AGENDA
CITY OF WINDCREST, TEXAS
SPECIAL CITY COUNCIL MEETING

January 9, 2012

6:00 P.M.
Executive Session

7:00 P.M.
Special City Council Meeting

NOTICE IS HEREBY GIVEN THAT A SPECIAL WINDCREST CITY COUNCIL MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 9th DAY OF JANUARY, 2012 STARTING AT 6:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE COUNCIL MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

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 of 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. Executive Session Call to Order (6:00 P.M.)

1. City Council will convene into a closed session relative to contemplated litigation as authorized by Section 551.071 of the Texas Government Code, as amended, for consultation with the City Attorney and its outside legal counsel regarding existing agreement(s), City's rights, and the possible action to dissolve the Bexar County Water Control and Improvement District, No. 10.

II. Call to Order, Pledge of Allegiance & Invocation (7:00 P.M.)

III. 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.

IV. Presentation

1. City Council will receive an update from members of the Parks & Recreation Board members regarding current projects to include the Civic Center.

V. Action Item(s)

1. City Council will discuss and may take action regarding existing agreements(s), City's rights, and possible action to dissolve the Bexar County Water Control and Improvement District, No. 10.

2. City Council will discuss and may take action on the City's Water Board License Agreement Negotiating Committee's report with regard to the negotiation and possible new License Agreement between the Water District and the City of Windcrest.

VI. 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. 2011-655, an ordinance of the City of Windcrest to tax tangible personal property in transit which would otherwise be exempt pursuant to Texas Tax Code, Section 11.253. *(Sarah Mangham, Municipal Finance Officer Request)* ***Second Reading,*** (Att. 1)

2. City Council will review, discuss and may take action on Ordinance No. 2011-656 (O), an ordinance authorizing compensation for members of the City Council as provided in Section 3.07 of the City Charter. *(Mayor Alan Baxter, Rafael Castillo, Jr., City Manager and Sarah Mangham Request)* ***Second Reading,*** (Att. 2)

3. City Council will review, discuss and may take action on Ordinance No. 2012-657 (O), an ordinance amending the Code of Ordinances by repealing existing Chapter 3, Animal Control, and adopting a new Chapter 3, Animal Control. *(Pam Dodson, Mayor Pro Tem Request)* ***First Reading,*** (Att. 3)

4. City Council will review, discuss and may take action on Ordinance No. 2012-658 (O), an ordinance authorizing the appointment of an Animal Advisory Committee. *(Pam Dodson, Mayor Pro Tem Request)* (Att.) ***First Reading,*** (Att. 4)

VII. Resolutions

1. City Council will review, discuss and may take action on Resolution No. 2012-362 (R) a resolution for the Council to accept the Engagement Letter for the Fiscal Year 2010-11 Audit. (Att. 5)

VIII. Discuss and Act

1. City Council will discuss and may take action to enter into a contract with Tyler Technologies for online payments and charging credit card fees to client. *(Sarah Mangham, Municipal Finance Officer, Heather Weidenbach, City Secretary and Kelly Rodriguez, Court Clerk/Asst. City Secretary Request)* (Att. 6)

2. City Council will discuss and may take action on CIP street projects and the possible formation of a council and/or citizen committee. *(Mayor Alan Baxter and Rafael Castillo, Jr., City Manager Request)* (Att. 7)

3. City Council will discuss and may take action on the section of Fourwinds Dr. currently owned by Whitestone REIT; expanding the Drive from the previously contracted width of 24' to 28' and the City paying approximately $89,000 and Whitestone REIT returning ownership of the road back to the City of Windcrest. (Att. 8) *(Mayor Alan Baxter and Rafael Castillo, Jr., City Manager Request)*

4. City Council will discuss and may take action on the Racker Road ground breaking ceremony and ribbon cutting. *(Mayor Alan Baxter and Rafael Castillo, Jr., City Manager Request)* (Att. 9)

5. City Council will discuss and may take action on a budget for the Valentine's Day event for the youth of Windcrest scheduled for February 12, 2012 from 3:00 – 5:00p.m.; at the Walzem Road YMCA. *(Mayor Alan Baxter Request)* (Att. 9)

6. City Council will discuss and may action on scheduling Town Hall meetings regarding Capital Improvement Projects for 2012. *(Mayor Alan Baxter and Rafael Castillo, Jr., City Manager Request)*

IX. General Announcement and Future Agenda Items

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.

X. Adjournment

Agenda Notice

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 9, 2011.

By: Heather Weidenbach **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 Heather Weidenbach, 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, 2011.

_____

Title: _____

ORDINANCE NO. 2011-655 (O)

AN ORDINANCE
OF THE CITY OF WINDCREST TO TAX TANGIBLE PERSONAL PROPERTY IN TRANSIT WHICH WOULD OTHERWISE BE EXEMPT PURSUANT TO TEXAS TAX CODE, SECTION 11.253.

WHEREAS, the 80th Texas Legislature in Regular Session has enacted House Bill 621 to take effect on January 1, 2008 which added Tex. Tax Code '11.253 to exempt from taxation certain tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing or fabricating purposes (goods-in-transit) which property has been subject to taxation in the past; and

WHEREAS, Tex. Tax Code '11.253(j) as amended allows the governing body of a taxing unit, after conducting a public hearing, to provide for the continued taxation of such goods-in-transit; and

WHEREAS, the City Council of the City of Windcrest, Texas, having conducted a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution, is of the opinion that it is in the best interests of the city to continue to tax such goods-in-transit.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS THAT: The goods-in-transit, as defined Tex. Tax Code 11.253(a)(2), as amended by House Bill 621, enacted by the 80th Texas Legislature in Regular Session, shall remain subject to taxation by the City of Windcrest, Texas.

PASSED AND APPROVED this the ___th day of _____, 2011.

_____
ALAN BAXTER, MAYOR

ATTEST:

_____
HEATHER WEIDENBACH, CITY SECRETARY

_____
Michael S. Brenan, City Attorney

ORDINANCE NO. 2011-656 (O)

AN ORDINANCE AUTHORIZING COMPENSATION FOR MEMBERS OF THE CITY COUNCIL AS PROVIDED IN SECTION 3.07 OF THE CITY CHARTER

WHEREAS, the City Charter in Section 3.07 authorizes the City Council to formally establish compensation for members of the City Council by ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that effective October 1, 2011, the Mayor(s) shall formally be paid a stipend of $600.00 per month and the other members of the City Council shall formally be paid a stipend of $120.00 per month. In addition to the monthly stipend, the City shall pay the premium for City funded health insurance for the Mayor.

That ordinance shall take effect upon its final passage, and it is so ordained.

PASSED and APPROVED this ____ day of January, 2012.

_____
Alan Baxter, Mayor

ATTEST:

_____
Heather Weidenbach, City Secretary

APPROVED AS TO FORM:

_____
Michael S. Brenan, City Attorney

ORDINANCE NO. 2012-657 (O)

AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY REPEALING EXISITNG CHAPTER 3, ANIMAL CONTROL, AND ADOPTING A NEW CHAPTER 3, ANIMAL CONTROL

WHEREAS, City officials and citizens of the community have reviewed the existing Chapter 3, Animal Control, and have developed a new Chapter 3, Animal Control, which addresses the current needs of the community and brings animal control in the City into conformity with current state law and animal protection best practices.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST THAT the existing Chapter 3, Animal Control, of the Code of Ordinances is hereby repealed and the attached Chapter 3, Animal Control, is adopted as the new animal control ordinance of the City.

This ordinance shall take effect five days after its publication.

PASSED and ADOPTED this the _____ day of January, 2011.

_____
Alan Baxter, Mayor

ATTEST:

_____
Heather Weidenbach, City Secretary

APPROVED AS TO FORM:

_____
Michael S. Brenan, City Attorney

CHAPTER 3

ANIMAL CONTROL

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CHAPTER 3 **ANIMAL CONTROL**

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CHAPTER 3 **ANIMAL CONTROL**

Subchapt 3.000 Definitions

As used in this Chapter, unless the context otherwise dictates,

1. ABANDONED ANIMAL – animal which has been deserted, relinquished, or forsaken by its owner or which has no apparent owner.

2. ANIMAL – ~~living vertebrate or invertebrate, domestic or wild, not including man.~~ every living dumb creature.

3. ANIMAL CONTROL OFFICER – person who is not a peace officer, who completes the basic animal control course in accordance with Title 10, Texas Health and Safety Code Chapter 829.002 ~~with, completes a training course on or before June 30, 2008~~, and completes 30 hours or continuing education ~~under Title 10, Health and Safety Code, Chapter~~ during each three-year period

4. ANIMALWASTE - excrement or feces of any animal.

5. AT LARGE – animal off the premises of the owner and not under the control of the owner or his employee or agent by means of a leash, chain, rope, or cord~~. or such other personal presence and attention as will reasonable control a dog's and cat's actions and conduct.~~

6. CAT – male or female of the feline species, whether altered or not.

7. COMMUNITY CATS – group of cats that congregate, more or less, together as a unit. Although not every cat in a colony may be feral, any non-feral cats that congregate with a colony shall be deemed to be a part of it.

8. CRUELLY TREATED – includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal and any subsequent revisions made by the State. (definition from Subchapter B, Disposition of Cruelly Treated Animals from Health and Safety Code, Chapter 821.)

9. DOG – male or female of the canine species, whether altered or not.

10. DOG AND CAT LICENSE - printed or written permission issued by the ~~Animal Control Officer~~ City authorizing the holder to keep a dog and/or cat within the City.

11. DOG AND CAT LICENSE TAG – ~~metal~~ tag of a design prescribed by the ~~Animal control Officer~~ City and bearing the corresponding number of the dog and cat license.

12. EAR-TIPPING – straight line cutting of the tip of the left ear of a feral cat done while the cat is anesthetized for spaying and neutering.

13. EUTHANIZE - the painless and merciful ending of an animal's life in accordance with Texas Statute, Health & Safety Code, Chapter 821, Subchapter C.

14. FERAL/ABANDONED CAT – cat that exists in a wild or untamed state, either due to birth or reversion to a wild state from domestication or which exists without owner ~~The usual and consistent temperament of a feral cat is extreme fear and resistance to contact with humans. Feral cats are completely or substantially unsocialized to humans~~.

15. FERAL CAT CAREGIVER (May also be called Community Cat Caregiver) – volunteer, uncompensated person who agrees to facilitate the trap-neuter-return program in accordance with this chapter and any rules and regulations established by the ~~Animal Control Officer~~ City Council.

16. ~~FERAL CAT COLONY – a group of cats that congregate, more or less, together as a unit. Although not every cat in a colony may be feral, any non feral cats that congregate with a colony shall be deemed a part of it~~.

17. Impoundment Facility - a facility that keeps or legally impounds stray, homeless, or unwanted animals in accordance with Texas Health Code 823.001.

18. OWNER – any person, persons, ~~firm, association or corporation~~ or entity who owns or has custody or control of an animal.

19. QUARANTINE – to detain or isolate due to a suspicion of ~~suspected contagion~~ rabies.

20. TRAP-NEUTER-RETURN (TNR) PROGRAM – program under ~~pursuant to~~ which feral or abandoned cats are trapped, evaluated, neutered or spayed, vaccinated against rabies and returned to the areas ~~which~~ where they congregate.

21. VICIOUS ANIMAL ~~– any animal with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise threaten the safety of human beings or domestic animals; Any animal which, without provocation, has attacked or injured a human being or domestic animal; Any animal owned or harbored primarily or in part for the purpose of fighting, or any animal trained for fighting; Any animal which, without provocation, chases or approaches a person upon the streets, sidewalks or any public or private property in a menacing fashion or apparent attitude of attack; or Any animal which has behaved in such a manner that the owner thereof knows or should reasonably know that the animal is possessed or has tendencies to attack or to bite human beings or other anima~~

Any animal that according to the records of an appropriate authority has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; has more than once severely injured or killed a domestic animal while off the owner's property; has been used primarily or in part for the purpose of fighting or is an animal trained for fighting.

Subchapt.3.100 DOGS AND CATS

Sec. 3.102 LICENSE AND REGISTRATION ~~REQUIRED~~

1. The owner of any dog or cat over ~~three~~ ~~(3)~~ four (4) months of age shall license and register such ~~owner's~~ dog ~~and~~ or cat within 60 days of residency or acquisition of pet. Renewal registration shall be ~~annually~~ in January or February of every year. Dog ~~and/~~or cat licenses shall be issued by the ~~Animal Control Officer or his representative~~ City upon payment of a license fee for each dog or cat that has been spayed or neutered. Any owner of a dog or cat that has not been spayed or neutered shall pay a non-sterilized license fee. The owner shall state at the time application is made for such license and upon forms provided for such purposes, his name and address, and name, breed, color and sex of each dog and/or cat. Non-resident owners of dogs and/or cats who temporarily bring their dogs and/or cats within the City are exempt~~. herefrom~~. The license ~~tax~~ fee for sterilized animals may be waived if the owner shows proof that the dog or cat has a microchip implanted.
2. Any person whose female dog or cat has a litter shall obtain a litter permit prior to or within ten (10) business days of the litter's birth.
3. The issuance of a permit authorizes the whelping of no more than one (1) litter per female dog or cat in any 12-month period.
4. No person may offer any puppy or kitten under the age of eight (8) weeks for sale, trade or other compensation or for free giveaway (except a puppy or kitten, or litter or litters taken to any tax-exempt nonprofit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals, or any recognized rescue organization which is currently registered with the department).
5. This section does not apply to Caregivers of Community Cat Colonies.

Sec. 3.103 VACCINATION

It shall be unlawful for the owner of any dog ~~and/~~or cat, to keep, maintain, or harbor such dog ~~and/~~or cat unless it shall have been vaccinated against rabies by a licensed veterinarian at the owner's expense. Such vaccines ~~shall~~ may be of the one (1) or three (3) year variety. Before any dog ~~and/~~or cat license shall be issued by the ~~Animal ControlOfficer~~ City, the owner must present a valid certificate issued by a licensed Veterinarian. ~~A valid certificate is one that is either dated in the calendar year for which the license is being issued or dated within the preceding ninety (90) days. Animals sent to another facility as approved by the Animal Control Officer need not be vaccinated or be required to have a microchip implant prior to being sent to that facility.~~

Sec. 3.104 TAG AND COLLAR

1. Upon payment of the license fee, the ~~Animal Control Officer or his representative~~ City shall issue to the owner, a license ~~certificate~~ receipt and a ~~metallic~~ tag for each dog ~~and/~~or cat so licensed. ~~The shape of the tag shall be changed every year and shall have a stamp thereon showing the year for which it was issued and the number corresponding with the number on the certificate.~~
2. Every owner shall be required to provide each dog ~~and/~~or cat with a collar and tag and it shall be constantly worn. An owner of a dog or cat can choose to have a microchip implanted under the skin of the animal ~~performed at a veterinary hospital~~, in lieu of wearing license tags. The microchip implant does not exempt the owner of the animal from registration.
3. In the event a dog ~~and/~~or cat tag is lost or destroyed, a duplicate will be issued by the ~~Animal Control Officer or his representative~~ City upon presentation of a receipt showing the payment of the license fee for the current year and an additional fee ~~payment of a two dollar ($2.00) fee~~ for such duplicate. Dog ~~and/~~or cat tags shall not be transferable from one dog ~~and/~~or cat to another and no refund shall be made on any dog ~~and/~~or cat license fee because of death of the dog ~~and/~~or cat or the owner's leaving the City before expiration of the license. ~~An owner of a dog or cat can choose to have a microchip implanted under the skin of the animal performed at a veterinary hospital, in lieu of license tags. The microchip implant does not exempt the owner of the animal from registration.~~

Sec. 3.105 IMPOUNDING

It shall be the duty of the Animal Control Officer to apprehend any dog ~~and/or cat~~ found ~~running~~ at large contrary to the provisions of this Chapter and to impound such dog ~~and/or cat~~ in ~~a designated veterinary hospital/quarantine~~ the City's Impoundment Facility ~~at his discretion~~ until the owner can be found or for the impoundment period. Any animal impounded shall be given proper and humane care and maintenance. The Animal Control Officer shall require the operator of the ~~subject designated veterinary hospital/quarantine~~ City's Impoundment Facility receiving any dog ~~and/or cat~~ pursuant to the provisions of this Chapter to make a complete registry, entering the breed, color and sex of such dog ~~and/or cat~~ and whether licensed or microchipped. If licensed, he shall enter the name and address of the owner and the number of the license tag or microchip.

