

**CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

Regular Meeting

**December 13, 2012
6:00 P.M.**

Windcrest City Hall

NOTICE IS HEREBY GIVEN THAT A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION (WEDC) WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 13th DAY OF DECEMBER 2012 STARTING APPROXIMATELY 6:00 P.M. DURING THE MEETING, THE BOARD WILL CONSIDER, DELIBERATE AND MAY TAKE ACTION UPON ANY OF THE SUBJECTS LISTED BELOW.

Vision Statement: Nourish and develop a vibrant community that consistently pushes the limits.

Mission Statement: Facilitate interaction between business, city and other community organizations to nourish the economic health and well being of Windcrest, its citizens and the region.

Request all pagers and cell phones be turned off, except emergency on-call personnel. Citizens are asked to refrain from talking during proceedings unless recognized by the Presiding Officer.

CITIZEN COMMUNICATION: AS A COURTESY TO CITIZENS IN ATTENDANCE, AND AT THE DISCRETION OF THE PRESIDING OFFICER OF THE MEETING, CITIZENS WILL BE GIVEN A REASONABLE OPPORTUNITY TO STATE THEIR COMMENTS OR ASK QUESTIONS REGARDING ANY ITEM ON THE AGENDA, AND PRIOR TO THE BOARD TAKING ACTION ON ANY ACTION ITEMS LISTED. THE BOARD REQUESTS COMMENTS BE BRIEF, TO THE POINT, AND NO LONGER THAN 5 MINUTES. TIME CANNOT BE YIELDED TO ANOTHER SPEAKER.

Consistent with Windcrest City Council Resolution No. 292, the WEDC Board elects to audio and video record its meetings. The recordings are preserved electronically as the official minutes of its meetings.

I. Call To Order

1. Determination of a Quorum
2. Pledge of Allegiance
3. Prayer
4. Vote to consider the excuse of absent board member(s), if applicable

II. Visitors/Presentations

1. Jim Bray of Don McCrary & Associates, Inc. will give an update on the Racker Road Project and present step by step procedures for closeout of contract. [Att. 1, 1a]
2. Sherry Mosier, WEDC Director, and Robert Colunga, WEDC Consultant, will give an update on the DevelopWindcrest website, the Windfall smartphone application and other projects.

III. Citizens to be Heard

IV. Discussion

None.

V. Discuss and Act

1. The WEDC Board of Directors will discuss and may take action to make a recommendation to City Council to allow for a variance to be issued for proposed 8' x 12' "temporary" real estate marketing signage by Whitestone REIT at the location known as the Windsor Park Centre on Fourwinds Drive and IH-35. [Att. 2]
2. The WEDC Board of Directors will discuss and may take action regarding stipends issued to Director and Consultant by the City and consider an adjustment to the EDC 2012-2013 Fiscal Year Budget. [Att. 3]

VI. General Announcements and Future Agenda Items Requested

VII. Adjournment

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Board of Directors of the WEDC is a true and correct copy of said Notice and I posted a true and correct copy of said Notice on the bulletin board at the Windcrest City Hall in a convenient place to the public. Said Notice was posted 72 hours prior to the 13th of December 2012.

By: Kelly Rodriguez
Kelly Rodriguez, City Secretary

I certify that the attached notice and agenda of items considered by the WEDC Meeting was removed by me from the City Hall bulletin board on the ____ of December 2012.

By: _____
Kelly Rodriguez, City Secretary

Racker Road Project Update

- On November 27th, we met with CPS to determine if the installation of an extended gas line was required by City Public Service. The cost to the WEDC would be approximately \$97,000.00. It was determined by CPS, that they did not need the full length looped line, but would like to install a couple of short extensions for future expansion. We have not yet received the formal cost estimate, however a verbal estimate was given to Robert of approximately \$10,000.00 to complete this work. We are still waiting for a quote and an installation time on the primary electrical services for the street lights and traffic signal.
 - The contractor has finished the road base section of Fanatical Place between Racker Road and Conn's and is now working on the south section of the old Conn's road entrance. The electrical subcontractor has finished a good portion of the conduit work and is now installing the light standards for the street lights, throughout the project.
 - The contractor anticipates having Conn's base work completed, the new curbing installed along Conn's and Fanatical Place and have the paving completed by the 21st of December.
 - Please find attached a copy of the contract documents which explain the final closeout procedure for our Racker Road project.
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2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other

indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not

fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);
2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;
3. CONTRACTOR's disregard of the authority of ENGINEER; or
4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

*See Supplementary Conditions

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;
4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A.* In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06* Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property



Agenda Item Report

December 7, 2012

Contact – Sherry Mosier
smosier@windcrest-tx.gov

SUBJECT: Deliberation and possible action to make a recommendation to City Council to allow for a variance to be issued for proposed 8' x 12' "temporary" real estate marketing signage by Whitestone REIT at the location known as the Windsor Park Centre on Fourwinds Drive and IH-35.

