (2) By a vote of at least two-thirds of those present, the City Council may order a complainant to show cause why the City Council should not determine that the complaint filed by the complainant against a respondent is a frivolous complaint.
- (3) In deciding if a complaint is frivolous, the City Council will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:
 - (A) the timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
 - (B) the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the City Council;
 - (C) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
 - (D) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(E) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(F) any evidence of the complainant's motives in filing the complaint.

(4) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:

(A) an explanation of why the complaint against a respondent appears to be frivolous; and

(B) the date, time, and place of the hearing to be held under this section.

(5) Before making a determination that a sworn complaint against a respondent is a frivolous complaint, the City Council shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.

(6) By a record vote of at least two-thirds of those present after the hearing under subsection (5) of this section, the City Council may determine that a complainant filed a frivolous complaint and may recommend sanctions against that complainant.

(f) Sanctions for Filing Frivolous Complaints.

(1) Before imposing a sanction for filing a frivolous complaint, the City Council shall consider the following factors:

(A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

(B) the sanction necessary to deter future violations; and

(C) any other matters that justice may require.

(2) The City Council may impose the following sanctions:

(A) a civil penalty of not more than \$500.

(B) imposition of attorneys' fees incurred by the respondent of the frivolous complaint;

(C) any other sanction permitted by law.

(3) The City Council may notify the appropriate regulatory or supervisory agency for their appropriate action. This may include a referral to a criminal investigation agency or prosecution entity for investigation of perjury.

(g) Confidentiality. *Ex parte* communications are prohibited.

- (1) The City Council shall not communicate any information about a pending sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.
- (2) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or City Council proceeding.
- (3) Requests for records pertaining to complaints shall be responded to in compliance with the Texas Public Information Act and the Texas Open Meetings Act.

SECTION 8-03 HEARINGS

At any hearing held by the City Council during the investigation or disposition of a complaint, the following rules apply:

- (a) **General Rules.** All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the City Council. The City Council may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless a majority of the City Council so finds by a preponderance of the evidence.
- (b) **Evidence.** The City Council shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The City Council shall further abide by the following:
 - (1) The City Council shall hear evidence relevant to the allegations; and
 - (2) The City Council shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (c) **The Person Charged (Respondent).** The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the City Council. The time permitted for presentation will be at the discretion of the City Council.
- (d) **The Complainant.** The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the City Council. Witnesses may not be presented by the complainant, except with the permission of the City Council. The time permitted for presentation will be at the discretion of the City Council.

SECTION 8-04 DISPOSITION

- (a) **Written Opinion.** The City Council shall issue a decision within ninety (90) days after the filing of a complaint. This deadline shall be extended by any amount of time granted to a respondent pursuant

a respondent's request for additional time to respond or to attend proceedings. The City Council shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:

- (1) dismiss the complaint; or
- (2) upon finding that there that there has been a violation of the ethics laws:
 - (A) impose sanctions in accordance with these regulations; or
 - (B) recommend criminal prosecution and/or civil remedies, in accordance with this Rule; or
 - (C) state why no remedial action is imposed or recommended.

If the City Council determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the City Council to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

- (b) **Notification.** Copies of the opinion shall be forwarded to the complainant and the person charged in the complaint. A copy of the opinion shall also be forwarded to the City Secretary, who shall make it available as authorized by law.
- (c) **Recommendations.** A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency. (note: Civil remedies covered in subsection (f) below)
- (d) **Similar Charges Barred.** If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the City Council shall not entertain any other similar complaint based on substantially the same evidence.
- (e) **Factors Relevant to Sanctions.**
 - (1) **General Violations (Non-Reporting Violations).** In deciding whether to recommend or impose, in the case of a violation of the ethics law, criminal prosecution and/or civil remedies, the City Council shall take into account relevant considerations, including, but not limited to, the following:
 - (a) the culpability of the person charged in the complaint;
 - (b) the harm to public or private interests resulting from the violation;
 - (c) the necessity of preserving public confidence in the conduct of local government;
 - (d) whether there is evidence of a pattern of disregard for ethical obligations; and

- (e) whether remedial action has been taken that will mitigate the adverse effect of the violation.

To impose or recommend sanctions for a first violation of the ethics code, other than a letter of notification, a letter of admonition or a referral to training, the board must find by a preponderance of the evidence that the person acted knowingly, unless otherwise provided by this code.

- (2) **Reporting Requirement Violations.** To impose sanctions, other than a letter of notification, a letter of admonition or a referral to training, for untimely or incomplete submission of reports required by the ethics code, the City Council must determine by a preponderance of the evidence that the person knowingly:

- (a) failed to file the report on time; or
- (b) failed to include in the report information that is required to be included; or
- (c) submitted inaccurate or false information.

Failure to submit a required report or an amended report after receipt of notice of non-compliance by the Office of the City Secretary, the City Attorney's Office or the City Council may be considered evidence of a knowing failure to comply with reporting requirements.

Upon finding a second or subsequent untimely, incomplete or inaccurate submission of reports within a two year period of time, the City Council may issue a letter of reprimand regardless of whether the second or subsequent violation was made knowingly by the filer.