Sec. 3.106 POSTINGS/SCANNING

1. Before the animal is impounded, the Animal Control Officer will take a photograph of the animal and such photograph will be posted on the City's website as soon as feasible, but not more than twenty-four (24) hours after capture. The photograph will also appear on the Found Animal Notice that is to be posted on the doors at City Hall.
2. The Animal Control Officer will scan the animal for an owner identification microchip and if located, record all information on an Animal Retrieval Form.
3. In order to safeguard the animals, additional checking for a microchip will be conducted by the City's Impoundment Facility and if found, reported back to the Police Communication Office with the corresponding case number.

Sec. 3.107 NOTICE TO OWNER AND REDEMPTION

~~Not later than five (5) days after the impounding of any dog and one (1) day for any cat, the owner shall be notified, or if the owner of the dog and/or cat is unknown~~,

1. Within 24 hours of capture of any dog, the owner, if the owner can be determined, shall be notified. Written notice, including a picture of the ~~animal~~ dog, shall be posted for five (5) days for dogs ~~and one (1) day for cats~~ at a conspicuous place in the City Hall describing the dog ~~and/or cat~~ impounded. At the same time, such notice shall also be posted on the City's designated web site. Attempts shall be made to notify area veterinary hospitals, ~~and~~ pet shops, and animal websites by e-mail or fax of the impounded animal.

2. The owner may reclaim such dog ~~and/or cat~~ upon payment of:

   a. license fee (if unpaid),

   b. ~~administrative~~ animal control fee to the City written for dog being at large ~~for the impounding of said dog and/or cat,~~ and

   c. all boarding charges due the City's ~~designated veterinary hospital/quarantine~~ Impoundment Facility.

~~Before releasing the animal, a microchip shall be implanted by the veterinarian and such cost paid for by the~~ owner.

3. The first time a dog ~~and/or cat~~ is reclaimed, no ~~administrative~~ animal control fee will be charged. The waiving of this fee shall only apply once for address. The second time a dog ~~and/or cat~~ is reclaimed by its owner, an ~~administrative~~ animal control fee will be charged, ~~fifty dollars ($50.00~~, and each subsequent time a dog ~~and/or cat~~ is reclaimed by its owner the ~~administrative~~ animal control fee will increase. ~~by $25.00~~. Should said owner fail to pay such charges and/or refuse to claim the animal, he/she shall be charged with abandonment and adjudicated accordingly. ~~In the case of feral cats, they shall spayed or neuter and return to their colony after the required recovery period assisted by the feral cat caregiver.~~

4.Owners of impounded animals may arrange for the release of their animal(s) during business hours (8am to 5pm) from the Police Communication Office. Animals will be released to owners with appropriate proof of ownership during the business hours of the City's Impoundment Facility. All costs incurred for the impoundment of an animal are the responsibility of the animal's owner. Owners of animals not having current rabies vaccination or written proof of current rabies vaccination will be required to

provide a deposit to the City. This will allow the owner to take their pet and get the proper immunization. This immunization shall be completed in ten (10) business days, unless there is a statement from a veterinarian that immunization will endanger the health of the animal. After proof of immunization, the owner will be refunded their deposit .

5. Microchipping of the pets will be required after the second impoundment.

6. The Animal Control Officer will require proof of ownership. Proof of ownership may include a valid animal license, veterinary records, registered microchip identification or other reliable documents such as home photographs or other verifiable documentary evidence. If ownership cannot be proven by the required information, the animal in question must be adopted rather than redeemed; the person claiming unproven ownership may be afforded the opportunity to adopt the animal.

Sec. 3.108 DISPOSITION OF UNCLAIMED ~~OR INFECTED~~ DOGS~~/CATS~~

It shall be the duty of the operator of the ~~designated veterinary hospital/quarantine~~ City's Impoundment Facility to keep all unclaimed dogs ~~and/or cats~~ delivered to it by the Animal Control Officer for a minimum of ~~one hundred twenty (120) hours~~ seven (7) days from the date of notice to the owner or the posting of notice. If after the expiration of ~~one hundred twenty (120) hours~~ seven (7) days from the date of notice to the owner or the posting of notice, such dogs ~~and/or cats~~ ~~shall~~ not ~~have~~ been redeemed, ~~they~~ may be ~~disposed of by sale, adoption or destruction~~ adopted, fostered, transferred to an adoption shelter if an adoption shelter is available, or humanely euthanized by a licensed veterinarian or an Animal Control Officer certified in euthanasia; provided, however, if the end of the ~~one hundred twenty (120) hours~~ seven (7) day period falls on a national holiday or Saturday or Sunday, the operator of the ~~designated veterinary hospital/quarantine~~ City's Impoundment Facility shall wait until the afternoon of the next ~~normal~~ regular business day. ~~prior to the sale or destruction of such dogs and/or cats.~~

Sec. 3.109 ABANDONMENT

No person, persons, ~~firm, association, or corporation~~ entity, shall abandon any dog ~~and/~~or cat, which it owns, or has within its custody or control either temporarily or permanently, within the corporate limits of the City ~~of Winderest, Texas~~; nor shall any person, persons, ~~firm, association, or corporation~~ or entity allow any dog ~~and/~~or cat, which it owns, or has within its custody or control either temporarily or permanently, to be left without proper food and water within the corporate limits of the City ~~of Winderest, Texas. Control shall include, but not be limited to, the temporary feeding, providing water, and temporary shelter of any dog and/or cat.~~

Sec. 3.110 ~~INHUMANE TREATMENT~~

CARE AND KEEPING OF DOGS AND OTHER ANIMALS

~~No person, persons, firm, association, or corporation shall torture, torment, deprive of necessary sustenance, fail to provide adequate shelter unnecessarily or cruelly beat nor needlessly mutilate or kill any animal, nor carry any animal in or upon any vehicle, or otherwise, in a cruel or inhuman manner, nor procure the same to be done, within the corporate limits of the City of Winderest, Texas. As used in this Section, the words "torture" and "cruelly" include every act, omission or neglect whereby unnecessary pain or suffering is caused, permitted or allowed.~~

1. No person shall cruelly treat any dog or animal.
2. An animal owner shall provide his animal with veterinary care when needed to prevent suffering.
3. An animal owner shall provide his animal with humane care and treatment.
4. Animals shall be protected from extremes of the environment including outside temperatures of heat (85 degrees or above), cold (32 degrees or below), and precipitation; this shall include but not be limited to shade, dog house, lean-to, tent, garage or inside the owner's house.
5. No owner of an animal shall abandon such animal at any place or time. If an animal owner has been identified and the owned animal has been impounded by the Animal Control Officer, no owner shall allow the animal to remain in the impoundment facility beyond the seven (7) days for the purpose of abandoning the animal or adopting the animal at a lower cost than the fine/fee(s).

Sec. 3.111 VICIOUS ANIMAL

It shall be unlawful for any keeper of any vicious animal to permit any such animal to ~~run~~ be at large regardless of any other provision contained in this Chapter. ~~Prosecution of any such owner of a vicious animal may be instituted in Municipal Court by any person filing a sworn complaint charging such owner with allowing or permitting a vicious animal to run at large, that such animal has bitten or attempted to bite or attacked or attempted to attack any person in a vicious manner, it appearing that the person so bitten or attacked or attempted to be attacked in a vicious manner was not at the time of such attack trespassing inside the home of the owner or within the enclosure of the animal and was not otherwise at fault.~~

Sec. 3.112 DOGS AND CATS ~~RUNNING~~ AT LARGE

It shall be unlawful for any person owning any dog ~~and/or cat~~ to permit it to be outside of such owner's fenced premises or other enclosure upon the streets, alleys or other public places of the City, unless the dog ~~and/or cat~~ shall be at all times under the control of the owner or his employee or agent by means of a leash, chain, rope or cord of sufficient strength to control the actions of said dog. ~~and/or cat. or such other personal presence and attention as will reasonably control its actions and conduct. Prosecution of any such owner for the offense described herein may be instituted in Municipal Court by any person filing a sworn complaint charging such owner with such offense.~~ When an unattended dog is found to be on unfenced private or public property without proper leashing, the Animal Control Officer shall have the authority to retrieve the dog on said property. The owner of a sexually intact (not spayed or neutered) domesticated cat shall not permit the domesticated cat to roam. ~~unsupervised.~~

Subchapt. 3.200 ~~DOMESTIC ANIMALS, KEEPING OF DOGS, CATS, AND OTHERS~~ OWNERSHIP OF ANIMALS

Sec. 3.201 RESTRICTIONS

A. It shall be unlawful:

~~1.For any person or persons to maintain or keep, in the aggregate, more than four (4) adult dogs and/or cats on premises within the corporate limits of the City of Winderest, Texas.~~ (Moved to Section 3.203)

~~2. For any person or persons to maintain or keep on premises within the corporate limits of the City of Winderest, Texas more than the number of adult dogs and/or cats designated by the City Council in the a variance granted to such person or persons.~~

~~As used in this Section, the word "adult dogs and/or cats" mean a dog and/or cat that is six (6) months or older.~~

3. For any person to sell, trade, barter, lease, rent, or give away, any animal on any roadside, public right-of-way, commercial parking lot, garage sale, flea market, festival, park, community center or outdoor public place.

4. For any person to display for a commercial purpose any animal on any roadside, public right-of-way, commercial parking lot, garage sale, flea market festival, park, community center or outdoor public place.

(This section shall not apply to any tax-exempt non-profit organization founded for the purpose of providing humane sanctuary or shelter for abandoned or unwanted animals or any recognized rescue organization which is currently registered with the department.) Any animal being sold, traded, bartered, leased, rented, or being given away on any roadside, public right-of-way, commercial parking lot, garage sale, flea market, festival, park, community center or outdoor public place shall be subject to seizure and impoundment at the discretion of the investigating Animal Control Officer and shall be subject to adoption, rescue, foster or humanely euthanized at the discretion of the City Manager if not timely redeemed by

payment of applicable impoundment fees for each animal impounded within the impoundment period as set out in this Code

5.To expose any known poisonous substance, whether mixed with food or not, so that the same may be attractive to any warm-blooded animal or human; except that it shall not be unlawful for a person to expose, on his own property or with permission of the property owner, commercially available rat poison or other pesticides appropriately placed in accordance with the labeling directions and in tamperproof bait stations. It shall be sufficient to constitute a violation under this section that the poisonous substance was attractively exposed by such person in such a manner that the same may have been eaten, or was in fact eaten, by any warm blooded animal or human; no intent or further culpable mental state shall be required to prove a prima facie violation.

6.To set up or allow to be set up on his property steel jaw traps, spring traps with teeth or perforated edges on the holding mechanism, snares, or any type of trap with a holding mechanism designed in such a fashion as to reasonably ensure the cutting, slicing, tearing or otherwise traumatizing of the entrapped prey, for the purpose of ensnaring domestic or wild animals within the city limits, unless the use of such traps is specifically deemed necessary by the State Director of Health in or for the control of communicable disease. This section is not to be construed to include those traps designed to kill common rodents, i.e., rats, mice, gophers and groundhogs; except that the owner is responsible for taking care that any of the above said "rodent" traps are not placed or used on or about his property in such a manner as to reasonably ensure the trapping of any other domesticated or wild animal, or of a human.

It shall be a prima facie violation of this section that the traps proscribed in this section were, in fact, set up by the person in question, or were allowed to be set up by the person in question; no intent or further culpable mental state shall be required to prove such a prima facie violation.

7. To transport or carry on any public roadway any animal in a motor vehicle unless the animal is safely enclosed within the vehicle; and if traveling in an unenclosed vehicle (including, but not limited to convertibles and jeeps), the animal shall be confined by a vented container or cage or canine safety belt.

8. To leave any animal in any standing or parked vehicle in such a way as to endanger the animal's health or safety. Any Animal Control Officer or Police Officer is authorized to use reasonable force, including the breaking of a side window, to remove an animal from a vehicle whenever it appears the animal's health or safety is endangered, and said neglected or endangered animal shall be impounded.

9. To strike an animal with a vehicle resulting in injury to the animal, and leave the scene without rendering aid and assistance in the care of such animal if such action can be taken with reasonable safety. If aid cannot be rendered safely, immediately call the police who will dispatch Emergency Animal Control.

B It shall be lawful

1. To set up on his own property humane traps used to capture dogs, cats, and other small animals alive which must be sheltered and shall be checked at least once every two (2) hours or every eight (8) hours if left overnight by the individual setting the trap. Humane care shall be provided for any t rapped animals including the provision of food, water and protections from extremes of the environment including heat, cold and precipitation. Trapped dogs or cats bearing identification ~~and/~~or city registration shall be turned over to the Animal Control Department or the animal's owner.

Sec. 3.202 KEEPING OF NEWBORN OFFSPRING

The keeping by any person of newborn offspring of dogs ~~and/~~or cats authorized hereby for a period of six (6) months shall not constitute a violation of this Subchapter. A Litter Permit is required.

