

**AGENDA
CITY OF WINDCREST, TEXAS**

July 2, 2012

**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 2nd DAY OF JULY, 2012 STARTING AT 7:00 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. Call to Order, Pledge of Allegiance & Invocation

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

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

III. Presentations

1. Katye Brought, Marketing and Events Specialist will provide City Council an update regarding the 4th of July Parade and Celebration scheduled for July 4, 2012 starting with opening ceremony at 10:45 a.m. followed by the Parade at 11:00 a.m.

IV. Audited Financials

1. City Council will receive a presentation from Rene Garza of Garza/ Gonzalez & Associates on the Fiscal Year 2011-2012 audit and may take action to accept.

V. Resolutions

1. City Council will review, discuss and may take action on Resolution No. 2012-378 (R), a resolution approving an Animal Control Contract with Alamo Heights Kennel Club. *(Rafael Castillo, Jr., City Manager Pam Dodson, Councilperson & Chief Al Ballew Request) (Att. 1)*
2. City Council will review, discuss and may take action on Resolution No. 2012-379 (R), a resolution approving an amended and restated Rackspace US, Inc. Redevelopment Project Master Economic Incentives Agreement and authorizing the Mayor and City Manager to execute said agreement on behalf of the city. *(Alan Baxter, Mayor, Tim Maloney, EDC President and Rafael Castillo, Jr., City Manager Request) (Att. 2A, 2B, 2C, 2D)*

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. 2012-667, an ordinance granting an Electric & Gas Franchise to City Public Service. **First Reading** *(Rafael Castillo, Jr. City Manager Request) (Att. 3)*

2. City Council will review, discuss and may take action on Ordinance No. 2012-668, an ordinance approving and adopting an amendment to the budget for operating the municipal government of the City of Windcrest for the Fiscal Year beginning October 1, 2011 and ending on September 30, 2012; and establishing a savings clause and an effective date. **First Reading** (*Sarah Mangham, Municipal Finance Officer Request*) (Att. 4)

VII. Discuss and Act

1. City Council will discuss and may take action on the Windcrest EDC Resolution 12-001(R), a resolution for the City of Windcrest Economic Development Corporation action requesting the City to consider allocating funds to the City of Windcrest Economic Development Corporation from those funds The City is to receive from CPS Energy per the Agreement Incident to Termination of the Community Infrastructure & Economic Development (CIED) Fund Program to be dedicated for improvements within the Windcrest Business District. For the amount of \$100,000. (*WEDC Board & Sherry Mosier, EDC Director Request*) (Att. 5)
2. City Council will discuss and may take action on the initiation of application procedures for the Texas Parks & Wildlife Department Outdoor Recreation Grant (PWD 1069-P4000) in the maximum amount of \$100,000 and the City's maximum contribution of \$100,000. (*Alan Baxter, Mayor, John Gretz, Councilperson, Rafael Castillo, Jr., City Manager, Michael McAlear, Alternate Interim City Secretary and Scott Gorton Parks & Recreation Member Request*) (Att. 6)
3. City Council will discuss and may take action on the procurement of environmental, planning, and engineering services to assist in the completion of a Texas Parks and Wildlife Department Outdoor Recreation Grant Application (PWD 1069-P4000). (*Alan Baxter, Mayor, John Gretz, Councilperson, Rafael Castillo, Jr., City Manager, Michael McAlear, Alternate Interim City Secretary and Scott Gorton, Parks & Recreation Member Request*) (Att. 7)

VIII. 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.

IX. 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 July 2, 2012.

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 ____ July, 2012.

Title: _____

RESOLUTION NO. 2012-378

**A RESOLUTION APPROVING AN AGREEMENT WITH
ALAMO HEIGHTS KENNEL CLUB FOR THE SHELTERING,
CARE, RELEASE AND OTHER DISPOSITION OF ANIMALS
AND AUTHORIZING THE CITY MANAGER TO EXECUTE
SAID AGREEMENT ON BEHALF OF THE CITY**

WHEREAS, the Windcrest City Council has determined that it would promote the health, safety and welfare of the citizens to enter into an a canine and feline sheltering agreement with Alamo Heights Kennel Club for the sheltering, care, release and other disposition of animals.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST that the attached Canine and Feline Sheltering Agreement between the City of Windcrest and Alamo Heights Kennel Club is hereby approved and the City Manager is authorized to execute said agreement on behalf of the city.

Passed and approved this 2nd day of July, 2012.

Mayor

City Secretary

City Attorney

CANINE AND FELINE SHELTERING AGREEMENT

This Agreement is made by and between the City of Windcrest, Texas, acting by and through its City Manager, pursuant to Resolution No. 378 passed and approved on the 2nd day of July, 2012 and the Alamo Heights Kennel Club by and through its authorized representatives.