- (f) **Civil Sanctions for Ethics Code Violations.** The following civil remedies may be recommended or imposed by the City Council which finds that the ethics laws have been violated:

- (1) **Disciplinary Action.** City officials (except the Mayor and members of the City Council) and employees who engage in conduct that violates this code may be notified, warned, reprimanded, suspended, or removed from office or employment by the appointing authority, or by a person or body authorized by law to impose such remedies. Disciplinary action under this Section may be imposed in addition to any other penalty or remedy contained in this code of ethics or any other law. Disciplinary action pertaining to the Mayor and members of the City Council is based on state law and the City Charter, and in particular section 3.08 thereof.
- (2) **Suit for Damages or Injunctive Relief.** This code of ethics has been enacted not only to further the policy stated in section 1-01 (Statement of Purpose), but to protect the City and any other person from any losses or increased costs incurred by the City or other person as a result of the violation of these provisions. It is the intent of the City that this ethics code can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this code of ethics or any other law. The City Council may refer a violation of the ethics code to the Windcrest City Attorney for consideration of a suit by the city for damages or injunctive relief.

(3) **Disqualification from Contracting or Lobbying.**

(a) If the City Council finds that any person (including business entities and non-profit entities) has intentionally or knowingly violated any provision of the Ethics Code, or has intentionally or knowingly assisted another person in violating any provision of the Ethics Code, or has violated a provision or assisted another in a violation that the person should have known was a violation of the Ethics Code, the City Council may prohibit that person from entering into any contract with the city for a period not to exceed three (3) years.

An entity or nonprofit entity may also be disqualified from contracting based on the conduct of an employee or agent in violation of this code.

(b) It is a violation of this code of ethics:

- (1) for a person debarred from entering into a contract with the city to enter, or attempt to enter, into a contract with the city during the period of disqualification from contracting; or
- (2) for a city official or employee to knowingly assist a violation of Subsection (b)(1) of this rule.

(c) Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.

(4) **Recommendation to Void or Ratify Contract.** If the City Council finds that there has been an intentional or knowing violation of any provision of the Ethics Code, or that a person has committed a violation that he or she should have known was a violation of the code that is related to the awarding of a contract, the City Council shall void the contract according to Local Government Code 252.061 Enforcement. Such action shall not affect the imposition of any penalty or remedy contained in this code of ethics or any other law.

(5) **Civil Fine.** The City Council may impose upon any person, whether or not an official or employee of the city, who violates any provision of this code of ethics a fine not exceeding five hundred dollars (\$500).

(6) **Letter of Notification.** The City Council may issue to any person, whether or not an official or employee of the city, when the board finds that a violation of the code of ethics was clearly unintentional or inadvertent. The letter must advise the person to whom it is directed of any steps to be taken to avoid future violations;

(7) **Letter of Admonition.** The City Council may issue to any person, whether or not an official or employee of the city, a letter of admonition when the board finds that the violation of the code of ethics was minor and/or may have been unintentional or inadvertent.

- (8) **Letter of Reprimand.** The City Council may issue to any person, whether or not an official or employee of the city, a letter of reprimand when the board finds that the person has intentionally or knowingly violated the code of ethics.
- (9) **Referral to Ethics Training.** Upon finding of violation of the ethics code, the City Council may require a city official or employee to attend ethics code training.
- (g) **Criminal Prosecution.** The City Council may recommend to the appropriate law enforcement agency criminal prosecution under this section or under Section 171 of the Texas Local Government Law.
- (h) **Appeals.** A decision of the City Council is final unless the person aggrieved by the decision appeals to the state district court in Bexar County no later than thirty days after the date the City Council renders the decision.

If the decision of the City Council is not supported by substantial evidence, the District Court may reverse or affirm the City Council's decision in whole or in part, or may modify the City Council's decision if substantial rights of the aggrieved person have been prejudiced. Costs of an appeal may not be assessed against the Board, individual board members, or the City of Windcrest.

SECTION 8-05 DISTRIBUTION AND TRAINING

- (a) Within thirty (30) days after entering upon the duties of his or her position, every new official or employee shall be furnished with information about this code of ethics. The failure of any person to receive a copy of this code shall have no effect on that person's duty to comply with this code or on the enforcement of its provisions. Upon appointment to a board or commission, such official shall be provided with a copy of the Ethics Code. The Code of Ethics shall be posted on the city's website.
- (b) All city officials, employees, volunteers and contractors shall sign an affidavit which affirms that they have read the ethics code. The affidavit shall be on a form prepared by the City Secretary.
- (c) The City Attorney or designee, in consultation with the City Manager, shall develop educational materials and conduct educational programs for the city officials, employees, former city officials and employees, candidates for public office, persons doing business with the city and lobbyists on the provisions of this code of ethics and Section 171 of the Texas Local Government Law. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws.
- (d) The City Manager shall enact an administrative directive requiring that all departments provide their employees with training on the Ethics Code at least once every other calendar year. Training shall be provided to all city departments by video and will include educational materials. Additional presentations shall be offered to any department where necessary to accommodate large numbers of employees.
- (e) The City Attorney shall notify department heads regarding any significant amendments to the Ethics Code within 30 days of adoption. Department heads shall disseminate the information to department employees.

- (f) Information shall be provided to employees terminating city service regarding the restrictions on former city employees in Division 3 of this code.

DIVISION 9: SEVERABILITY

If any provision of this code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.