~~**Sec. 3.203 VARIANCE; MAXIMUM AUTHORIZED; AUTHORITY OF CITY COUNCIL TO REVOKE**~~

~~The City Council, upon application for variance to Section 3.201 as hereinafter provided, may grant or deny, in whole or in part, an application for variance to Section 3.201 of this Code.~~
~~The City Council, upon granting a variance to Section 3.201 of this Code shall designate the number of adult dogs and/or cats authorized to be maintained or kept by the variance granted, but in no event shall the number of adult dogs and/or cats authorized by the~~

~~granting of the variance to Section 3.201 of this Code. exceed, in the aggregate, six (6) adult dogs and/or cats.~~
~~The City Council, after notice to the person or persons granted a variance to Section 3.201 of this Code, and after conducting a hearing thereon, may revoke the variance granted to such person or persons.~~
~~1. The notice shall be:~~

~~A. In written form,~~
~~B. Addressed to the person or persons,~~
~~C. Specify the purpose of the notice,~~
~~D. Designate the time, date, and place of the hearing to consider revoking the variance granted to such person or persons.~~
~~E. Reason for revocation.~~

~~2. The notice shall be mailed to the address of the person or persons by certified mail return receipt requested.~~

~~The decision of the City Council considering the revocation of the variance granted to the~~

~~person or persons shall be attached to the person's or persons' application for variance to Section 3.201 of the Code and be maintained on file in the office of the City Secretary in accordance with the record keeping practices of that office.~~

~~**Sec. 3.203.1 APPLICATION FOR VARIANCE; PROCEDURE**~~

~~Any person desiring to maintain or keep in the aggregate more than four (4) adult dogs and/or cats within the corporate limits of the City of Winderest, may file a written application with the City Secretary of the City of Winderest, Texas, requesting the City Council to grant his written application for variance to Section 3.201.~~
~~The written application must contain the following information:~~

1. ~~The name(s) and address (es) of the person(s) making such application for variance;~~
2. ~~The applicant's reason(s) for requesting the variance.~~
3. ~~The names and addresses of all homeowners residing within a 200 foot radius of the applicant's property lines;~~
4. ~~The number of adult dogs and/or cats the applicant desires to maintain or keep in excess of the basic number of adult dogs and/or cats allowed by Section 3.201; and~~

5. ~~The application must be signed and dated by the applicant.~~

~~A fee of ten dollars ($10.00) must accompany each application to cover the expense of processing the application and notifying adjacent property owners of the applicant's request for variance to Section 3.201 of the Code.~~

~~The City Secretary, upon receipt of the application for variance and the application fee, shall then do the following:~~

1. ~~Place such application on the agenda of the regularly scheduled City Council meeting following the next regularly scheduled City Council meeting~~
2. ~~Notify the applicant of the date such application will be considered by the City Council.~~
3. ~~Notify by mail all homeowners within a two hundred (200) foot radius of applicant's property lines of the application for variance to Section 3.201 and the date that the City Council will consider the application for variance.~~
   A. ~~All notices to said homeowners shall be a standardized form and contain a provision requesting that the homeowner indicate his/her consent or objection to the variance application and return such form to the City Secretary on or before the date of the scheduled hearing on the application for variance.~~

   B. ~~All such returned forms shall be open for inspection at the office of the City Secretary during regular business hours~~

~~3.203.2 HEARING ON APPLICATION FOR VARIANCES~~

~~The City Council of the City of Winderest shall hear all applications for variances to Section 3.201 of the City Code at a regularly scheduled Council meeting. The Council, in determining whether to grant or deny a variance application may consider the~~

~~following factors:~~

~~1. The size or breed of dogs and/or cats,~~
~~2. The applicant's lot size,~~
~~3. The number of runs or pens,~~
~~4. The neutering of the dogs and/or cats,~~
~~5. The de-barking of the dogs,~~
~~6. The applicant's fencing,~~
~~7. The objections to the application from homeowners within a two hundred (200) foot radius of applicant's property lines, and~~
~~8. All other matters deemed relevant by the Council to the application for variance~~
~~The decision of the City Council considering the application for variance to Section 3.201 of this Code shall be noted on the application by the City Secretary and thereafter, the application and any attending documents shall be maintained on file in the office of the City Secretary in accordance with the record keeping practices of the office of the City Secretary~~

Section 3.203 MAXIMUM ANIMALS AUTHORIZED AND VARIANCE

A. It shall be unlawful for any person or persons to maintain or keep, in the aggregate, more than ~~four (4)~~ six (6) adult dogs and/or cats on premises within the corporate limits of the City. As used in this Section, the word, "adult dogs ~~and/~~or cats" mean a dog ~~and/~~or cat that is six (6) months or older.

B. The City Council, upon application for variance to Section 3.203A as hereinafter provided, may grant or deny, in whole or in part, an application for variance to Section 3.203 A of this Code. Any person desiring to maintain or keep in the aggregate more than six (6) adult dogs ~~and/~~or cats within the corporate limits of the City, may file a written application with the City Secretary, requesting the City Council to grant his written application for variance.

C. The written application must contain the following information:

1. The name(s) and address of the person(s) making such application for variance,
2. The number of adult dogs ~~and/~~or cats the applicant desires to maintain or keep in excess of the basic number of adult dogs ~~and/~~or cats allowed by Section 3.203 A and whether some or all are sterilized,
3. A statement of care or recommendation from the applicant's veterinarian(s) or at minimum, the name, address, and telephone number for the applicant's veterinarian.
4. Any complaints received or citation issued by animal control about animal issues against the applicant listed in the variance application.

5. Applicant's existing and intended animal housing,
6. The application must be signed and dated by the applicant.

D. The City Secretary, upon receipt of the application for variance shall then do the following:

1. Place such application on the agenda of the next scheduled City Council meeting.
2. Notify the applicant of the date such application will be considered by the City Council.

E. The City Council, in determining whether to grant or deny a variance application may consider the following factors:

1. Whether the dogs or cats have been spayed or neutered
2. The applicant's intended animal housing,
3. Applicant's animal compliance history and any previous complaints or violations of animal ordinances and
4. Veterinarian's statement of applicant's animal care.

Sec. 3.204 DOMESTIC AND NON-DOMESTIC ANIMAL RESTRICTIONS

~~3.204.1 BOVINES, SHEEP, GOATS, AND EQUINES~~
~~It shall be unlawful to keep bovines, sheep, goats, and equines in, on, or near any premises in the City of Winderest.~~
~~3.204.2 SWINE~~
~~It shall be unlawful to keep any swine within the corporate limits of the City of Winderest, Texas.~~
~~3.204.3 POULTRY~~
~~It shall be unlawful to keep or maintain any poultry on any premises within the city limits of the City of Winderest, Texas.~~
~~3.204.4 PIGEONS~~
~~It shall be unlawful to keep or maintain pigeons on any premises within the city limits of the City of Winderest.~~
~~3.204.5 PEACOCK~~
~~It shall be unlawful to keep or maintain peacocks or pea hens of any kind within the city limits of the City of Winderest.~~

/It shall be unlawful to keep domestic farm/ranch animals and fowl within the City limits. This includes but is not limited to hoofed stock (bovines, sheep, goats, equines, swine,) poultry, pigeons and peacocks. This provision does not preclude the keeping of common indoor pet birds such as canaries, finches ~~and/~~or parrots.

~~Subchapt. 3.300 NON-DOMESTIC ANIMALS, KEEPING OR HARBORING~~

~~Sec. 3.301 RESTRICTIONS~~

~~It shall be unlawful for any person to keep or harbor within the corporate limits of the City of Winderest any warm-blooded carnivorous animal of a species such as, but not limited to, ape, baboon, bear, or lion which ordinarily lives in a state of nature without the aid or care of man, or to keep or harbor any cold-blooded carnivorous animal of a species such as, but not limited to, rattlesnake, constricting snake, alligator, or crocodile, which ordinarily lives in a state of nature without the aid or care of man.Nothing in this provision shall prevent the keeping of fish, spiders, insects, frogs, toads, lizards, snakes of a non-poisonous species, turtles, or non-constricting snake, subject, however, to all other applicable provisions of the City Code of the City of Winderest,Texas.~~

Subchapt 3.300 NON-DOMESTIC/EXOTIC ANIMAL AND REPTILE RESTRICTIONS

It shall be unlawful to keep animal(s) or reptiles that typically are found at a wildlife refuge or zoo within the City limits. This animal/reptile restriction includes but is not limited to carnivorous, non-carnivorous, poisonous, constricting species such as snake, alligator, crocodile, great ape, monkey, bear, big cat, wolf, hoofed mammals, etc. This provision does not preclude the keeping of such pet animals, reptiles or insects as hamsters, gerbils, ferrets, lizards, rabbits, fish, turtles, frogs, spiders or Pot Belly Pigs.

Subchapt. 3.400 ANIMAL CONTROL OFFICER

Sec. 3.401 DESIGNATION OF ANIMAL CONTROL OFFICER

~~The City Council shall create the office of Animal Control Officer to administer the provision of this Chapter. The City Manager shall designate a special officer to be known and designated as the Animal Control Officer, whose duty it shall be to carry out the terms of this Chapter and who shall further be designated as the local health authority for purposes of Subchapter 3.500, Rabies Control, and the Rabies Control Act of 1981, Tex. Rev. Civ. Stat. Ann. Art. 4477-6a, Section 3.02. Other duties of the Animal Control Officer consist of, but are not limited to, the following:~~

1. ~~Maintaining an Animal Disposition Log,~~
2. ~~Impounding all retrieved stray animals, sick or injured animals, at a designated holding facility at his discretion,~~
3. ~~Disposing of dead animals, after removing any identification tags, by placing the carcass in a plastic garbage bag and disposed of accordingly.~~
4. ~~Filing proper municipal court complaints when violations of City Ordinances are witnessed and appear as a witness if required.~~
5. ~~Scan nay animal impounded for a microchip~~

CHAPTER 3 ANIMAL CONTROL

The City Council shall create the position(s) of Animal Control Officer(s) to aide and protect the Citizens and the welfare of animals in Windcrest and uphold (in accordance with) the State of Texas Constitution Health and Safety Code, Title 10 and the terms of this City Chapter. The Officer(s) will have successfully completed certification (Animal Control Licensing) from the State of Texas within 6 months of accepting the position and will maintain his/her license in accordance with the continuing education requirements of such license.

Sec 3.402 DUTIES OF ANIMAL CONTROL OFFICER

The Animal Control Officer(s) will carry out his/her duties in accordance with the Texas Department of Health Services Animal Control Officer Basic Training Manual. Duties shall include but are not limited to:

1. Investigating all reports or incidents of animal cruelty.
2. Investigating all reports of biting incidents, animal to human and animal to animal, domestic or non-domestic
3. Removing dead animals from public or private property for the protection of public health and safety and after notifying owners when possible by the use of records, tags, reports and microchips, properly disposing of those dead animals.
4. Issuing violation notices (written warnings, tickets, or citations), filing of municipal court documents and making court appearances when necessary for violations of this City Chapter or the animal laws of the State of Texas.
5. Capturing lost or stray pets and identifying owners through the use of records, tags, reports and microchips. All animals captured should be transported to the City's Impoundment Facility as soon as capture is complete.
6. Impounding and caring for retrieved dogs at the City's Impoundment Facility and posting pictures and description at City Hall and on the website in accordance with the terms of this Chapter for those animals whose owners cannot be identified.
7. Posting pictures and descriptions at City Hall and the Website for owners seeking their lost pets.
8. Maintaining relationships with rescue, foster and adopting shelter organizations and then transporting pets when space is available after the holding period as described in this Chapter.
9. Requesting verification of City registration from owners of dogs/cats when he/she believes necessary and verifying City registration of captured dogs once owner is known.
10. Maintaining Animal Control Department records in accordance with the guidelines in State of Texas Officer Basic Training – Records Chapter; this would include all adoption, rescue, shelter, and euthanasia records.
11. Maintaining Animal Control equipment, reporting any failures ~~and/~~or acquiring replacements.
12. If Animal Control believes an animal, wild or domestic, is displaying symptoms of rabies, Animal Control will capture the animal and take it to a veterinarian for evaluation. If the animal is wild and the veterinarian believes it is rabies, the animal will be humanely euthanized and the head prepared for delivery to a state

lab for rabies testing and subsequent reporting. In the case of domestic dog or cat this will only be done after exhausting all resources to identify and notify the owner of the animal. Pictures of the animal will be posted and the animal held for the required 5 days in quarantine whenever medically possible for the humane care of the animal.

13. Overseeing the community cat program (TNR) and caregivers in the City.
14. Communicating Animal Control issues and animal education material to the Citizens of Windcrest.
15. Maintaining the Animal Control Department website.

Sec. 3.403 VERIFICATION OF LICENSE CERTIFICATE AND TAG

For the purpose of discharging the duties imposed by this Chapter and to enforce its provisions, the Animal Control Officer ~~or his authorized representative~~ is hereby empowered to request from the owner or the person having in his possession any dog or cat, such dog's or cat's current license certificate ~~and/~~or ~~metallic~~ tag issued pursuant to Section 3.104 ~~of this Chapter~~,. ~~and the~~ Upon presentation of warning, the owner of the animal has ten (10) business days to present a copy of certificate or tag to the City.
The failure of such owner or person having in his possession any dog or cat to exhibit, upon request, such license certificate ~~and/~~or ~~metallic~~ tag, shall constitute an offense under this Chapter.

Sec. 3.404 INTERFERENCE WITH DISCHARGE OF ~~WARDEN~~ DUTIES

It shall be unlawful for any person to interfere with, hinder or ~~molest~~ harass the Animal Control Officer ~~or his assistants~~ in the execution or performance of his duty under the provisions of this Chapter. (Ord. No. 91A, 4/12/76)

Sec. 3.405 ANIMAL CONTROL FEE AND CITATIONS FOR VIOLATIONS

For the purpose of enforcing this Chapter, the Animal Control Officer ~~or his authorized representative~~ shall ~~contact a City of Winderest Police Officer to~~ issue a written warning or citations ~~upon~~ to an owner, as defined in Section 3.101- ~~3~~ 16, whose ~~animal~~ is found to be in violation of any of the provisions of this Chapter and appear as a witness thereto in Court.

~~Sec. 3.406 PENALTIES~~

~~Any person violating any provision of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined. a minimum of one hundred dollars ($100.00) and not exceeding one thousand dollars ($1,000.00).~~

~~Subchapt. 3.500 RABIES CONTROL~~

~~Sec. 3.501 PURPOSE~~

~~The purpose of this Subchapter is to establish a minimum program to control and eradicate rabies in the City of Winderest. This program shall be administered by the City Council in conjunction with the Animal Control Officer and with the cooperation of the Texas Board of Health, pursuant to the Rabies Control Act of 1981, Tex. Rev. Civ. Stat. Ann. Art. 4477-6a, as it presently exists and is hereafter amended.~~

~~Sec. 3.502 DUTY OF PERSONS HAVING KNOWLEDGE~~

~~Whenever an animal is infected with rabies or suspected of being infected with rabies or has been bitten by an animal known or suspected of being infected with rabies, the owner of the animal or any person having knowledge thereof, shall immediately inform the Animal Control Officer where the animal may be found. (Ord. No. 91A, 4/12/76)~~

~~Sec. 3.503 DUTY OF VETERINARIAN~~

~~It shall be the duty of all veterinarians to report in writing all clinical or suspected cases of rabies under their care, to the Animal Control Officer within twenty-four (24) hours after the animal is admitted to a hospital or visited, giving:~~

1. ~~Location of the veterinary hospital,~~
2. ~~Name and address of the owner,~~
3. ~~Location of the patient,~~
4. ~~Names and addresses of persons bitten, and~~
5. ~~A negative statement if no persons were bitten.~~

~~Sec. 3.504 DUTY OF ANIMAL OWNER~~

~~The Animal Control Officer shall serve notice in writing upon an owner of an animal known to have been bitten by an animal known or suspected of being infected with rabies, requiring such owner to have the animal examined and treated at the designated veterinary hospital/quarantine facility within twenty four (24) hours or have such animal put to death under the supervision of the City Animal Warden.~~

~~Sec. 3.505 RABIES NOTICE~~

~~Whenever an animal is exhibiting any symptoms of rabies or has been bitten by an animal suspected of having rabies, such animal shall be held under observation at the owner's expense for a period of ten (10) days from date of bite in the City's designated veterinary hospital/quarantine facility operated by a licensed veterinarian. No such animal shall be released from observation until a licensed veterinarian certifies that such animal shows no clinical signs of rabies. The owner shall notify the Animal Control Officer of the fact that his animal has been exposed to rabies and, at his discretion; the Animal Control Officer is empowered to have such animal impounded at the designated~~

~~veterinary hospital/quarantine facility. Every owner or other person upon ascertaining an animal is rabid shall immediately notify the Animal Control Officer who shall remove the animal to the designated veterinary hospital/quarantine facility if possible and, if not, to summarily destroy it. (Ord. No. 91, 224, 2/8/71, 12/11/89)~~

~~Sec. 3.506 ANIMALS WHICH DIE OF RABIES~~

~~The heads of animals that have died of rabies or suspected of having died of rabies shall be turned over to a licensed veterinarian for dispatch to the nearest Texas Department of Health laboratory for testing. In all such cases of delivery to a licensed veterinarian, the Animal Control Officer shall be notified and provided a written result of the diagnosis. It shall be the responsibility of the owner of the animal to provide such notification and result of the diagnosis. If there is any expense for the service of dispatch or diagnosis, it shall be the obligation of the owner of the subject animal.~~