1. BACKGROUND/HISTORY

Fast Signs, as contractor for Whitestone REIT, submitted a Permit Application on November 14, 2012 for installation of a wooden site sign on posts at Whitestone REIT's Windsor Park Centre to market available retail space. The proposed signage is an 8' X 12' "temporary" real estate marketing sign. Because Section 4.308A of the City Code allows for a maximum size of 32 square feet, the permit was denied with a statement indicating that Applicant may apply for a waiver from City Council. The City Manager would like the WEDC to make a recommendation to Council since it involves a request within the City's Business District. The Council will take action on this request the morning of December 13, 2012 pending EDC approval.

2. FINDINGS/CURRENT ACTIVITY

Section 4.308A indicates "Permits may be issued, upon application, by the Building Official, for one sign not exceeding thirty-two (32) square feet in area and pertaining to the lease or sale of a building, premises, or lot, and not to exceed nine (9) months after the date of approval of the permit, for temporary use in B-1 and B-2 zoning districts of the City of Windcrest, provided the sign is immediately removed upon the lease or sale of such building, premises or lot. (Ord. No. 343, 2/21/00)

Section 4.900 Allows for "A request for any waiver of the requirements set forth in this chapter shall be forwarded to City Council for review and action. (Ord. No. 418, 3/17/03)

Because other signs of similar or larger square footage have been allowed (i.e. the signage for the 111 acres is 8' X 20' and the signage by Dominion Advisory Group located in the same general area appears to be of similar size as that being requested by Whitestone), it would seem appropriate that the variance request be allowed to ensure visibility by the public especially given the fact that the WEDC would like to see the retail space in the Windsor Park Centre filled. There is a nine (9) month time limit upon which the sign may be displayed without requesting a formal extension.

- 3. FINANCIAL IMPACT -**
None at this time.

- 4. ACTION OPTIONS/RECOMMENDATION**
Staff recommends action is taken by the WEDC Board of Directors to make a recommendation to City Council to allow for a variance to be issued for proposed 8' x 12' "temporary" real estate marketing signage by Whitestone REIT at the location known as the Windsor Park Centre on Fourwinds Drive and IH-35. This will allow for adequate visibility by the public from IH35.



Agenda Item Report

December 7, 2012

Contact – Sherry Mosier
smosier@windcrest-tx.gov

SUBJECT: Deliberation and possible action regarding stipends issued to Director and Consultant by the City and consider an adjustment to the EDC 2012-2013 Fiscal Year Budget.

1. BACKGROUND/HISTORY

Stipend checks were issued to Director (\$1,200) and Consultant (\$600) on Friday, November 16, 2012 along with checks of similar amounts issued to City employees and contractors. Director and Municipal Finance Officer discussed the issue and Municipal Finance Officer indicated it was an oversight when assisting with the EDC Budget and further indicated she would address it with the Board. Director was hesitant to accept the checks so Municipal Finance Officer discussed with City Manager who advised that it was okay to issue the stipends.

2. FINDINGS/CURRENT ACTIVITY

After contemplating over the weekend, Director was not comfortable accepting the stipend without first obtaining Board approval and decided to inquire with Board President and Board Attorney regarding the matter before cashing check. Both had questions for Municipal Finance Officer that were answered to their satisfaction. However, after Director further discussed with Board Attorney, it was advised the item be placed on the agenda for Board consideration and approval.

3. FINANCIAL IMPACT -

\$1,800.00 plus FICA and Medicare deductions in the amount of \$ 137.70 for a total of \$1,937.70.

4. FUNDING SOURCE

Following discussion of this matter, the Director and the Municipal Finance Officer suggest that a budget adjustment be made to move funds from the travel account or other account (i.e. contingencies, fund balance, or other) as the Board feels appropriate to salaries and benefits.

5. ACTION OPTIONS/RECOMMENDATION

Staff recommends action is taken by the Board of Directors regarding stipends issued by the City to the Director and Consultant and consider adjustment to the EDC 2012-2013 Fiscal Year Budget to allocate the funds.