City of Windcrest Code of Ethics Policy

Code of Ethics Committee Members:

Ronnie Cain, City Manager

Tracy Freimarck, City Secretary

Pastor Malcolm McQueen

Ira L. "Shine" Morgan III

Don Myles

Dan Reese, Fire Chief

Cindy Strzelecki

Statement of Purpose

All persons are entitled to have fair, ethical and accountable local government which earns the public's full confidence for integrity. The strong desire of the City of Windcrest, Texas to fulfill this expectation requires that City Officials, Employees and Volunteers:

- Comply with the letter and spirit of the laws and policies affecting the operations of government;
- Be independent, impartial and fair in their judgment and actions;
- Use their office or position for public good, not for personal gain;
- Recognize the worth of individual City Officials, Employees and Volunteers and appreciate their talents, perspectives and contributions;
- Help create an atmosphere of respect and civility where individual City Officials, City staff and the public are free to express their ideas and work to their full potential;
- Conduct their personal and public affairs with honesty, integrity, fairness and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as their highest purpose and focus on achieving constructive solutions for public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interests of Windcrest, Texas;
- Treat all people in a manner they would wish to be treated;

To this end, the Windcrest City Council has adopted this Code of Ethics and Conduct for City Officials, Employees, and Volunteers to assure public confidence in the integrity of local government and its effective and fair operation.

Definitions

The following words, terms and phrases, when used in this Code, shall have the meanings subscribed to them in this section.

Affinity. Relationship by "affinity" ("marriage") is defined in Sections 573.024 and 573.025 of the Texas Government Code.

Benefit. Anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary had a direct and substantial interest.

Business Entity. A sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, a profit or non-profit entity, or any other entity recognized by law.

City Council. The legislative and governing body of the City consisting of the Mayor and City Council members.

City Official. The City Manager, Mayor, any member of the City Council, any department head, any appointed or alternate member of a board, commission, or Committee set up by ordinance, charter, state law or otherwise, on a temporary or permanent basis and any other person appointed by Ordinance as a City Official.

Confidential Government Information. Includes all information held by the City that is not available to the public under the Texas Public Information Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, unless disclosure is permitted under the Open Meetings Act or Public Information Act.

Discretionary Contract. Any contract other than those which by law must be awarded on a low or high qualified bid basis. Discretionary contracts do not include those contracts subject to Section 252.022(a)(7) of the Texas Local Government Code.

Economic Interest. Includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than minimal value. Service by a City Official or Employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create an economic interest in the property of the organization.

Electioneering. Working for the election of a candidate to political office.

Employee. Any person employed by the City, including those individuals on a part-time basis and independent contractors hired by the City for repetitive performance of services, but not independent contractors engaged for occasional services.

Gift. A voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.

Indirect Ownership. A person “indirectly owns” an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

Partner. Someone who engages in an activity or undertaking with another. “Partner” includes partners in general partnerships, limited partnerships, and joint ventures. One who shares or takes part with another especially in a venture with shared benefits and shared risks.

Personally and Substantially Participated. To have taken action as an Official, Employee or Volunteer through decision, approval, disapproval, recommendation, advice, investigation or similar action. The fact that the person had responsibility for a matter does not by itself establish that the person “personally and substantially participated” in the matter.

Public Servant: "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

- (a.) an officer, Employee, or agent of government;
- (b.) a juror or grand juror; or
- (c.) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or
- (d.) an attorney at law or notary public when participating in the performance of a governmental function; or
- (e.) a candidate for nomination or election to public office; or
- (f.) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

Relatives. Spouse, parent, parent-in-law, brother, sister, child, stepchild, grandparent, grandchild, sister/brother-in-law, aunt/uncle, niece/nephew, cousin, domestic partner and relationships created as a result of the domestic partnership that are similar to the family relationships listed (i.e. child of domestic partner).

Representation. A presentation of fact—either by works or by conduct—made to induce someone to act. Representation does not include appearance as a witness in litigation or other official proceedings.

Solicitation. An attempt to obtain subsequent employment or business opportunities includes all forms of proposals and negotiations relating thereto.

Volunteers: Any person who gives his services to the City without any expressed or implied promise of remuneration. Volunteers are required to comply with this Code of Ethics.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, City Officials, Employees and Volunteers will work for the common good of the people of Windcrest, Texas and not for any private or personal interest when acting on behalf of the City of Windcrest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Windcrest City Council, Boards, Commissions, and Committees.

2. Comply with the Law

City Officials, Employees and Volunteers should make diligent efforts to become familiar with the many laws of the United States, the State of Texas and the City of Windcrest applicable to the conduct of government personnel in order to discharge their public duties in an exemplary and legal manner. For example, there are state and federal laws applicable to bribery, gifts to public servants, tampering with governmental records, impersonating public servants, misuse of official information, disruption of meetings, official oppression, abuse of official capacity, nepotism, and disclosure of business and property interests among others. It is impossible to include all of those laws in this Code, so those persons connected with the government of the city should seek information about those laws from all available sources. It shall be a violation of this Code of Ethics for a City Official, Employee or Volunteer to violate the laws of the United States, the State of Texas and the City of Windcrest in the performance of such person's public duties.

3. Conduct of City Officials, Employees and Volunteers

The professional and personal conduct of City Officials, Employees and Volunteers must be above reproach and avoid even the appearance of impropriety. City Officials, Employees and Volunteers shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other City Officials, Employees and Volunteers as well as Board, Commission, and Committee members and the public.

4. Respect for Process

City Officials, Employees and Volunteers shall perform their duties in accordance with the policies and rules of order established by the City Charter, City Council and City Manager.