~~Sec. 3.507 MUZZLING~~

~~Whenever it becomes necessary to safeguard the public from the dangers of hydrophobia (rabies), the Mayor, if he deems it necessary, shall issue a proclamation ordering every person owning or keeping a dog and/or cat to confine it securely on his premises. unless such dog and/or cat has a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog and/or cat running at large during the time of the proclamation shall be seized and impounded. Dogs and/or cats impounded during the period of such proclamation shall, if claimed within ten (10) days, be released to the owner, unless under quarantine, upon payment of the impounding charges provided for in Section 3.106. If unclaimed after that period, such dog/cat may be summarily destroyed.~~

~~Sec. 3.508 PROCEDURE FOR RABIES BITES~~

~~Whenever any animal susceptible to having rabies bites a person or another animal, the owner of the biting animal or the person observing the incident shall immediately report the incident to the Police Department. The Police Department shall forward all such reports to the Animal Control Officer for follow up. The animal making the attack shall be quarantined at the City's designated veterinary hospital/quarantine facility operated by a licensed veterinarian or the owner's veterinarian for at least ten (10) days from the date of the bite, exclusive of the date of the bite. In the event that the date for release of theanimal is a national holiday or Saturday or Sunday, then the animal will be held until the next normal business day.~~

1. ~~The violation of observation confinement of the biting animal shall be just cause for seizure and confinement of the animal in the City's designated veterinary hospital/quarantine facility at the owner's expense.~~
2. ~~No biting animal shall be released from observation unless a licensed veterinarian certifies in writing to the Animal Control Officer that such animal is not showing any symptoms of rabies.~~
3. ~~Whenever any animal susceptible to having rabies bites a person and the owner or person in control of such animal is unknown, or where the owner or person in control of such animal is known and fails, neglects or refuses to deliver such animal to the City's designated veterinary hospital/quarantine facility as provided by Section 3.504, and such fact is made known to the Judge of the Municipal Court upon Affidavit of a credible person, it shall be the duty of such Judge to~~

4. ~~issue a Written Order directed to the Animal Control Officer ordering him to seize such animal and deliver it to the City's designated veterinary hospital/quarantine facility instantly.~~
5. ~~Any person who resists or interferes with the officer in the enforcement of such order may be proceeded against under Section 38.03 of the Penal Code of the~~

6. ~~State of Texas or by contempt proceedings in Municipal Court or both.~~
7. ~~The owner of any animal confined in the City's designated veterinary hospital/quarantine facility under the provisions of this Section shall pay board for such animal at the usual and customary rate per day as set by the designated veterinary hospital/quarantine facility.~~

Subchapter 3.500 REPORTING OF ANIMAL BITES AND QUARANTINE PROCEDURES

Sec 3.501 REPORTING OF ANIMAL BITES

It is the responsibility of any citizen with direct knowledge of an animal bite to immediately report the incident to Police Dispatch Office. This duty to report includes biting incidents of domestic animal to human or animal, wild animal to human or domestic animal; whether the citizen is the owner of the animal, the victim or a witness of the biting incident. The report should include the date, time, place of the incident, a detailed description of the offending animal(s), the animal's owner, if known, the victim's name, if known and the reporting citizen's information. If the victim (animal or human) is bitten or skin is scratched open by the teeth of a wild or stray animal it is their responsibility and duty to immediately seek medical care. Please note, in order to test an animal for rabies, the animal must be killed, decapitated, and the head sent to the State laboratory for testing. Whenever possible, our city will quarantine in lieu of killing and testing.

Sec 3.502 INVESTIGATIONS OF BITE INCIDENTS

In accordance with the Texas Health and Safety Code, Chapter 826 Rabies Control Act 1981 and subsequent revisions, it is the duty of the Animal Control Officer, who is also the Local Rabies Control Officer, to investigate all animal bite occurrences within our city. Information regarding the animal's description; current rabies vaccination date; owner's name, address and telephone number; the name of the animal; the address and telephone number of person bitten; and location of wound, shall be recorded. Victim, owner and/or witnesses to the event shall be interviewed. Exact identification of the offending animal is imperative. Observation, quarantine or testing of the wrong animal is useless to the victim and the efforts of rabies control.

Whether the bitten victim is an animal or a person, the Animal Control Officer will obtain copies of current rabies vaccination from the offending animal's owner and provide a copy to the victim. The Animal Control Officer will keep the bite victim informed as to the health of the offending animal during the quarantine period or the results of laboratory testing.

Sec 3.503 DOMESTIC ANIMAL QUARANTINE

A. Owned Animals

1. It shall be the duty and responsibility of the owner of the animal that has bitten or that has been bitten to have such animal impounded at a veterinarian hospital or relinquish the animal to animal control for impoundment for a period of 10 days. If, however, the owner can evidence that such animal has been inoculated against rabies within the time prescribed by law prior to the biting, such animal shall be confined on the premises of its owner and in a manner which shall prohibit such animal from biting any other animal or person for a period of ten days.
2. It further shall be the duty and responsibility of the owner to have such animal examined by a licensed veterinarian on the first and tenth day of impoundment or confinement or as soon thereafter as possible; provided, that the impoundment or confinement of the animal described above shall not be terminated until examination by a veterinarian. All charges for impoundment and veterinary exams shall be at the expense of the owner. Prior to release from quarantine, the owner shall furnish evidence of these exams to Animal Control for the file.
   It shall be unlawful for the owner of any animal, when notified that the animal has bitten any person to sell, euthanize, inoculate, or give away the animal or to permit or allow the animal to be taken out of the County area.

B. Stray Animals

If the bite is caused by a stray domestic animal, Animal Control shall impound and hold in quarantine for a period of 10 days from the date of the bite or the date of capture for the purpose of rabies observation.

Sec 3.504 EXCEPTIONS TO DOMESTIC ANIMAL QUARANTINE

The offending animal will be euthanized after notice to owner and sent for pathological testing if:

A. the animal previously determined to be vicious bites again and does not have proof of current rabies vaccination, the Animal Control Officer after notice to the owner shall obtain an order from the court and have the animal humanely destroyed and tested by a state laboratory for rabies.
B. the animal attack has caused death of a human not on premises of owner or
C. the animal is showing clinical signs of rabies as determined by the owner's (if the owner chooses) or city's veterinarian.

Sec 3.505 DISPOSITIONS OF WILD ANIMALS WHICH HAVE BITTEN

Any wild animal that bites any person or directly exposes any person to its saliva that can be positively identified as the offending animal shall be humanely killed in accordance with Texas Health & Safety Code, Chapter 821 and submitted to the State diagnostic laboratory for rabies testing by Animal Control. Killing and subsequent testing of the wrong animal is useless and dangerous to the treatment of the victim. If during the incident the victim traps or kills the animal, it shall be immediately surrendered to Animal Control for preparation and testing by calling Police Communication Office.

Sec. 3.506 ANIMALS WHICH DIE OF RABIES

The animals that have died of rabies or suspected of having died of rabies shall be turned over to Animal Control or a licensed veterinarian for dispatch to the nearest State diagnostic laboratory for testing.

Sec 3.507 MUZZLING

Due to the risk of hyperthermia, it shall be unlawful to muzzle an animal without constant supervision if temperatures are predicted to exceed 75 degrees. Any muzzle used shall, by its design, allow the animal to open its mouth, pant, drink water, not interfere with its vision and not cause injury to the animal. Muzzling of any snub-nosed animal is discouraged. A Gentle Leader or Halti is not considered a muzzle.

Subchapt. 3.600 ANIMAL WASTE DISPOSAL

~~Sec. 3.601 DEFINITIONS~~

1. ~~OWNER, as used in this Subchapter shall mean either:~~

   ~~A. The owner of any animal including, but not limited to a dog or cat, which is located within the corporate limits of the City of Winderest, or~~

   ~~B. Any other person, firm, association, or corporation which has within his, her, or its control, either temporarily or permanently, any animal, including, but not limited to, a dog or cat, which is located within the corporate limits of the City of Winderest.~~

   ~~C.~~ 2. ~~ANIMAL WASTE, as used in this Subchapter, shall be intended to mean the excrement or feces of any animal.~~

~~**Sec. 3.602 WASTE DISPOSAL**~~

1. It shall be unlawful for the owner of any animal to allow his animal's waste to be deposited and remain upon any private property, public street, roadway, sidewalk, easement, alleyway, recreational area, or drainage ditch within the corporate limits of the City.
2. It shall not be a defense to a violation of Section ~~3.602~~ 3.600 that the owner had no knowledge of the commission of the violation.

Subchapter 3.700 COMMUNITY CAT TRAP-NEUTER-RETURN PROGRAM

In order to effectively and humanely control ~~feral~~ community cat populations within its jurisdictional boundaries, the city shall sponsor a Trap-Neuter-Return Program. ~~in an effort to reduce the feral cat population over time without the necessity of wholesale capture and euthanization. The city may establish a fund or provide services to off set the costs or trapping, neutering, and vaccinating captured feral cats that can be returned to a appropriate, controlled, protected, and authorized colony site,~~ Registered Caregivers for colonies, whether one (1) or several ~~feral~~ community cats, may be aided by the city in providing traps, and transportation to spay/neuter facility. ~~and off-setting costs, to the extent the funding is available~~ Left Ear tipping shall be used on ~~feral~~ these cats in order to be identified as spayed or neutered and a vaccinated member of a managed colony. A photographic record adequate to identify the cat shall be obtained for all cats. This is part of the City Trap-Neuter-Return Program and maintained by the Registered Caregiver.

Sec 3.701 REGISTERED CAREGIVERS

~~Caregivers of feral cat colonies shall be registered with the city, and shall implement proper management and sterilization practices, and seek the assistance of the Animal Control Officer in order to:~~

1. ~~Sterilize (spay/neuter) all adult cats that can be captured.~~
2. ~~Vaccinate, as required by law, all cats that can be captured against rabies with a three (3) year vaccine and against any other infectious disease as may be mandated by law.~~
3. ~~Make every attempt to remove kittens for the colony before eight (8) weeks of age for domestication and placement.~~
4. ~~Make every attempt to remove sick or injured cats from the colony for immediate veterinarian care of humane euthanasia.~~
5. ~~Assure responsibility and arrangement for feeding the cat colony regularly throughout the year. Feeding of feral colonies by a caregiver shall not constitute a violation of this chapter.~~

Registered Caregivers shall attend one of the San Antonio Feral Cat Coalition workshops, and shall provide information about the colony to the Animal Control Officer. Caregivers of a community cat or community cat colony shall be exempt under the provisions of License Requirements and Animal Identification requirements by furnishing the Animal Control with a signed statement agreeing to the following conditions:

1. Regularly feed the community cat colony including weekends and holidays insuring sanitary conditions at all times. Colonies shall be fed using bowls, plates, pans or a similar utensil to contain the food; food shall not be poured on the ground for the purpose of providing food. Food shall not be left out during hours of darkness to avoid attracting wildlife or vermin.
2. Regularly and frequently trap the community cats over the age of twelve (12) weeks for purposes of sterilization.
3. Identify all community cats by tipping their left ears when under anesthesia for sterilization.
4. All community cats must be vaccinated for rabies with a 3 year vaccine.
5. All community cats with illness and/or injury that cannot be provided with treatment shall be humanely euthanized by a veterinarian to prevent pain and suffering.
6. Caregivers are not permitted to release community cats onto private or public property without the permission of property owner.
7. Any caregiver determined to be in violation of Section 9(C) shall be issued a written warning and be permitted up to and including thirty (30) days compliance. Failure to comply may result in the issuance of a citation.

Sec 3.702 ANIMAL CONTROL OFFICER

The Animal Control Officer shall maintain all records relating to authorized managed community colonies in the City Trap-Neuter-Return program~~. to include list of authorized care givers, sterilization, vaccination, ear tipping, and medical care records~~.

Other duties shall include:

1. ~~Authorization of~~ Monitor the managed ~~feral~~ community cat colonies in the City Trap-Neuter-Return program, maintaining records of Registered Caregivers and determining the need of additional Caregivers.
2. Help to resolve complaints over the conduct of a colony ~~caregiver or of cats with a managed colony.~~
3. Maintain records and prepare ~~monthly~~ quarterly reports on the following:
   a. Number and location of managed colonies in the City;
   b. Total number of cats in colonies;
   c. Number of cats and kittens spayed and neutered pursuant to the Trap-Neuter-Return program; and
   d. Number of cats and kittens placed in permanent homes.

~~Other Trap Neuter Release (TNR) providers must register with the City Manager or the Animal Control Officer prior to setting up traps or providing any other service to any citizens of the City of Winderest, Texas~~. After receiving the permission of the Community Cat Caregiver or a resident, the Animal Control Officer may set up traps in the Caregiver's yard to assist in trapping.

Sec. 3.702 3 ENFORCEMENT

The city shall retain the following rights:

1. The right to seize or remove cats from a colony that have not been vaccinated against rabies and which are demonstrating signs of the disease;
2. The right to seize/remove a cat from a colony that is creating a nuisance after the caregiver has been afforded thirty (30) days to remove and relocate the cat and has failed to do so; and
3. The right to seize and remove a colony of cats when a caretaker ~~and/~~or Animal Control Officer are unable to provide care and management of the colony and have not been able to obtain a replacement or substitute caregiver.
4. When the number of cats trapped and sterilized by the City exceeds 400 in a year, the City will reevaluate this program.

Subchapt 3.800 PENALTIES

~~Any owner who shall violate any provision of this Subchapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in accordance with Section 1.301 of this Code.~~

Sec 3.801 UNLAWFUL ACTS; CRIMINAL PENALTIES; CIVIL REMEDIES

1. Unless otherwise specifically provided for in this chapter, if it is found that a person intentionally, knowingly or recklessly violated any provision of this chapter, then upon conviction a person shall be fined from $1 to $2000 for each day such violation occurs.
2. Nothing in this section shall limit the remedies available to the City in seeking to enforce the provisions of this chapter.
3. Where it is deemed necessary by the City Manager or City Council, the City Attorney's office is hereby empowered to secure injunctive relief to enforce the provisions of this chapter. This shall be in addition to, and not in lieu of, the criminal penalties provided for in this chapter.

Sect 3.802 ANIMAL NUISANCE: PRESUMPTIONS

1. An animal owner commits an offense if by act, omission or possession he creates an animal nuisance.
2. The following presumptions are hereby declared applicable in the prosecution of animal nuisance offense pursuant to this subsection:

Any dog can be deemed to be a nuisance under the provisions of this section by:

A. The filing of a noise complaint by three (3) or more neighbors, within a twelve (12) month period, if the dog barks or whines in such a manner, with such intensity, or with such continued duration so as to annoy, distress or disturb the quiet, comfort or repose of persons of normal nervous sensibilities. For the purpose of this presumption, each neighbor must occupy a different residence.

B. The fact that an animal in question has bitten or injured another animal or human being without provocation during the previous eighteen (18) months shall give rise to the presumption that the animal bites or injures other animals or human beings without provocation.

C. The fact that an animal in question has permanently damaged or destroyed public or private property (not to include plants, mulch, grass, or perishable items) during the last twelve (12) months shall give rise to the presumption that the animal has a propensity to destroy property.

D Any cat can be deemed to be a nuisance under the provisions of this section by the filing of a trespass complaint by three or more neighbors within a twelve month period. For the purpose of this presumption, each neighbor must occupy a different residence. Any person filing a trespass complaint must have an accompanying photograph of the cat trespassing in their yard. The owner of said cat may be issued a citation.

These are some of the sources that were used to amend our animal control code.