5. Conduct of Public Meetings

City Officials have an obligation to attend meetings and be prepared for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfering with the orderly conduct of meetings. It is expected that City Officials, Employees and Volunteers review material, participate in discussion and base their decisions on the merits and substance of the matter at hand.

6. Contract Personnel

A. A City Official or Employee who, in the course of official duties, has direct supervisory authority over contract personnel shall make reasonable efforts to ensure that the conduct of contract personnel is compatible with the obligations imposed on City Officials and Employees by this Code of Ethics.

1. Contract personnel employed by the City shall comply with all obligations imposed by this Code of Ethics on City Employees, except for restrictions on political activity imposed on City Employees by paragraph 11 of this Code of Ethics. Contract personnel, however, may not engage in political activity using City resources or during duty hours.
2. All contracts for administrative services between the City and independent contractors shall contain a provision requiring the independent contractor to comply with all requirements imposed by this Code on City Employees.

7. Persons Seeking Discretionary Contracts

A. DISCLOSURE OF PARTIES, OWNERS AND CLOSELY RELATED PERSONS

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and this Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract on a form provided by the City:

1. the identity of any individual who would be a party to the discretionary contract;
2. the identity of any business entity that would be a party to the discretionary contract and the name of:
 - a. any individual or business entity that would be a subcontractor on the discretionary contract; and
 - b. any individual or business entity that is known to be a partner or a parent entity of any individual or business entity who would be a party to the discretionary contract, or any subsidiary business entity that is anticipated to be involved in the execution of the contract; and

3. the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

B. SUPPLEMENTATION

An individual or business entity seeking a discretionary contract is required to supplement by addendum in the event there is any change in the information previously submitted by the individual or business entity under this subsection, i.e. change of ownership, change in mailing address, etc.. The individual or business entity seeking a discretionary contract must supplement this filing before the discretionary contract is the subject of City Council action, and no later than five (5) business days after any change about which information is required to be filed.

C. PROHIBITED CONTACTS DURING CONTRACT SOLICITATION PERIOD

A person or entity who seeks or applies for a City contract or any other person acting on behalf of such person or entity, is prohibited from contacting City Officials and Employees regarding such a contract after a Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with City Officials, Employees and Volunteers, such contact will be done in accordance with procedures incorporated into the RFP, RFQ or other solicitation. Violation of this provision by respondents or their agents may lead to disqualification of their offer from consideration.

8. **Political Advocacy**

City Officials, Employees and Volunteers shall not utilize the City's name, logo or assets for purposes of endorsing any political candidate or business. City Employees and Volunteers shall not engage in electioneering while on the job.

City Employees and Volunteers shall not engage in political activities relating to a campaign for elective office while in uniform or on active duty.

City Employees and Volunteers are prohibited from using their title or position in any advertisement or endorsement of products, persons or activities, without exclusive authorization by the City Council.

9. **Confidential Information**

City Officials, Employees and Volunteers shall respect the confidentiality of information concerning City property, personnel or proceedings of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal interests.

10. **Use of Public Resources**

City Officials, Employees and Volunteers shall not use public resources generally unavailable to the public, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

11. Representation of Private Interests

In keeping with their role as stewards of the public interest, City Officials and Employees shall not appear on behalf of the private interests of third parties before the Council or any Board, Commission, Committee, or proceeding of the City.

12. Advocacy

City Officials, Employees and Volunteers shall represent the official policies or positions of the City Council, Board, Commission, or Committee to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, City Officials and Employees shall explicitly state they do not represent their body or the City of Windcrest, nor will they allow the inference that they do.

13. Policy Role of City Officials, Employees and Volunteers

City Officials, Employees and Volunteers shall respect and adhere to the Windcrest City governmental structure as outlined in the City's Charter, Ordinances and the Personnel and Operations Manual. The City Council determines the policies of the City with advice, information and/or analysis from the public, Boards, Commissions, and Committees and City staff. Except for the purpose of inquiry, City Officials, Employees and Volunteers shall not interfere with the administrative functions of the City or the professional duties of the City staff; nor shall they impair the ability of staff to implement City Council policy decisions.

14. Former City Officials, Employees and Volunteers

A. CONTINUING CONFIDENTIALITY

A former City Official, Employee or Volunteer shall not use or disclose confidential government information acquired during service as a City Official, Employee or Volunteer. This rule does not prohibit:

1. Any disclosure or use that is authorized or required by law;
2. The confidential reporting of illegal or unethical conduct to authorities designated by law;
3. Disclosure of information that has been previously made public; and
4. Any disclosure that is no longer confidential by law.

B. SUBSEQUENT REPRESENTATION OF PRIVATE INTERESTS

1. Representation of Private Interests before the City by a Former Board Member. A person who was a member of a Board or other City Body shall not represent any person, group, or entity for a period of one (1) year after the termination of his Official duties:
 - a. Before the Board or Body of which he was a member; or

- b. Before City Staff responsible for making recommendations to, or taking any action on behalf of, that Board or Body, unless the Board or Body is only advisory in nature; or
 - c. Before a Board or other City Body that has appellate jurisdiction over the Board or Body of which the former City Official or Employee was a member, if any issue relates to his former duties.
- 2. Representation of Private Interests before the City by Former City Officials and Employees. A former City Official or Employee shall not represent for compensation any person, private group, or private entity, other than himself, or his spouse or minor children, before the City for a period of one (1) year after termination of his official duties. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- 3. Improper Representation of Influence. In connection with the representation of private interests before the City, a former City Official, Employee or Volunteer shall not state that he is able to influence City action on any basis other than the merits.
- 4. Representation in Litigation Adverse to the City. A former City Official or Employee shall not, without consent from the City, represent any person, group, or entity, other than himself, or his spouse or minor children, in any litigation to which the City is a party for a period of one (1) year after termination of his official duties, if the interests of that person, group, or entity are adverse to the interests of the City and the matter is one in which the former City Official or Employee personally and substantially participated prior to termination of his official duties.

C. PRIOR PARTICIPATION IN THE NEGOTIATION, AWARD, OR ADMINISTRATION OF CONTRACTS

- 1. A former City Official or Employee shall not, within one (1) year of termination of official duties or employment for the City, perform work on a compensated basis relating to a discretionary City contract, if he personally and substantially participated in the negotiation, award, or administration of the contract.
- 2. During the first year after official duties or employment for the City, a former City Official or Employee, shall disclose to the City Secretary immediately upon knowing that he will perform work on a compensated basis relating to a discretionary City contract for which he did not “Personally and Substantially Participate” in its negotiation, award, or administration.

D. DISCRETIONARY CONTRACTS

- 1. Impermissible Interest in Discretionary Contract or Sale. This subsection applies only to contracts or sales made on a discretionary basis, and does not apply to contracts or sales made on a competitive bid basis. Within one (1) year of the termination of official duties or employment, a former City Official or Employee shall neither have a financial interest, direct or indirect, in any discretionary

contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of any land, materials, supplies, or service. Any violation of this Section, with the knowledge, expressed or implied, of the individual or business entity contracting with the City Council shall render the contract involved voidable by the City Manager or the City Council. A former City Official or Employee has a prohibited “financial interest” in a discretionary contract with the City, or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- a. the former Official or Employee;
 - b. his relative;
 - c. a business entity in which the former Official or Employee, or his parent, child, or spouse, directly or indirectly owns:
 1. ten (10) percent or more of the voting stock or shares of the business entity; or
 2. ten (10) percent or more of the fair market value of the business entity; or
 - d. a business entity of which any individual or entity listed in Subsection a, b, or c is:
 1. a subcontractor on a City contract;
 2. a partner; or
 3. a parent or subsidiary business entity.
2. Exception: Prior Employment or Status. Subsection C of this Section, a former City Official or Employee may upon leaving official duties return to employment or other status enjoyed immediately prior to commencing official City duties.
 3. The City Council may waive the prohibitions contained in this subsection if the City Council determines that a waiver of any prohibition in this subsection would be in the public interest after full disclosure by the contracting party of all relationships between the contracting party and the city regarding the subject matter of the contract

15. Independence of Boards, Commissions, and Committees

Due to the value of the independent advice of Boards, Commissions, and Committees to the public decision-making process, City Officials shall refrain from using their position to influence unduly the deliberations or outcomes of Board, Commission, and Committee proceedings.

16. Positive Work Place Environment

City Officials shall support the maintenance of a positive and constructive work place environment for City Employees, Volunteers and for citizens and businesses dealing with the City. City Officials shall recognize their special role in dealing with City Employees and Volunteers and refrain from creating the perception of inappropriate direction to staff.

17. Compliance, Enforcement, and Enforcement Mechanisms

- A. The Windcrest Texas Code of Ethics and Conduct expresses standards of ethical conduct expected for City Officials, Employees and Volunteers of Windcrest. City Officials, Employees and Volunteers themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of the government.
- B. The Chairs of Boards, Commissions, and Committees and the Mayor have the additional responsibility to intervene when an appointed member of a board, commission or committee's actions appear to be in violation of the Code of Ethics and Conduct and are brought to their attention. The City Manager will intervene when a City Official's, who is a member of the City staff, actions appear to be in violation of the Code of Ethics and Conduct.
- C. The City Council may impose sanctions, such as reprimand, formal censure, or loss of Committee assignment, on City Officials whose conduct does not comply with the City's ethical standards. The City Council also may act to remove members of Boards, Commissions, and Committees from office.
- D. In addition to other remedies provided by law, the following remedies are available with respect to violations of this Code of Ethics:
 - 1. Disciplinary Action. The City Manager may notify, warn, reprimand, suspend, or remove from office or employment any Employee or Volunteer who engage in conduct that violates this Code. Disciplinary action under this provision may be imposed in addition to any other penalty or remedy contained in this Code of Ethics or any other law.
 - 2. Voiding or Ratification of Contract. If it is found upon investigation that there has been a violation of any provision in Section 7 the City Council shall vote on whether to ratify or void the contract. Such action shall not affect the imposition of any penalty or remedy contained in this Code of Ethics or any other law.
 - 3. Disqualification from Contracting.
 - a. Any persons (including business entities and non-profit entities) who intentionally or knowingly violate any provision of this Code related to Persons Doing Business with the City may be prohibited by the City Council from entering into any contract with the City for a period not to exceed three (3) years.
 - b. It is a violation of this Code of Ethics:
 - 1. For a person prohibited from entering into a contract with the City to enter, or attempt to enter, into a contract with the City during the period of disqualification from contracting; or
 - 2. For a City Official to knowingly assist in a violation of Section 17.
 - c. Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.