Texas Department of State Health Services Animal Control Officer Training Manual

The Animal Control Officer (ACO) Training Manual is a study reference prepared by the Texas Department of State Health Services' Zoonosis Control Branch (ZCB). The online manual contains chapters covered in the ZCB's Basic ACO Training course, including such topics as animal identification, capture and restraint, transportation, impoundment, and disposition, plus health, safety, sanitation, records, controlled substances, animal cruelty, investigations, and communication skills. There are copies of the full set of laws pertinent to animal control. Additionally, the manual is an excellent reference tool for animal control agencies. The manual is available at this website at no charge or can be ordered from the ZCB Regional Office for your area at a cost of $40.00. Please note that the manual is copyrighted and cannot be reproduced by any means without permission from the Department of State Health Services.
http://www.dshs.state.tx.us/idcu/health/zoonosis/education/training/aco/manual/information/basChapters.asp

Link to the State of Texas Statutes for Health and Safety Codes *affecting animals and animal control* *http://www.statutes.legis.state.tx.us/*

DEA laws if there is possession and use of controlled chemicals (euthanisia and tranquilizers) by personnel
http://www.deadiversion.usdoj.gov/21cfr/21usc/index.html

State of Texas Rabies Statistics by year, by county, by species for past 13 years *showing infrequency and/or nonexistence of rabies by species for all of Bexar County*
http://www.dshs.state.tx.us/idcu/disease/rabies/cases/statistics/

ORDINANCE NO. 2012-658 (O)

AUTHORIZING THE APPOINTMENT OF AN ANIMAL ADVISORY COMMITTEE

WHEREAS, the City Council has determined that an Animal Control Advisory Committee would be beneficial to the community to study animal issues, make recommendations to the City Council on animal issues and to serve as a shelter advisory committee if necessary,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST THAT an Animal Control Advisory Committee to study animal issues, make recommendations to the City Council on animal issues and to serve as a shelter advisory committee if necessary is hereby authorized with the five (5) members to be appointed by the City Council.

This ordinance shall take effect upon its final adoption.

PASSED and ADOPTED this the _____ day of January, 2011.

_____
Alan Baxter, Mayor

ATTEST:

_____
Heather Weidenbach, City Secretary

APPROVED AS TO FORM:

_____
Michael S. Brenan, City Attorney

RESOLUTION NUMBER 2012-362 (R)

A RESOLUTION FOR THE COUNCIL ACTION TO ACCEPT THE ENGAGEMENT LETTER FOR THE FISCAL YEAR 2010-11 AUDIT.

WHEREAS, the City of Windcrest accepted the engagement letter associated with the annual of the Fiscal Year 2010-11 Audit; and

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

1. The Fiscal Year Audit 2010-11 will be performed by Garza/Gonzalez & Associates, with a not to exceed cost of $26,500.

DULY PASSED AND APPROVED, on the ____ day of January 2012 at a regular 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 Baxter, Mayor

ATTEST:

_____
Heather Weidenbach, City Secretary

Garza/Gonzalez & Associates
CERTIFIED PUBLIC ACCOUNTANTS

September 27, 2011

Mr. Rafael Castillo
City Manager
City of Windcrest
8601 Midcrown
Windcrest, Texas 78239

Dear Mr. Castillo:

We are pleased to confirm our understanding of the services we are to provide City of Windcrest for the year ending September 30, 2011. We will audit the basic financial statements of City of Windcrest and the Windcrest Economic Development Corporation, a discretely presented component unit as of and for the year ending September 30, 2011. We will assist the City in the preparation of the Annual Financial Report. Based on the audit request for proposal, we plan to present the final Annual Financial Report to the Mayor and City Council members at the March 5, 2012 meeting. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany City of Windcrest's basic financial statements. As part of our engagement, we will apply certain limited procedures to City of Windcrest's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management Discussion and Analysis.
2. Schedule of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual.
3. Schedule of Funding Progress Texas Municipal Retirement System.

Supplemental Information other than RSI also accompanies the City of Windcrest's Financial Statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

1. Non-Major Governmental Fund Statements.
2. Fund Statements.
3. Budget Schedules.

207 Arden Grove
San Antonio, TX 78215
210/227-1389
Fax 227-0716

The Statistical Section will accompany the basic financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements. Our auditor's report will disclaim an opinion.

Audit Objectives

The objective of our audit is the expression of an opinion as to whether your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principle and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the financial statements taken as a whole.

Our audit will be conducted in accordance with generally accepted auditing standards in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. If our opinion on the financial statements is other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement. We will bill you for services we have performed through the date that we determine that we are unable to complete the audit.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You are also responsible for making all management decisions and performing all management functions; for designating an individual with suitable skill, knowledge, or experience to oversee our assistance with the preparation of your financial statements and related notes and any other nonattest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Windcrest and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Windcrest's compliance with applicable laws and regulations and the provisions of contracts and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Audit Administration, Fees, and Other

We understand that your employees will assist us during the audit too include locating any invoices selected by us for testing.

The workpapers for this engagement are the property of Garza/Gonzalez & Associates and constitute confidential information. However, we may be requested to make certain workpapers available to another government agency pursuant to authority given to it by law or regulation. If requested, access to such workpapers will be provided under the supervision of our personnel. Furthermore, upon request, we may provide photocopies of selected workpapers to the government agency. The government agency may intend, or decide, to distribute the photocopies or information contained therein to others, including other governmental agencies.

The workpapers for this engagement will be retained for a minimum of five years after the date the auditors' report is issued.

We expect to begin our audit during December 2011 and we expect to issue a draft report to management by the end of January 2012. The audit report will be presented to City Council on or about March 2012. Eli Mendoza, CPA is the engagement partner and is responsible for supervising the engagement and signing the report.

Our fee for these services will not exceed $21,800 for investing 248 hours for the City audit and no more than $4,700 for investing no more than 52 hour for the Windcrest Economic Development Corporation. The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Additional services the City may require such as: single audit, and/or other services will be billed as follows:

Position	Hourly Rate
Partner	$120
Manager	95
Senior	90
Junior	85

Our fee for the services described in this letter will be rendered for payment on a monthly basis, so that you may readily relate our charges to the actual work performed.

A copy of our most recent quality control review report was included in our proposal.

We appreciate the opportunity to be of service to City of Windcrest, and its Economic Development Corporation and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

René E. Gonzalez, CPA
Senior Partner

REG:myh

RESPONSE:

This letter correctly sets forth the understanding of City of Windcrest.

By: _____

Title: _____

Date: _____

cc: Ms. Sarah Mangham
Municipal Finance Officer

Mr. Alan Baxter
Mayor

BUMGARDNER, MORRISON & COMPANY, L.L.P.

BMC

CERTIFIED PUBLIC ACCOUNTANTS

JOSEPH B. BUMGARDNER, CPA
(1911-2002)
JACK R. MORRISON, SR., CPA
(1922-1997)

MEMBERS:
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
TEXAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS
AICPA PRIVATE COMPANIES PRACTICE SECTION
AICPA TAX DIVISION

JACK R. MORRISON, JR., CPA
CHRISTOPHER E. KREJCI, CPA
JEROME G. KOTZUR, CPA
G. DENNIS SHAT, CPA, CFP®
PAULA G. LESKE, CPA
MICHAEL E. WENSKE, CPA

JACK C. FITZGERALD, CPA

September 30, 2009

System Review Report

To the Partners of Garza/Gonzalez & Associates
and the Peer Review Committee of the
Texas Society of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Garza/Gonzalez & Associates (the firm) in effect for the year ended May 31, 2009. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards;* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Garza/Gonzalez & Associates in effect for the year ended May 31, 2009, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass, pass with deficiency (ies)* or *fail.* Garza/Gonzalez & Associates has received a peer review rating of *pass.*

Bumgardner, Morrison + Company, LLP

1501 E. MOCKINGBIRD, SUITE 300 P.O. BOX 3750 VICTORIA, TEXAS 77903-3750 (361) 575-0271 FAX (361) 578-0880

tyler technologies

Proposal - Municipal Court Online

Local Government Division

Presented to:

Kelly Rodriguez
Court Clerk
City of Windcrest
8601 Midcrown Dr.
Windcrest, TX 78239-2516
(210) 655-0022
krodriguez@windcrest-tx.gov

Proposal date:

November 4, 2011

Submitted by:

Robin Reeves
(800) 646-2633
robin.reeves@tylertech.com

Tyler Technologies
Local Government Division
5519 53rd Street
Lubbock, Texas 79414

Investment Summary

Kelly Rodriguez
City of Windcrest
November 4, 2011

Cost Breakdown

Proposal Valid for 120 days

Tyler On-Demand	Cost	Annual Fees
Hosted Applications	3,200	2,400
	3,200	**2,400**

Hosted Applications

Kelly Rodriguez
City of Windcrest
November 4, 2011

Service	QTY	Charges		Initial Year	Annual Fee
Citizen Portal					
One Time Setup Fee - Hardware Configuration - DNS registration	1	800		800	
Monthly fee to support and host Web site		100	/month	1,200	1,200
INCODE Court Online Component					
Monthly support/maintenance fee - Display of citation/citations for payment - Collects plea from defendant - Security – SSL (Secure Socket Layer) - Payment Processing - Credit Card • Payment packet is created to be imported to Court System *NOTE: Defendant pays $1.50 fee per transaction for payment on-line.*		100	/month	1,200	1,200
Hosted Applications Total				3,200	2,400

tyler technologies

CLIENT COPY

Systems Agreement

Local Government Division

Agreement between:

Tyler Technologies, Inc
5519 53rd Street
Lubbock, Texas 79414
(800) 646-2633
(806) 797-4849 Fax

And

City of Windcrest, TX
8601 Midcrown Drive
Windcrest, TX 78239-2516
(210) 655-0022

Issued date: November 18, 2011

tyler

AGREEMENT

This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY, located at 5519 53rd Street, Lubbock, Texas 79414; and; City of Windcrest, TX, hereinafter referred to as CLIENT on, _____, 2011.

COMPANY and CLIENT agree as follows:

1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement.

2. This Agreement consists of this Cover and the following Attachments and Exhibits:
   - Section A — Investment Summary (A-D)
   - Section B — COMPANY Agreement Terms and Conditions

3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: City of Windcrest, TX

By: _____
Signature

_____
Printed Name

_____
Title

_____
Date

_____
Sales Tax Certificate Number

Tyler Technologies, Inc.:

By: _____
Signature

S. Brett Cate
Printed Name

President, Local Government Division
Title

11/18/11
Issue Date

Investment Summary

Kelly Rodriguez
City of Windcrest, TX

Prepared for:	City of Windcrest, TX	**Contract ID # :**	2011-0223
Contact Person:	Kelly Rodriguez	**Issue Date:**	11/18/11
Address:	8601 Midcrown Drive Windcrest, TX 78239-2516	**Salesman:**	R. Reeves
Phone:	(210) 655-0022		
Fax:	(210) 655-8776	**Tax Exempt:**	*Yes / No*
Email:	krodriguez@windcrest-tx.gov		

Total Monthly Services *Internet Services and Products* ***Please note this is not an Annual agreement, the fees listed herein are monthly fees*		800	200

Hosted Applications

Kelly Rodriguez
City of Windcrest, TX
November 18, 2011

Service	QTY	Charges		Initial Year	Annual Fee
Citizen Portal					
One Time Setup Fee - Hardware Configuration - DNS registration	1	800		800	
Monthly fee to support and host Web site		100	/month	1,200	1,200
INCODE Court Online Component					
Monthly support/maintenance fee - Display of citation/citations for payment - Collects plea from defendant - Security – SSL (Secure Socket Layer) - Payment Processing - Credit Card • Payment packet is created to be imported to Court System *NOTE: Defendant pays $1.50 fee per transaction for payment on-line.*		100	/month	1,200	1,200
Hosted Applications Total				3,200	2,400

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

THIS AGREEMENT is effective as of the date of acceptance set forth at the end hereof, and is by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY and the party signing this agreement as the "SUBSCRIBER".

DEFINITIONS

COMPANY Web Services COMPANY Web Services are designed to enable SUBSCRIBER to easily establish a presence on the Internet. COMPANY Web Hosting and Design is composed of the COMPANY Web Hosting and Design Publishing Component and other miscellaneous components. These components may be used independently or in conjunction with each other.

COMPANY Court On-Line The COMPANY Court On-Line Component provides the ability for municipal court fines to be paid by credit card via the Internet. Since it was designed by COMPANY, this system interfaces seamlessly with COMPANY's InCourt Municipal Court System.

AGREEMENTS

1) TERM. SUBSCRIBER must return an executed copy of this Agreement to COMPANY within 90 days from the issue date. Thereafter, the Agreement will be voided and is subject to change. Subject to the limitations of this Section 1, and unless otherwise provided for in this Agreement, the term of this Agreement shall commence as of the effective date and shall continue for three (3) years. The term shall thereafter be automatically extended in separate consecutive periods of twelve (12) months duration unless either party gives written notice to terminate. Notice to terminate must provide at least sixty (60) days notice of said intent. In the event that the SUBSCRIBER fails to pay any amount payable to COMPANY hereunder, when due, or fails to comply with any other provision of this Agreement, COMPANY may terminate the SUBSCRIBER's rights by written notice to that effect to the SUBSCRIBER. COMPANY may, by written notice to the SUBSCRIBER, terminate its obligations under this Agreement in the event that COMPANY, for whatever reason, ceases to host SUBSCRIBER's Web Site. A termination of the SUBSCRIBER's rights under this Agreement shall not terminate any of the parties' rights under this Agreement to receive or hold amounts rightfully owing to the respective party pursuant to the terms of this agreement or to enforce the intellectual and proprietary rights in the COMPANY concept, web site, software, and technology. Upon termination or non-renewal of this agreement, the parties shall each promptly account for all due but unpaid amounts hereunder. If SUBSCRIBER wishes to terminate before the stated term expires, SUBSCRIBER must give sixty (60) days written notice in order not to incur termination costs of $600.00. Please also see section entitled **"TERMINATION"** in this Agreement.

2) NATURE OF WEB SITE. COMPANY shall maintain a web site accessable over the Internet, for SUBSCRIBER. This web site shall contain both static information pages, non-static interactive pages as well as payment function pages. The web site shall allow a citizen with Internet access to view relevant data provided by SUBSCRIBER. This data may include certain data elements from SUBSCRIBER's Tyler Software System. This web site shall be equipped to accept payment of amounts owed to SUBSCRIBER, via Secured Socket Layer (SSL) encryption and credit card or debit card charge.

3) DATA PROCUREMENT. COMPANY must host the components and services listed in the Investment Summary of this Agreement. The SUBSCRIBER will be required to setup a merchant account with Electronic Transaction System Corporation or authorized.net for the sole use of COMPANY Web Service transactions. The merchant account must be setup to fund to the SUBSCRIBER bank account. All fees for the merchant account will be paid by SUBSCRIBER.

SUBSCRIBER will be required to install and run Tyler Web Services in order for the COMPANY On-Line application to access and transfer the necessary data from the SUBSCRIBER's primary software system, to COMPANY's web server. The transfer will occur on a real time basis. Additionally, certain information, such as payment information, must be conveyed to SUBSCRIBER. COMPANY will assume responsibility for transferring such information back to SUBSCRIBER on a regular basis. Tyler Web Services requires a dedicated IP address. Assignment of dedicated IP address is the sole responsibility of SUBSCRIBER.

4) LICENSED SOFTWARE OWNERSHIP. SUBSCRIBER agrees that COMPANY possesses exclusive title to and ownership of the COMPANY Software.
   a. SUBSCRIBER agrees that SUBSCRIBER acquires neither ownership nor any other interest in the COMPANY Software, except for the right to use and possess the COMPANY Software in accordance with the terms and conditions of this Agreement.
   b. All rights not expressly granted to SUBSCRIBER in this Agreement are retained by COMPANY.
   c. SUBSCRIBER agrees that COMPANY Software including, but not limited to, systems designs, programs in source and/or object code format, applications, techniques, ideas, and/or know-how utilized and/or developed by COMPANY are and shall remain the exclusive property of COMPANY. SUBSCRIBER agrees that the COMPANY Software consists of COMPANY's trade secrets. COMPANY shall retain all copyrights in the COMPANY Software, whether published or unpublished.