- d. A business entity or nonprofit entity may be disqualified from contracting based on the conduct of an Employee or agent, if the conduct occurred within the scope of the employment or agency.
- E. A person who wishes to file a complaint against a City Official, Employee or Volunteer for violation of this Code of Ethics shall submit a sworn complaint (**attachment 1**) to the City Secretary on a form prepared by the City Secretary for that purpose. The complaint will be kept confidential by the City Secretary to the extent permitted by applicable law. Upon receipt of a sworn complaint, the City Secretary shall forward a copy of the complaint to the appropriate city official for review and possible action and to the person charged in the complaint. Within 10 days of the delivery of the complaint to the person charged in the complaint, the person charged in the complaint may file a sworn response with the City Secretary which will also be forwarded to the appropriate city official and to the complainant. The City Official to whom the City Secretary forwards the complaint and response shall notify the complainant and the person charged in the complaint of any action taken by the official in response to the complaint after review and investigation of the complaint by the Official. The City Official in charge of reviewing and investigating the complaint may refer the matter to another city official, a department head, the City Attorney or the City Council for further investigation or action if the City Official deems such action necessary or appropriate.

18. Administrative Provisions

A. OTHER OBLIGATIONS

- 1. This Code of Ethics is cumulative of and supplemental to applicable City Charter, State and Federal laws and regulations. Compliance with the provisions of this Code of Ethics shall not excuse or relieve any person from any obligation imposed by the City Charter, State or Federal law regarding ethics, financial reporting, lobbying activities, or any other issue addressed herein. (**See Addendum**)
- 2. The city may enforce its personnel policies and rules as therein provided, even though such enforcement may result in a more stringent punishment than is authorized for a violation of this Code of Ethics for the same act.

B. PERIODIC CODE REVIEW

- 1. In accordance with the guidelines in Section 11.03 of the City Charter, the City Council, Boards, Commissions, and Committees shall review this Code of Ethics and shall further consider recommendations from Boards, Commissions, Committees, Employees, Volunteers and Citizens for revision as it becomes necessary.
- 2. The City Secretary shall notify Department Heads regarding any significant amendments to the Code of Ethics within thirty (30) days of adoption. Department Heads shall disseminate the information to Department Employees and Volunteers.

C. IMPLEMENTATION

1. This Code of Ethics shall take effect immediately after passage and the publication of the caption, as the law and City Charter in cases provide. Individuals seated on the City Council and the Mayor and all present and future City Officials, Employees and Volunteers at the time this Code is approved, shall be bound by it immediately after its passage. Their signed acknowledgement of receipt and understanding of this Code shall be submitted to the City Secretary ***(attachment 2)***.
2. Any provision of any ordinance or the Code of Ordinances in conflict herewith is hereby rescinded.

D. SEVERABILITY

If any provision of this Code of Ethics is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this Code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Code of Ethics which can be given effect without the invalid or unconstitutional provision or application.



WINDCREST
TEXAS
1959

Please complete the form and submit it to:

City of Windcrest
Attn: City Secretary
8601 Midcrown
Windcrest, TX 78239

**SWORN COMPLAINT
AND
AFFIDAVIT**

_____, (hereinafter called the "Complainant"), and
Full name of person filing the complaint

who resides at _____
Mailing or street address, including P.O. Box, number, street, City, county, state and zip code

and for his/her Complaint states as follows:

I.

Name, Title, and Address of Respondent

The Respondent, _____,
Name of Respondent

Currently _____,
Position or Title of Respondent

Whose address is _____
Mailing or street address, including P.O. Box, umber, street, City, county, state and zip code

II.

Nature of Violation

(If possible, state the rule, regulation, or law violated)

(If more space is needed, attach a sheet immediately after this first page and number it as "Page 1(a)".)

Signature of Complainant

Attachment 1

Addendum

1.01 Bribery

It is unlawful for a City Official to intentionally or knowingly offer, confer, or agree to confer on another, or solicit, accept or agree to accept:

- A. any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion as a City Official; or
- B. any benefit as consideration for a decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or
- C. any benefit as consideration for a violation of a duty imposed by law on a City Official.
- D. any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit;

Tex. Penal Code Ann. § 36.02 (Vernon 2003)

1.02 Gifts to Public Servants

- A. It is unlawful for a Public Servant to solicit, accept, or agree to accept any benefit from a person the Public Servant knows is subject to regulation, inspection, or investigation by the Public Servant or the City.

Tex. Penal Code Ann. § 36.08(a) (Vernon 2003)

- B. It is unlawful for a person to offer, confer or agree to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

Tex. Penal Code Ann. § 36.09(a) (Vernon 2003)

- C. In the event of litigation involving the City, it is unlawful for any Public Servant to solicit, accept, or agree to accept any benefit from a person against whom the official knows litigation is pending or contemplated by the City.

Tex. Penal Code Ann. § 36.08(c) (Vernon 2003)

- D. It is unlawful for a Public Servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government to solicit, accept, or agree to accept any benefit from a person the Public Servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

E. It is unlawful for a Public Servant who has judicial or administrative authority, is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, to solicit, accept, or agree to accept any benefit from a person the Public Servant knows is interested in or likely to become interested in any matter before the Public Servant or tribunal.

F. Exceptions to Gifts to Public Servants

1. Texas Penal Code §§ 36.08 (Gifts to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

- a. a fee prescribed by law to be received by a Public Servant or any other benefit to which the Public Servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Public Servant;
- b. a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or
- c. a benefit to a Public Official required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
 - 1. the benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - 2. the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are non-reimbursable by the state or political subdivision;
- d. a political contribution as defined by Title 15, Election Code;
- e. a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;
- f. an item with a value of less than \$50, excluding cash or a negotiable instrument as described by § 3.104, Business & Commerce Code; or
- g. an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.

2. § 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

3. § 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

Tex. Penal Code Ann. § 36.10 (Vernon 2003)

1.03 Tampering with Governmental Records

- A. A Person commits an offense if he:
1. knowingly makes a false entry in, or false alteration of, a governmental record;
 2. makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
 3. intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
 4. possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;
 5. makes, presents, or uses a governmental record with knowledge of its falsity;
or
 6. possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.
- B. It is an exception to the application of Subsection (A)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

Tex. Penal Code Ann. § 37.10 (Vernon 2003)

1.04 Impersonating A Public Servant

- A. A person commits an offense if he:
1. impersonates a Public Servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts; or
 2. knowingly purports to exercise any function of a Public Servant or of a City office, including that of a judge and court, and the position or office through which he purports to exercise a function of a Public Servant or City office has no lawful existence under the constitution or laws of this state or of the United States.

Tex. Penal Code Ann. § 37.11 (Vernon Supp. 2007)

1.05 Misuse of Official Information

- A. A City Official commits an offense if, in reliance on information to which he has access by

virtue of his office or employment and that has not been made public, he:

1. acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
 2. speculates or aids another to speculate on the basis of the information; or
 3. as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.
- B. A City Official commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:
1. he has access to by means of his office or employment; and
 2. has not been made public.
- C. A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a City Official information that:
1. the City Official has access to by means of his office or employment;
 2. has not been made public.

Tex. Penal Code Ann. § 39.06 (Vernon 2003)

1.06 Disrupting Meeting or Procession

It is unlawful for any person, with intent to prevent or disrupt a lawful meeting, to obstruct or interfere with the meeting by physical action or verbal utterance.

Tex. Penal Code Ann. § 42.05 (Vernon 2003)

1.07 Official Oppression

It is unlawful for a City Official to intentionally subject another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful, to intentionally deny or impede another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful, or to intentionally subject another to sexual harassment.

Tex. Penal Code Ann. § 39.03 (Vernon 2003)

1.08 Abuse of Official Capacity

It is unlawful for a City Official, with intent to obtain a benefit or with intent to harm or defraud another, to intentionally or knowingly violate a law relating to his office or employment or to misuse government property services, personnel, or any other thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment.

Tex. Penal Code Ann. § 39.02 (Vernon 2003)

1.09 Nepotism

No person related within the second degree of affinity, or within the third degree of consanguinity to any elected officer of the City, or to the City Manager, may be appointed to any office or position, or other service to the City for which they receive compensation. This prohibition does not apply to officers or Employees who have been continuously serving the City or employed by the City for one year or more prior to the election or appointment of the officer related in the prohibited degree.

Windcrest City Charter § 10.3.4 (2007)

1.10 Disclosure of Interest in Property

A. A City Official who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.

B. The affidavit must:

1. state the name of the City Official;
2. state the City Official's office, public title, or job designation;
3. fully describe the property;
4. fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;
5. state the date when the person acquired an interest in the property;
6. include a verification as follows: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code"; and
7. contain an acknowledgement of the same type required for recording a deed in the deed records of the county.

C. The affidavit must be filed with:

1. the county clerk of the county in which the City Official resides; and
2. the county clerk of each county in which the property is located.

Tex. Gov't. Code Ann. § 553.002 (Vernon 2004)

STATEMENT OF ACKNOWLEDGEMENT

As a member of the Windcrest City Council or of a Windcrest City Board, Commission or Committee, an Employee, or Volunteer I agree to uphold the Code of Ethics and Conduct.

I affirm that I have read, understand, accept and support the City of Windcrest, Texas Code of Ethics and Conduct.

Council, Board, Commission, Committee, Employee, Volunteer

Position

Signature

Date

RIGHT -TO-WORK LAWS

Further, we resolve to respect the Right-to-Work Laws of Texas, our home state, and will carefully protect each person's right to enjoy all the privileges of employment without regard to his membership or non membership in any employee organization or association.

OUTSIDE EMPLOYMENT STATEMENT

The City recognizes the right of employees to engage in activities outside of their employment which are of a private nature and unrelated to our business. However, the employee must disclose any possible conflicts so that the City may assess and prevent potential conflicts of interest from arising. A potential or actual conflict of interest occurs whenever an employee is in a position to influence a decision that may result in a personal gain for the employee or an immediate family member (i.e., spouse or significant other, children, parents, siblings) as a result of the City's business dealings. When an employee is on FMLA leave they will not be permitted to work outside employment.

Employees are required to obtain written approval from their supervisor before participating in outside work activities. Approval will be granted unless the activity conflicts with the City's interest. In general, outside work activities are not allowed when they:

- prevent the employee from fully performing work for which he is employed at the City, including overtime assignments;
- involve organizations that are doing or seek to do business with the City, including actual or potential vendors or customers; or
- violate provisions of law or the City's policies or rules.