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

d. COMPANY agrees that all data provided to COMPANY for the purposes of generating the web site shall remain the property of SUBSCRIBER. Should SUBSCRIBER terminate the Internet Services in good standing and in accordance with the termination provisions of this Agreement, COMPANY agrees to return to SUBSCRIBER, all graphics, text documents, and data files held by COMPANY.

5) **SUBSCRIBER MEMBERSHIP FEES.** For establishing new COMPANY Web Services, the SUBSCRIBER shall pay to COMPANY the amounts as stated in the Investment Summary.

6) **INSITE FEES.** COMPANY may increase the INSITE per-transaction fee for online payment no more than once per year with prior written notice.

7) **NOT ASSIGNABLE.** The rights of the SUBSCRIBER under this Agreement are not assignable without the prior written consent of COMPANY. Any attempt to sublicense, assign, encumber or transfer any of the rights, duties or obligations under this Agreement by the SUBSCRIBER is void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors.

8) **SOFTWARE MAINTENANCE.** This SUBSCRIPTION AGREEMENT includes unlimited telephone support, support by communication modem, and all software upgrades, enhancements and new releases. COMPANY reserves the right to change the functionality of future releases of its software and SUBSCRIBER understands that COMPANY is not obligated to include specific functionality in future releases unless provided for herein.

9) **PARTIAL INVALIDITY.** Should any provision or clause of this Agreement be held to be invalid, such invalidity shall not affect any other provision or clause hereof, which can be given effect without such invalid provision or clause.

10) **RESPONSIBILITY OF DATA.** COMPANY will assume responsibility for all data transfer, but not responsible for data accuracy.

11) **SITE REQUIREMENTS.**

a. SUBSCRIBER shall maintain a high speed internet connection (1.5mbps download AND 512kbps upload) with a static IP address and must be able to provide COMPANY with IP connection to SUBSCRIBER's network through Citrix GotoAssist, VPN, Citrix, or Microsoft Terminal Services. COMPANY shall use the connection to assist with problem diagnosis and resolution. COMPANY is not responsible for purchase of VPN client software license or configuration of SUBSCRIBER's firewall settings. No **wireless Internet connections allowed.**

b. COMPANY shall provide SUBSCRIBER with remote support through the use of secure connection over the Internet connection via Citrix GotoAssist. If SUBSCRIBER will not allow access through GotoAssist, COMPANY cannot guarantee support standards will be met.

12) **PROPRIETARY INFORMATION.**

a. Distribution of COMPANY Software. SUBSCRIBER may not sell, assign, transfer, disclose, or otherwise make available, either directly or indirectly, any object code, documentation or other material relating to the Software, in whole or in part, or any copy of the same in any form, to any other person or entity.

b. Software as Trade Secret. SUBSCRIBER shall maintain the confidentiality of the Software and unless specifically authorized by COMPANY or except for ordinary and necessary backup purposes, SUBSCRIBER may not make or have made any copies of the Software or any part thereof. SUBSCRIBER shall include COMPANY's proprietary notice or other legend on any copies made by SUBSCRIBER as permitted hereunder.

13) **WARRANTY, DISCLAIMER, LIMITATION ON LIABILITY.** COMPANY warrants that the Software will substantially conform to current specifications delivered by COMPANY to SUBSCRIBER pursuant to this Agreement, including COMPANY's response to the Request for Proposal for six (6) months following installation; provided, however, that COMPANY's warranty hereunder shall not cover or apply to any software or part thereof that is not developed or designed by COMPANY. In the event that the Software is found to be defective in such respect and SUBSCRIBER notifies COMPANY in writing within six (6) months after its receipt of the Software of any substantial non-conformity of the Software with such specifications, COMPANY's sole obligation under this warranty is to remedy such defect within a reasonable time. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS MADE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL IN NO EVENT BE LIABLE FOR DAMAGES THAT EXCEED THE AMOUNT OF THE CHARGES PAID BY SUBSCRIBER HEREUNDER FOR THE DEVELOPMENT AND LICENSE OF THE SOFTWARE. IN NO EVENT SHALL COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS, REVENUES OR DATA, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

14) **HOLD HARMLESS.** SUBSCRIBER agrees that it will hold COMPANY harmless against any claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of or relating to
   a. SUBSCRIBER's failure to implement any corrections, improvements and new releases relating to the Software, or any part thereof,
   b. SUBSCRIBER's unauthorized alterations to or use of the Software, or
   c. SUBSCRIBER's breach of any of its obligations to maintain the confidentiality of the Software or SUBSCRIBER's unauthorized copying thereof.

15) **TERMINATION.** This Agreement or any license referenced hereunder may be terminated by COMPANY upon written notice to SUBSCRIBER if SUBSCRIBER performs any breach of the terms of this Agreement. At the date of termination of this Agreement, SUBSCRIBER shall promptly return to COMPANY any Software, related documentation, materials and other property of COMPANY then in its possession, and any copies thereof wherever located. Notwithstanding the foregoing, all provisions hereof relating to confidentiality of the Software shall survive the termination of this Agreement.

16) **GENERAL.**
   a. This Agreement shall be governed by the laws of SUBSCRIBER's state of domicile and constitutes the entire Agreement between the parties hereto with respect to the Software described herein, and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to the matters set forth herein.
   b. All acceptances by COMPANY of purchase orders and all sales by COMPANY are expressly limited to and made on the basis of the terms and conditions set forth herein, notwithstanding receipt or acknowledgment of SUBSCRIBER's order forms or specifications containing additional or different provisions, or conflicting oral representations by an agent, representative or employee of COMPANY. Any such additional or different terms are hereby objected to. All acceptances by COMPANY are expressly conditional on SUBSCRIBER's assent to the additional or different terms and conditions set forth in this Agreement. If these terms and conditions are not acceptable, SUBSCRIBER should notify COMPANY at once.

October 18, 2010

City of Windcrest
8601 Midcrown
Windcrest, Texas 78239

Attn: City Council & Members

RE: City Street and Drainage Improvements

During the October 4, 2010 City Council Meeting, a list of street and drainage improvements and repairs were presented to Council for approval. We were asked to review the projects and priorities. The Public Works Director, Charles Lackey and myself revisited each area last week and I have comprised the following list for council's consideration and approval.

	Location	Description of Repairs	Estimated Cost
1	Throughout City Limits	Spot reconstruction with black base patching	$54,000.00
2	Alley off of Fenway and Sunhaven	Regrade and compact to drain to Fenway	$2,695.00
3	8706 to 8710 Spanish Moss	Re-grade, patch, replace curb and gutter	$31.250.00
4	437 Bronzeglo	Patch and level up	$4,050.00
5	605 Richfield to Richway	Patch and level up	$21,375.00
6	Crestway at Eaglecrest	Re-grade, patch and level up	$6,228.00
7	621 Mooreside	Patch and level up	$10,710.90
8	Park Crest	Install underground drainage system	$19,450.80
9	*Blue Grass Between Balfour and Fenwick	Install underground drainage system.	$89,514.00
10	Midcrown	Chip seal with new striping	$48,721.00
	Entire Project	Mobilization and bonding @ 6%	$8,985.58
		Subtotal:	**$158,745.28**
		Contingency @ 10%:	**$15,874.52**
		Professional Fees @ 10%:	**$15,874.52**
		Estimated Budget Cost:	**$190,464.32**

For the council's information, it is important to know that spot repair for ponding water is not always a reliable fix. Even though we have surveyed these areas and tried to cover as much as possible and allow the water to exit the streets, without total re-grading to a known drainage

DMc Don McCrary & Associates, Inc. Engineers and Surveyors

March 15, 2011

City of Windcrest
Rafael Castillo – City Manager
8601 Midcrown
Windcrest, Texas 78239

Re: **2010 Street and Drainage Repair Project Resolution Information**

Dear Mr. Castillo:

The resolution information you requested is as follows.

- In September of 2010, the Windcrest City Council asked us (Don McCrary & Associates, Inc., in capacity of city engineer) to provide them with a cost estimate to address a repair project for the city streets. This would take into consideration failed areas of the pavement and ponding water.

- In October we provided a prioritized list of 10 items to be a part of this project with an estimated budget of $366,021.82. The City Council approved the first 8 of these items with an allowable budget of $190,464.32 (see attached list).

- Plans and specifications were prepared by the City Engineer and the project advertised for bid on January 31st, 2011.

- On the morning of January 31st, 2011 at 10:30 A.M., in the City Council Chambers, we opened three sealed bids from prospective contractors. Ramming Paving was the low bidder coming in at 150,215.00 (within the allowable budget). This information was provided to the City Council at the February 2nd, 2011 council meeting (see attached) and the contract was awarded.

- The contract documents were completed by our office and notice of award was provided to the contractor. The contractor has completed his portion of the contract initiation along with the required project bonding and insurance.

- Upon the City of Windcrest signing of the contract, we can schedule a pre-construction meeting along with a construction start date and anticipated completion date.

If you should require any additional information or have any further questions, please contact me at your earliest convenience.

Sincerely,

James R. Bray
Vice-President

323 Breesport St. San Antonio, Texas 78216-2602 Phone (210) 349-2651 Fax (210) 349-2653

location, ponding can still occur. However, the underground drainage proposed at Bluegrass and Parkcrest should allow this area to drain sufficiently.

If you should have any questions or require any additional information, please feel free to contact me at your earliest convenience.

Sincerely,

James R. Bray
Vice-President

Weidenbach, Heather

From: Castillo, Rafael Jr
Sent: Thursday, December 15, 2011 10:25 AM
To: Weidenbach, Heather
Subject: Windsor Park Shopping Center "Road"

Respectfully,

Rafael Castillo Jr.

This e-mail and any files transmitted are confidential,and are inteneded solely for the use of the individual to whom this email is addressed.

Msg sent from iPhone, please disregard any misspelled words and grammar.

Begin forwarded message:

> **From:** "Dan Nixon" <dnixon@whitestonereit.com>
> **Date:** December 12, 2011 11:41:59 AM CST
> **To:** "Baxter, Alan" <ABaxter@windcrest-tx.gov>, "Castillo, Rafael Jr" <rcastillo@windcrest-tx.gov>
> **Cc:** "Jim Mastandrea" <jmastandrea@whitestonereit.com>, "John Dee" <jdee@whitestonereit.com>
>
> Dear Mayor Baxter and City Manager Castillo:
>
> Jim, John and I enjoyed speaking with you last Wednesday afternoon with regard to the Fourwinds Drive rededication to the City of Windcrest. Based on our discussion, it is our understanding that you will support and present to City Council on December 19th, the rededication of the remaining 28' portion of Fourwinds Drive to the City of Windcrest and the payment of $89,653 to Whitestone for the incremental cost to widen Fourwinds Drive from 24' to 28'. The rededication of Fourwinds Drive needs to be contingent upon the approval of certain tenants (University of Phoenix and Ross Dress For Less), whose leases contain a site plan exhibit of the shopping center and parking field (with a control area from the main entrance to the northern portion of the parking lot) showing Fourwinds Drive at 24' and more parking spaces than the proposed configuration will provide. Because increasing the width of the road changes the parking configuration within their control areas, they must approve this change. Therefore, we believe it prudent to request from Council the right to fund the $89,653 subject to those approvals.
>
> Please let me know if you have any questions or would like to discuss this further.

Best regards,

Daniel E. Nixon

Senior Vice President, Regional Director

WHITESTONE REIT

2600 S. Gessner Road, Suite 500

Houston, TX 77063

P 713 435 2237

F 713 465 8847

M 281 889 0197

E dnixon@whitestonereit.com

W http://www.whitestonereit.com

WHITESTONE REIT
Creating Communities in Our Properties™

December 1, 2011

Mayor Alan E. Baxter
City of Windcrest
8601 Midcrown
Windcrest, TX 78239

RE: Fourwinds Drive at Windsor Park Centre

Dear Mayor Baxter:

We will be resubmitting our construction drawings for the roadwork on Fourwinds Drive, between Windcrest Drive and Crestwind Drive, directly in front of the parking lot of our Windsor Park Centre. The construction drawings were updated for the comments our civil engineer CEI Engineering Associates, Inc. received from the City of Windcrest engineering firm Don McCrary & Associates, Inc. by letter dated October 31, 2011 from Edmund McNew to City Manager Rafael Castillo (*letter attached*).

The construction drawings as submitted show Fourwinds Drive being 24 feet wide upon completion. An alternative that Jim Mastandrea, Whitestone REIT Chairman & CEO, and I discussed with you and Rafael Castillo on October 26, 2011, and further discussed by our Dan Nixon, Regional Director – Sr. V-P, and Rafael Melara, Director of Whitestone's Hispanic Division, with Rafael Castillo on November 4, 2011, and then summarized in an e-mail from Dan Nixon to Rafael Castillo on November 8, 2011 (*e-mail attached*) would be to widen the Fourwinds Drive to 28 feet. The additional cost for widening the Fourwinds Drive from 24 feet as noted in Section 3 of the Windcrest Fourwinds Drive Agreement (*agreement attached*), to 28 feet and the addition of curbing at the end of each parking aisle requested by the City is $89,653, which would be the City's responsibility as it represents the incremental cost for the requested changes (*contractor's bid attached*). Whitestone REIT will be paying approximately $250,000 for the cost of its roadwork.

We understand that the City wants Fourwinds Drive to be 28 feet wide and for the road to be deeded back to the City after the completion of our work. We offered to deed back Fourwinds Drive to the City in exchange for certain items listed in Dan Nixon's November 8th e-mail. We have not had a response to our e-mail, and accordingly, we will resubmit our construction drawings for Fourwinds Drive to be 24 feet wide, rather than 28 feet wide until we have an agreement with the City. We have commitments to our tenants at Windsor Park Centre requiring us to complete the roadwork in early 2012. In fact, at this time, we had planned to be completed for the portion of Fourwinds Drive in front of the University of Phoenix so as to be done before the holiday shopping season began. We are hopeful to finalize a commitment from the City of Windcrest for the items listed in Dan Nixon's e-mail quickly.

We remain enthusiastic and excited about completing this portion of Windsor Park Centre's renovation and opening stores for new tenants, including Ross Dress For Less, Skechers, and Mattress Firm, and know you are as well as it will provide additional jobs and revenues for the City. We look forward to meeting and finalizing this with you soon.

Very truly yours,

John J. Dee
Chief Operating Office

Copy: Rafael Castillo, Jr., Windrest City Manager
Daniel E. Nixon, Jr., Whitestone REIT Senior VP – Regional Director
James C. Mastandrea, Whitestone REIT Chairman & CEO

DMc Don McCrary & Associates, Inc. Engineers and Surveyors

October 31, 2011

City of Windcrest
5601 Midcrown
Windcrest, TX 78239

Attn: Rafael Castillo – City Manager

Re: Windsor Park Center – Construction Plans (Approval Denied)

Dear Rafael:

Don McCrary & Associates, Inc. in its capacity as the City's engineer has completed its review of the construction plans for Windsor Park Center 8510 Fourwinds Drive. The plans, as submitted by CEI Engineering Associates, Inc. are not in substantial compliance with the City of Windcrest requirements. The following items must be revised and be resubmitted for further review.

1. Show underground utilities.
2. Acquire TXDOT permit for all work in TXDOT R.O.W. (IH 35 entrance at Windcrest Dr.)
3. Make all curb returns radii 25' minimum.
4. Identify apparent utility lines on site plans (dashed and shaded lines).
5. Provide calculations and details on the grate inlet and piping.

Please call should you have any questions.

Sincerely,

Edmond McNew
Vice-President

Cc: CEI Engineering Associates, Inc.