From time to time, City employees may be required to work beyond their normally scheduled hours. Employees must perform this work when requested. In cases of conflict with any outside activity, the employee's obligations to the City must be given priority. Employees are hired and continue in the City's employ with the understanding that the City is their primary employer and that other employment or commercial involvement which is in conflict with the business interests of the City is strictly prohibited. *(Added 06/09)*

CODE OF ETHICS

Statement of Purpose

All persons are entitled to have fair, ethical and accountable local government which earns the public's full confidence for integrity. The strong desire of the City of Windcrest, Texas to fulfill this expectation requires that City Officials, Employees and Volunteers:

Comply with the letter and spirit of the laws and policies affecting the operations of government;
Be independent, impartial and fair in their judgment and actions;

Use their office or position for public good, not for personal gain;

Recognize the worth of individual City Officials, Employees and Volunteers and appreciate their talents, perspectives and contributions;

Help create an atmosphere of respect and civility where individual City Officials, City staff and the public are free to express their ideas and work to their full potential;

Conduct their personal and public affairs with honesty, integrity, fairness and respect for others;

Respect the dignity and privacy of individuals and organizations;

Keep the common good as their highest purpose and focus on achieving constructive solutions for public benefit;

Avoid and discourage conduct which is divisive or harmful to the best interests of Windcrest, Texas;

Treat all people in a manner they would wish to be treated;

To this end, the Windcrest City Council has adopted this [Code of Ethics](#) and Conduct for City Officials, Employees, and Volunteers to assure public confidence in the integrity of local government and its effective and fair operation.

Employees who are uncertain as to whether their present or anticipated conduct violates any of the above standards should obtain clarification from the employee's Department Head/Supervisor. The purpose of this policy is to protect employees from any conflict of interest that might arise.

A violation of this policy will result in immediate and appropriate discipline, up to and including immediate termination.

Refer to [Code of Ethics](#) (*Revised 06-09*)

Work Product Ownership

All City employees must be aware that the City retains legal ownership of the product of their work. No work product created while employed by the City can be claimed, construed, or presented as property of the individual, even after employment by the City has been terminated or the relevant project completed. This includes written and electronic documents, audio and video recordings, system code, and also any concepts, ideas, or other intellectual property developed for the City, regardless of whether the intellectual property is actually used by the City. Although it is acceptable for an employee to display and/or discuss a portion or the whole of certain work product as an example in certain situations (e.g., on a resume, in a freelancer's meeting with a prospective client), one must bear in mind that information classified as confidential must remain so even after the end of employment, and that supplying certain other entities with certain types of information may constitute a conflict of interest. In any event, it must always be made clear that work product is the sole and exclusive property of the City. (*Added 06/09*)

Reporting Potential Conflicts

An employee must promptly disclose actual or potential conflicts of interest, in writing, to his supervisor. Approval will not be given unless the relationship will not interfere with the employee's duties or will not damage the City's relationship. *(Added 06/09)*

EMPLOYMENT

Initial Employment Period

Every new employee goes through an initial period of adjustment in order to learn about the City and about his job. During this time the employee will have an opportunity to find out if he is suited to, and likes, his new position.

Additionally, the initial employment period gives the employee's supervisor a reasonable period of time to evaluate his performance. The initial employment period is six months for non-police personnel and one year for police personnel.

During this time, the new employee will be provided with training and guidance from his Supervisor. He may be discharged at any time during this period if his Supervisor concludes that he is not progressing or performing satisfactorily. Under appropriate circumstances, the initial employment may be extended. Additionally, as is true at all times during an employee's employment with the City, employment is not for any specific time and may be terminated at will, with or without cause and without prior notice.

At the end of the initial employment period, the employee and his supervisor may discuss his performance. Provided his job performance is "satisfactory" at the end of the initial employment period, he will continue in our employment as an at-will employee.
(Added 06/09)

Applicability of Personnel Policies

Department Heads may establish departmental rules and regulations that relate specifically to personnel issues in their departments as long as they do not conflict with these policies. If there is a conflict between a departmental rule or policy and these policies or any future amendments to these policies, the terms of these policies shall prevail. Departmental rules and regulations must be approved by the City Manager in writing. Additionally, the provisions of these policies are severable, and if any provision or part of a provision is held invalid, illegal, or unenforceable, this shall not affect the validity of the remaining provisions or parts of provisions, which shall remain in force and effect. Changes in state or federal laws or regulations will supersede these policies and/or departmental policies from the effective date of the law or regulation forward and will substitute for these personnel policies only insofar as necessary for compliance. Should Police policy and this manual be in conflict, the Police policy will prevail as approved by City Council. *(Revised 08-07)*

Employee Categories

Full-time Employee

A "full-time employee" is an individual who consistently works at least 37.5 hours per week and at least eleven months per year. This employee is eligible for all of the employee benefits given by the City. *(Revised 08-07)*

Windcrest Ethics Policy

Ethical behavior regarding human conduct is a factor in all aspects of life. As a Windcrest city employee (whether paid or as a volunteer), it is simply a matter of public trust in the services provided. This trust encompasses each and every facet of all operations that make Windcrest city government and its ancillary functions work...in an absolute ethical manner. It also applies to all businesses contracted to provide services for Windcrest.

A key term regarding ethical behavior is “integrity.” Simply put, integrity means doing what you know is right even if no one is watching. If ever in doubt, confide with someone up your management chain (e.g., supervisor, city secretary, city manager, city attorney, council members, or the mayor). If an integrity issue involves someone in your management chain, feel free to take it to the next higher level without fear of retribution. If necessary, take it outside the chain (e.g., our city judge perhaps).

Bottom line...ethical employee behavior is essential to the well being of Windcrest and its citizens. There is zero tolerance for otherwise.