EM/ad

Job Number: 11001

323 Breesport St. San Antonio, Texas 78216-2602 Phone (210) 349-2651 Fax (210) 349-2653

From: Dan Nixon
Sent: Tuesday, November 08, 2011 2:26 PM
To: Castillo, Rafael Jr
Cc: Jim Mastandrea; John Dee; Rafael Melara
Subject: FW: Recent Meeting

Rafael:

Rafael Melara and I enjoyed meeting with you and Mr. Neeper last Friday. While the deeding of Fourwinds Drive was important to Whitestone REIT ("Whitestone") to make the decision to invest a substantial amount of capital into Windsor Park Centre (the "Shopping Center") to turn the property around, Whitestone would consider the following to make it economically viable to deed back the remainder of Fourwinds Drive to the City of Windcrest (the "City"):

- Parking Spaces: The University of Phoenix and Ross Stores site plan exhibits requires a total of 889 parking spaces in the shopping center which equates to an overall parking ratio of 4.53 cars per 1,000 square feet of leasable area. The plan that we showed you on Friday with the 28' drive lane provided 898 parking spaces (not counting the spaces in back of the proposed restaurant building at the south end of the center). Although we seem to meet the parking count requirements under the Ross and University of Phoenix leases, it is provided in a different configuration than what each approved as evidenced on their lease exhibits and would therefore require approval on the part of each prior to finalizing any agreement with the City.

- Digital Sign: It is very important to our tenants and the success of their respective businesses to have a digital style electronic pylon sign on the west side of our property facing I-35 to promote the businesses in the Shopping Center as well as others. Whitestone is requesting the right for this sign.

- Curbing: Whitestone is requesting that the City agree and provide standard curbing at the end each parking aisle. The drive lanes servicing those parking spaces need to be open to Fourwinds Drive.

- Cost: Whitestone would pay to extend the drive lanes and parking spaces as shown on the plan and the City would create the aforementioned curbing. The City would make any improvements necessary on the remaining 28' wide road. Whitestone would not reimburse the City for any portion of Fourwinds Drive that it required for parking prior to deeding it back to the City.

- Crosswind Drive Closure: To help Whitestone recover a portion of its costs for deeding over the 28' road to the City, the City would deed over to Whitestone, Crosswind Drive and approve its closure, subject to the reasonable approval of public fire and safety services, to provide Whitestone the opportunity to expand the Shopping Center so that it might add a sit down restaurant(s) to the Shopping Center.

- New Outparcel: Finally, similar to Crosswind Drive, to help Whitestone recover a portion of its costs, Whitestone would like the City to approve a new outparcel at the south end of the Shopping Center so that it might add a drive through "coffee" type retailer to the Shopping Center.

Rafael, these six (6) points are important to Whitestone as such relates to Whitestone deeding back the remaining portion of Fourwinds Drive to the City. We are looking forward to providing the residents of the City a "top notch" shopping center through our extensive renovation and bringing in new retailers as we have with Ross Dress For Less, Skechers and Mattress Firm (opening in 2012) and working with you and Mayor Baxter throughout this process and beyond.

Best regards,

Daniel E. Nixon
Senior Vice President, Regional Director

WHITESTONE REIT

2600 S. Gessner Road, Suite 500
Houston, TX 77063
P 713 435 2237
F 713 465 8847
M 281 889 0197
E dnixon@whitestonereit.com
W http://www.whitestonereit.com

WINDCREST FOURWINDS DRIVE AGREEMENT

WHEREAS, a portion of Fourwinds Drive (hereinafter referred to as "Fourwinds") traverses the Windsor Park Shopping Centre at 8680 Fourwinds Drive in Windcrest, Texas (hereinafter referred to as "Centre"); and

WHEREAS, Whitestone REIT (hereinafter referred to as "Whitestone") is the owner of Centre and therefore owns the underlying fee simple title to the portion of Fourwinds Drive which traverses the Centre; and

WHEREAS, Whitestone has requested the City of Windcrest (hereinafter referred to as "Windcrest") to vacate and abandon the portion of Fourwinds which traverses the Centre in order to promote additional development in Centre and Windcrest; and

WHEREAS, the City Council of Windcrest considered Whitestone's request at a Special City Council Meeting on May 3, 2010, determined that such request was in the public interest and voted to approve Whitestone's request in part subject to certain limitations and conditions.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, for a good and valuable consideration, the sufficiency which is hereby acknowledged, Windcrest and Whitestone agree as follows:

1. Windcrest hereby vacates and abandons the portion of Fourwinds Drive platted in the plat of Windsor Park Retail Subdivision Unit 32, recorded in Volume 9524, Page 146 of the Plat Records of Bexar County, Texas, and as depicted in the attached Exhibit "A" to Whitestone REIT Operating Company IV, L.L.C.

2. In consideration of such vacation and abandonment, Whitestone hereby dedicates the 0.87 acre easement depicted on the attached Exhibit "A" to Windcrest and the public for use as a twenty-four (24') foot wide unobstructed driveway.

3. Whitestone and its successors and assigns shall perpetually maintain the twenty four (24') foot driveway easement depicted in the attached Exhibit "A" in good and useable condition, including paving and striping for two lanes of travel in opposite directions. In the event Whitestone fails to maintain such easement in good and useable condition, Windcrest may make any needed repairs or provide needed maintenance and shall be reimbursed for the reasonable cost thereof by Whitestone, or its successors or assigns, within thirty (30) days from demand therefor. If Whitestone fails to timely make such reimbursement, Windcrest may file a lien against Centre for the cost of such repairs and maintenance and may foreclose its lien as provided by Texas law for private foreclosure sales, or Windcrest may pursue any other remedy authorized by law for the collection of such costs, including attorney's fees.

4. Whitestone shall be solely responsible for the relocation and/or replacement of public utilities displaced or to be moved on account of the roadway abandonment and easement dedication

authorized herein. Whitestone's sole responsibility furthermore includes any modification, replacement or enhancement of stormwater or other environmental improvements arising from the roadway abandonment and easement dedication authorized herein.

5. As part of the consideration for the foregoing, Whitestone agrees to keep the Centre clean, neat and free of litter, weeds, trash and other unsightly debris, and shall promptly remove graffiti or other defacements of the Centre which would negatively affect the beauty of Windcrest. Whitestone furthermore shall, subject to the rights of existing tenants, make reasonable efforts to discourage the loading, unloading or parking of large trucks between the Centre and the residential neighborhood adjacent to it between the hours of 10:00 p.m. and the following 6:00 a.m. If tenant leases do not prohibit the loading, unloading or parking of large trucks between the Centre and the residential neighborhood adjacent to it between the hours 10 p.m. and 6 a.m., then all future leases and lease renewals shall include such wording.

6. Whitestone represents and warrants to Windcrest that it is the owner of the Centre and has the unrestricted right and authority to execute this agreement and that the persons executing this agreement on behalf of Whitestone are authorized to execute this agreement. If lender approval is required for the execution of this agreement, such lender approval shall be attached hereto and made a part hereof for all purposes.

7. Whitestone shall indemnify, defend and hold Windcrest harmless from and against any and all loss, damage, liability, claims, causes of actions, costs and expenses that may be incurred by Windcrest arising out of or in connection with the acts taken by and herein or arising out of or in connection with the transaction described herein (unless caused by Windcrest's gross negligence or willful misconduct), including reasonable legal costs and expenses of defending itself against any claim or liability in connection with this agreement.

8. This agreement shall be construed in accordance with the laws of the state of Texas and venue for all legal proceedings arising hereunder shall be in Bexar County, Texas or the Western District of Texas.

9. This agreement may not be modified except by written instrument executed by all parties hereto. If it becomes necessary for any party to file suit to enforce this agreement of any provision hereof, the party prevailing in such action shall be entitled to recover, in addition to other remedies or damages, reasonable attorney's fees and court costs incurred in such suit. This agreement shall inure to the benefit of the parties hereto and shall be binding upon their respective successors and assigns. This agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a party based solely upon that party's authorship of the agreement or any portion thereof.

Executed this 19 day of August, 2010.

CITY OF WINDCREST

By: _____
RICK BRUNS, Mayor

WHITESTONE REIT

By: _____
Name: JOHN J. DEE, COO
Title: CHIEF OPERATING OFFICER

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on the 20th day of August, 2010, by RICK BRUNS, Mayor of the CITY OF WINDCREST.

_____
Notary Public for
the State of Texas

CAROLE L. MAURO
Notary Public
State of Texas
My Commission Expires
June 1, 2014

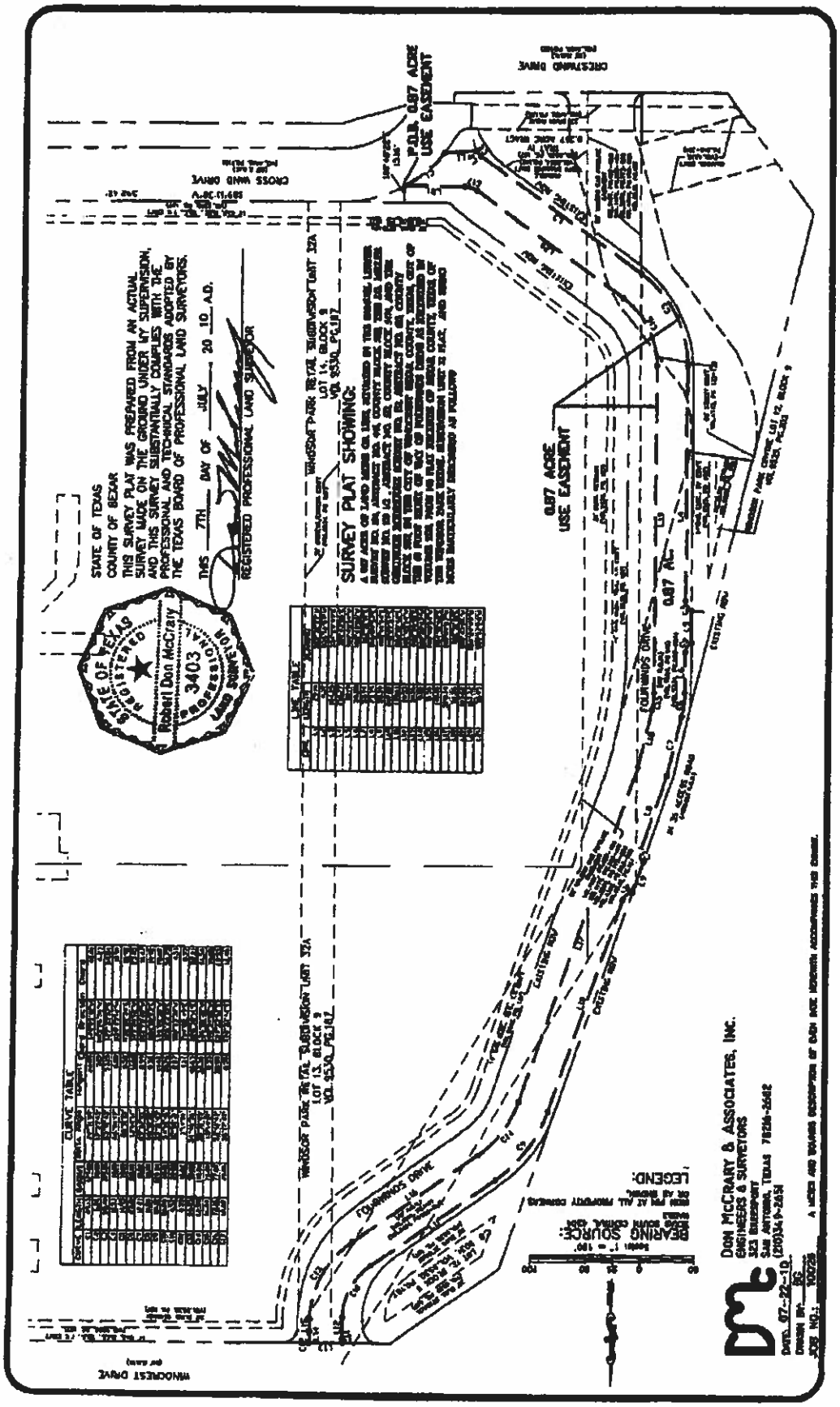
STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on the 19th day of August, 2010, by John J. Dee, Chief Operating Officer of WHITESTONE REIT.

Priscilla A. Gonzalez
Notary Public for
the State of Texas

EXHIBIT A



P:\DMC\GS\10028\SURVEY\10028-DWG Survey Topo Detail.dwg, LAYOUT1, 8/4/2010 8:35:24 AM, bgutman, \\dmc-wdc-1\HP Designjet 1050C, Oversize: U.S. Legal (landscape), 1:1

EXHIBIT A

DMc Don McCrary & Associates, Inc. Engineers and Surveyors

Date: 07/07/2010
Job No. 10026
0.87 Acre Use Easement

METES AND BOUNDS DESCRIPTION OF A 0.87 ACRE USE EASEMENT

DESCRIBING A 0.87 ACRE OF LAND MORE OR LESS, SITUATED IN THE SAMUEL LEEPER SURVEY NO. 104, ABSTRACT NO. 445, COUNTY BLOCK 5031, THE J.G. MILLER SURVEY NO. 103 1/2 , ABSTRACT NO. 532, COUNTY BLOCK 5474, AND THE GERTRUDE RODRIGUEZ SURVEY NO. 132, ABSTRACT NO. 610, COUNTY BLOCK 5077, IN THE CITY OF WINDCREST BEXAR COUNTY, TEXAS, OUT OF THE 60 FOOT RIGHT OF WAY OF FOURWINDS DRIVE AS RECORDED IN VOLUME 9524, PAGE 146 PLAT RECORDS OF BEXAR COUNTY, TEXAS, OF THE WINDSOR PARK RETAIL SUBDIVISION UNIT 32 PLAT, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a point in the north right-of-way line of Cross Wind Drive, for reference said point being S89°11'38"W, a distance of 392.42 feet, and S00°48'22"E, a distance of 15.16 from the southeast corner of Lot 14, Block 9, Windsor Park Retail Subdivision Unit 32A, recorded in Volume 9530, Page 187 Plat Records of Bexar County, Texas;

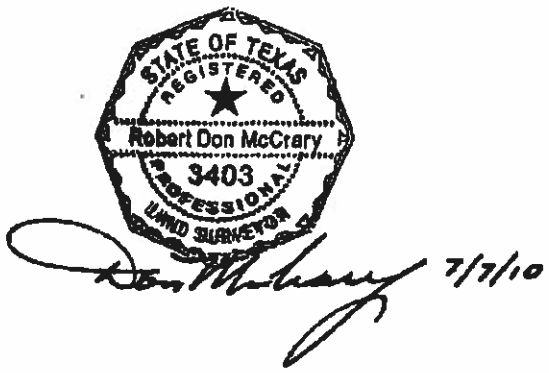
THENCE 49.13 feet along the arc of the northwest right-of-way line of Cross Wind Drive and the southeast line of this easement herein described beginning of a non-tangent curve to the left, having a radius of 125.00 feet, a central angle of 22°31'09", whose chord bears S49°25'10"W, a distance of 48.81 feet to a point; S85°32'27"W, a distance of 29.14 feet to a point; N36°16'57"W, a distance of 0.37 feet to a point for the beginning of a curve to the left; continuing in a northwesterly direction 6.26 feet along the arc of said curve to the left, having a radius of 20.00 feet, a central angle of 17°55'45", whose chord bears N45°26'56"W, a distance of 6.23 feet to a point; N54°24'49"W, 184.25 feet to a point for the beginning of a curve to the right; continuing 98.40 feet along the arc of said curve to the right, having a radius of 105.00 feet, a central angle of 53°41'43", whose chord bears N27°33'57"W, a distance of 94.84 feet to a point; N00°43'06"W, a distance of 216.77 feet to a point and the beginning of a curve to the left; continuing 11.53 feet along the arc of said curve to the left, having a radius of 10.00 feet, a central angle of 66°11'21", whose chord bears N33°45'14"W, a distance of 10.90 feet to a point; N00°45'14"W, a distance of 30.19 feet to point of a non- tangent curve to the left; continuing in a northeasterly direction 11.55 feet along the arc of said curve to the left, having a radius of 10.00 feet, a central angle of 66°04'11", whose chord bears N32°22'34"E, a distance of 10.92 feet to a point; N00°43'06"W, a distance of 38.38 feet to a point and the beginning of a curve to the right; continuing 23.10 feet along the arc of said curve to the right, having a radius of 100.00 feet, a central angle of 13°14'17", whose chord bears N05°54'02"E, a distance of 23.05 feet to a point; N12°31'11"E, a distance of 55.94 feet to a point; N18°09'57"E, a distance of 73.35 feet to a point for the beginning of a curve to the left; continuing 12.21 feet along the arc of said curve to the left, having radius of 10.02 feet, a central angle of 69°47'21", whose chord bears N13°23'22"W, a distance of 11.47 feet to a point; N18°14'34"E, a distance of 30.39 feet to a point and the beginning of a non-tangent curve to the left; Continuing in a northeasterly direction 11.55 feet along said curve to the left, having a radius of 10.00 feet, a central angle of 66°10'52", whose chord bears N51°15'23"E, a distance of 10.92 feet to a point; N18°09'57"E, a distance of 207.05 feet to a point and the beginning of a curve to the right; continuing 80.12 feet along the arc of said curve to the right, having a radius of 128.00 feet, a central angle of 35°51'45", whose chord bears N36°05'50"E, a distance of 78.82 feet to a point; N54°01'42"E, a distance of 139.61 feet, having a radius of 60.01 feet, a central angle of 54°16'41", whose chord bears N26°23'15"E, a distance of 54.75 feet to a point; N00°45'14"W, a distance of 19.53 feet to a point and the beginning of a curve to the left; continuing in a northwesterly direction 4.52 feet along said curve to the left, having a radius of 20.00 feet, a central angle of 12°56'31", whose chord bears N07°13'30"W, a distance of 4.51 feet to a point for the northwest corner of this easement in the south right-of-way line of Windcrest Drive; N88°56'01"E, a distance of 30.56 feet to a point for the northeast corner of this easement herein described and the beginning of a non-tangent curve to the left;

323 Breesport St. San Antonio, Texas 78216-2602 Phone (210) 349-2651 Fax (210) 349-2653

EXHIBIT A

THENCE along the east line of this easement the following calls:
continuing in a southeasterly direction 0.35 feet along the arc of said curve to the left, having a radius of 16.02 feet, a central angle of 01°14'04", whose chord bears S04°05'49"E, a distance of 0.35 feet to a point; S00°20'47"E, a distance of 9.82 feet to a point; S00°45'14"E, a distance of 11.56 feet to a point and the beginning of a curve to the right; continuing 86.05 feet along the arc of said curve to the right, having a radius of 90.00 feet, a central angle of 54°46'56", whose chord bears S26°38'14"W, a distance of 82.81 feet t a point; S54°01'42"W, a distance of 140.50 feet to a point and the beginning of a curve to the left; continuing 62.59 feet along said arc to the left, having a radius of 100.00 feet, a central angle of 35°51'45", whose chord bears S36°05'50"W, a distance of 61.58 feet to a point; S18°09'57"W, a distance of 328.34 feet to a point; S12°31'11"W, a distance of 54.56 feet to a point and the beginning of a curve to the left; continuing 16.64 feet along arc of said curve to the left, having a radius of 72.00 feet, a central angle of 13°14'17", whose chord bears S05°54'02"W, a distance of 16.60 feet to a point; S00°43'06"E, a distance of 303.62 feet to a point and the beginning of a curve to the left; continuing 72.16 feet along the arc of said curve to the left, having a radius of 77.00 feet, a central angle of 53°41'43", whose chord bears S27°33'57"E, a distance of 69.55 feet to a point; S54°24'49"E, a distance of 167.72 feet to a point and the beginning of a curve to the left; continuing 12.67 feet along the arc of said curve to the left, having a radius of 20.00 feet, a central angle of 36°17'47", whose chord bears S72°33'42"E, a distance of 12.46 feet to a point; N89°17'24"E, a distance of 56.05 feet to the POINT OF BEGINNING and containing 0.87 acre of land more or less.

This description was prepared from an on the ground survey dated July 7th, 2010 by employees of Don McCrary & Associates, Inc.



323 Breesport St. San Antonio, Texas 78216-2602 Phone (210) 349-2651 Fax (210) 349-2653

PAVECON

Proposal and Contract
Revised

November 30, 2011

Whitestone Reit
2600 Gessner Ste 500
Houston, TX 77063

Tele: 713.435.2212
Fax: 713.465.8847

Attn: Tim Daher

PAVECON, Ltd. will furnish all labor, materials and equipment required for the performance of the following described work in connection with construction or improvements at: **Windsor Park Center Four Winds Drive Windcrest, TX**

The work is to be performed as follows: **Additional Paving & Concrete islands**

Item #	Bid Item	Qty	Units	Unit Price	Total Price
	WIDEN 1,400 ft of ROAD BY 4 ft.				
1	EXCAVATE and PREP SUB-Grade	5,600	Sf	$ 1.25	
	PROCESS FLEX BASE	5,600	Sf	$ 2.28	
	ASPHALT PAVING	5,600	Sf	$ 1.25	**$ 34,653.00**
	Total with Tax:				
2	CONCRETE ISLAND AT THE END OF EACH PARKING LANE.	5,500	Sf	$ 9.25	
	Total with Tax:				**$ 55,100.00**

Project Note: Due to the volatility of the Liquid Asphalt market, asphalt pricing is valid till December 30, 2011 only. This asphalt proposal must be placed under contract with the Supplier within 30 days of the quote in order to secure this material pricing. Any materials shipped after December 30, 2011, asphalt pricing will be adjusted to reflect any increase from supplier.

INCLUSIONS:

a) **Unit pricing prevails on all items unless otherwise noted.**
b) **Barricades and Traffic Control.**

EXCLUSIONS:

a) **Permits, Bonds, and Testing.**
b) **Utility relocation/adjustment, irrigation, or landscape repair.**
c) **Fire Hydrant adjustments, will place 6" collar around base of Fire Hydrant.**
d) **All work areas must be free of materials & equipment.**
e) **Haul off of spoils created by others.**
f) **Reflective cracking, vegetation sterilization.**
g) **This estimate is based on completing work in 1 move-in.**
h) **Sleeves for irrigation. Dewatering.**
i) **Erosion Control or SWPPP.**
j) **THIS IS A UNIT PRICE BID BASED ON PLAN QUANITIES. IF QUANITY DESCREPANCIES ARE NOTED, UNIT PRICE IS TO BE USED.**

TERMS AND CONDITIONS

- PAVECON, Ltd., will carry workmen's compensation insurance covering its employees and shall provide public liability and property damage insurance.

- *No work shall be performed prior to the location of all utility lines as located by DIG TESS services. The owner shall be responsible for the location of any irrigation lines, private electrical lines and any substructures unknown to PAVECON, Ltd.* By accepting this proposal, Owner agrees to indemnify and to hold PAVECON, Ltd. harmless from all claims, including its reasonable attorneys' fee incurred in defending any claim, resulting from damages to any utility line, irrigation line, private electrical, or sub structure not identified or clearly marked. Any damage to clearly marked utility lines, irrigation line, private electrical lines, or sub structures shall be the responsibility of PAVECON, Ltd.

- Any changes from the specifications or modifications of the terms of this contract shall be set put in writing and signed by both parties.

- This proposal expires fifteen (15) days from the date hereof but may be accepted at any later date at the sole option of the Company.

- Unless a lump sum price is to be paid for the foregoing work, and is clearly so stated, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices on the actual quantities of work performed by PAVECON as determined upon completion of the work.

- PAVECON shall not be responsible for any damage to or deterioration of any of our work, whether completed or in process, resulting from any cause or causes beyond our control, but not limited to failure of sub-grade, including soil volume changes, or failure of inadequacy of any labor or materials not furnished and installed by us, whether or not such failure or inadequacy was or could have been known at the time our work was undertaken.

18680 Marbach Lane San Antonio, Texas 78266
Office: 210.798.1111 • Fax: 210.798.1112

- *In the event all work under this contract is not completed in one operation, Company shall be paid in full for all items of work completed upon the completion thereof. Any work under this contract for which PAVECON has not received a "work order" calling for completion within one year from the date of this agreement will be subject to renegotiation of prices, or cancellation at PAVECON's option.*

- Terms of Payment - Payment in full for all work performed hereunder during any month shall be made no later than the tenth day of the month next following. Final and complete payment for all work performed herein shall be made upon completion of such work and receipt of our invoice. Interest at the rate of (18) percent per annum shall be charged you and paid by you on all unpaid balances from the due date to the date of receipt of payment by PAVECON. Reasonable attorney's fees and cost of collection shall be charged you and paid by you, if incurred by us.

If the foregoing meets with your acceptance, kindly sign and return the attached copy of our proposal. Upon its acceptance it is understood that the foregoing, including the terms and conditions set forth and attached hereto and incorporated herein for all purposes, will constitute the full and complete agreement between us.

ACCEPTED:

PAVECON, LTD.

_____

_____

Jerry Casillas
Project Manager

_____

JC1200a

18680 Marbach Lane San Antonio, Texas 78266
Office: 210.798.1111 • Fax: 210.798.1112

From: (713) 827-9595
Tara Dows
Whitestone REIT
2600 S. Gessner Rd Ste 500

Houston, TX 77063

Origin ID: NQIA

FedEx Express

J1120110805022S

Ship Date: 02DEC11
ActWgt: 1.0 LB
CAD: 100131760/INET3210

Delivery Address Bar Code

Ref #
Invoice #
PO #
Dept #

SHIP TO: (713) 435-2209 BILL SENDER

Rafael Castillo, Jr.
City of Windcrest Texas
8601 MIDCROWN DR

WINDCREST, TX 78239

MON - 05 DEC A1
STANDARD OVERNIGHT

TRK# 0201 **7978 0042 6840**

XH SVZA

78239
TX-US
SAT

50FG1/8C50/F5F4

After printing this label:
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2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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Castillo, Rafael Jr

From: Dan Nixon <dnixon@whitestonereit.com>
Sent: Tuesday, November 08, 2011 2:26 PM
To: Castillo, Rafael Jr
Cc: Jim Mastandrea; John Dee; Rafael Melara
Subject: FW: Recent Meeting

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Rafael:

Rafael Melara and I enjoyed meeting with you and Mr. Neeper last Friday. While the deeding of Fourwinds Drive was important to Whitestone REIT ("Whitestone") to make the decision to invest a substantial amount of capital into Windsor Park Centre (the "Shopping Center") to turn the property around, Whitestone would consider the following to make it economically viable to deed back the remainder of Fourwinds Drive to the City of Windcrest (the "City"):

- Parking Spaces: The University of Phoenix and Ross Stores site plan exhibits requires a total of 889 parking spaces in the shopping center which equates to an overall parking ratio of 4.53 cars per 1,000 square feet of leasable area. The plan that we showed you on Friday with the 28' drive lane provided 898 parking spaces (not counting the spaces in back of the proposed restaurant building at the south end of the center). Although we seem to meet the parking count requirements under the Ross and University of Phoenix leases, it is provided in a different configuration than what each approved as evidenced on their lease exhibits and would therefore require approval on the part of each prior to finalizing any agreement with the City.

- Digital Sign: It is very important to our tenants and the success of their respective businesses to have a digital style electronic pylon sign on the west side of our property facing I-35 to promote the businesses in the Shopping Center as well as others. Whitestone is requesting the right for this sign.

- Curbing: Whitestone is requesting that the City agree and provide standard curbing at the end each parking aisle. The drive lanes servicing those parking spaces need to be open to Fourwinds Drive.

- Cost: Whitestone would pay to extend the drive lanes and parking spaces as shown on the plan and the City would create the aforementioned curbing. The City would make any improvements necessary on the remaining 28' wide road. Whitestone would not reimburse the City for any portion of Fourwinds Drive that it required for parking prior to deeding it back to the City.

- Crosswind Drive Closure: To help Whitestone recover a portion of its costs for deeding over the 28' road to the City, the City would deed over to Whitestone, Crosswind Drive and approve its closure, subject to the reasonable approval of public fire and safety services, to provide Whitestone the opportunity to expand the Shopping Center so that it might add a sit down restaurant(s) to the Shopping Center.

- New Outparcel: Finally, similar to Crosswind Drive, to help Whitestone recover a portion of its costs, Whitestone would like the City to approve a new outparcel at the south end of the Shopping Center so that it might add a drive through "coffee" type retailer to the Shopping Center.

Rafael, these six (6) points are important to Whitestone as such relates to Whitestone deeding back the remaining portion of Fourwinds Drive to the City. We are looking forward to providing the residents of the City a "top notch" shopping center through our extensive renovation and bringing in new retailers as we have with Ross Dress For Less, Skechers and Mattress Firm (opening in 2012) and working with you and Mayor Baxter throughout this process and beyond.

Best regards,

Daniel E. Nixon
Senior Vice President, Regional Director

WHITESTONE REIT

2600 S. Gessner Road, Suite 500
Houston, TX 77063
P 713 435 2237
F 713 465 8847
M 281 889 0197
E dnixon@whitestonereit.com
W http://www.whitestonereit.com

Weidenbach, Heather

From: Castillo, Rafael Jr
Sent: Thursday, December 15, 2011 9:37 AM
To: Weidenbach, Heather
Subject: Fwd: Windsor Park Shopping Center

Respectfully,

Rafael Castillo Jr.

This e-mail and any files transmitted are confidential,and are inteneded solely for the use of the individual to whom this email is addressed.

Msg sent from iPhone, please disregard any misspelled words and grammar.

Begin forwarded message:

From: "Dan Nixon" <dnixon@whitestonereit.com>
Date: December 9, 2011 7:18:44 AM CST
To: "Baxter, Alan" <ABaxter@windcrest-tx.gov>
Cc: "Castillo, Rafael Jr" <rcastillo@windcrest-tx.gov>, "Jim Mastandrea" <jmastandrea@whitestonereit.com>, "John Dee" <jdee@whitestonereit.com>
Subject: Windsor Park Shopping Center

Mayor Baxter:

We enjoyed speaking with Rafael and you this week about the progress that we are making at Windsor Park and with the City of Windcrest in working together to foster a healthy and productive public-private partnership. As we discussed, Whitestone would like to add a sit down restaurant to Windsor Park. Based on space availability and tenant restrictions relating to restaurant uses (mostly parking related requirements), the best location would be at the south end of the shopping center. We would construct a new building for the right restaurant use. To accomplish that, we would need to add more land to the shopping center which would require closing a portion of Crosswind Drive. We understand that from time to time you may become aware of restaurant operators looking for sites in the immediate area. In addition, you are probably best equipped to help us with information relating to the market and why it would be a good idea for a significant restaurant to open a location at Windsor Park. Any help that you could provide would be greatly appreciated.

Best regards,

Daniel E. Nixon

Senior Vice President, Regional Director

WHITESTONE REIT

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City of Wincrest
Projects Budget

	City	EDC	Total	YTD Expenditures	Balance
Windcrest Proud	3,000.00	3,000.00	6,000.00	4,114.16	1,885.84
Special Events	7,500.00	-	7,500.00	5,057.75	2,442.25
Fireman's Picnic	5,000.00	-	5,000.00	5,000.00	-
Windcrest Youth Activities	4,500.00	-	4,500.00	-	4,500.00