WITNESSETH:

WHEREAS, it is the desire of CITY OF WINDCREST and ALAMO HEIGHTS KENNEL CLUB to join in Agreement for the welfare of canines and felines that have been lost, found, abandoned or injured requiring food, water, shelter, and medical attention to the limits allowed by license, certification or law; and

WHEREAS, it is the agreement of both parties to reunite canines and felines with their owners or to seek foster and/or adoption opportunities in furtherance of placing qualified animals in good homes; and

WHEREAS, it is the agreement of both parties to provide for the best interest and welfare of a sheltered canine or feline until it is claimed by the rightful owner, placed in a foster home, adopted or otherwise disposed of; and

WHEREAS, the CITY OF WINDCREST and ALAMO HEIGHTS KENNEL CLUB in joining in this agreement agree that certain formal operating procedures shall be followed for the sheltering, care, release and other dispositions of animals, as well as the billing for services rendered by ALAMO HEIGHTS KENNEL CLUB and payment for those services by CITY OF WINDCREST; and

WHEREAS, it is further the determination of each party that their decision to enter into a Canine and Feline Sheltering Agreement can be terminated at any time as provided in this agreement; and

WHEREAS, it is the agreement of both parties that the provisions in this agreement shall be in compliance with the City of Windcrest Code of Ordinances, Chapter 3 Animal Control;

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements stated herein, the parties agree as follows:

SECTION 1. The ALAMO HEIGHTS KENNEL CLUB will only accept canines and felines from a representative of the CITY OF WINDCREST as designated by the Chief of Police and will only release a canine feline to a designated representative of the CITY OF WINDCREST or a responsible person producing a release form issued by the CITY OF WINDCREST authorizing the release of a canine or feline.

It is further understood that the CITY OF WINDCREST will not reveal the location of any canine or feline previously in the custody of a person arrested by the Windcrest Police Department to the arrested person and that all canines and felines belonging to an arrested person be only released to a representative of CITY OF WINDCREST and transported to the CITY OF WINDCREST municipal facility for eventual release to an arrested person or their representative.

SECTION 2. The ALAMO HEIGHTS KENNEL CLUB will not accept any canine(s) demonstrating vicious behaviors under any circumstances due to the liability it poses to that specific canine, other canines and felines boarding at ALAMO HEIGHTS KENNEL CLUB, as well as the danger it poses to ALAMO HEIGHTS KENNEL CLUB employees.

SECTION 3. Canines and felines may be dropped off at the ALAMO HEIGHTS KENNEL CLUB during normal business hours by the CITY OF WINDCREST designated representative or may be dropped off at any time that ALAMO HEIGHTS KENNEL CLUB is closed. After hours entry will be made at an entry point designated by the ALAMO HEIGHTS KENNEL CLUB using the gate code provided by ALAMO HEIGHTS KENNEL CLUB.

It is further understood the CITY OF WINDCREST designated representative will be responsible for securely sheltering the canine or feline in the kennel or crate designated for this purpose by ALAMO HEIGHTS KENNEL CLUB and shall be responsible for "clipping" the kennel or crate in such a manner as to ensure the safety of the canine or feline and to prevent escape from the enclosure.

SECTION 4. It will be the responsibility of the CITY OF WINDCREST designated representative to contact the ALAMO HEIGHTS KENNEL CLUB designated representative immediately when a canine or feline is sheltered at ALAMO HEIGHTS KENNEL CLUB after hours in order that the ALAMO HEIGHTS KENNEL CLUB designated representative is immediately aware of the canine or feline being sheltered and their specific situation.

It is further understood that the ALAMO HEIGHTS KENNEL CLUB designated representative will arrive within one (1) hour of being notified when it becomes necessary to shelter multiple canines or felines during hours when ALAMO HEIGHTS KENNEL CLUB is closed. CITY OF WINDCREST designated representatives shall not attempt to handle multiple canines or felines without the assistance of the ALAMO HEIGHTS KENNEL CLUB designated representative.

SECTION 5. An animal's owner shall reimburse CITY OF WINDCREST for any and all costs associated with boarding a canine or feline. These costs must be paid to the CITY OF WINDCREST administrative offices prior to a release being issued to the animal's owner. CITY OF WINDCREST will assume responsibility for all authorized costs associated with the boarding of canines and felines that are unclaimed.

ALAMO HEIGHTS KENNEL CLUB will charge a fee of \$10.00 per day for each individual canine or feline boarded at ALAMO HEIGHTS KENNEL CLUB. Additional charges shall apply to treat minor injuries, flea/tick infestation or any other condition that may be contagious or detrimental to a kennel environment.

SECTION 6. To ensure a healthy environment for all animals kenneled at ALAMO HEIGHTS KENNEL CLUB, proof of vaccinations will be required for every animal brought into ALAMO HEIGHTS KENNEL CLUB for sheltering. If after twenty-four (24) hours a canine or feline has not been claimed, ALAMO HEIGHTS KENNEL CLUB will vaccinate canines with the Bordatella vaccine and the DHLPP vaccine. Felines will be vaccinated for Feline Leukemia and for the FVRCP viruses. Additionally, if proof of current rabies vaccination cannot be provided by an owner claiming an animal, the animal will be required to have a rabies vaccination before it can be released.

The animal's owner shall reimburse CITY OF WINDCREST for any and all costs for vaccines administered to canines and felines and will be paid to CITY OF WINDCREST prior to receiving a release for the animal. CITY OF WINDCREST will assume responsibility for the costs of all vaccines administered to canines and felines that are unclaimed.

SECTION 7. Realizing that emergency treatment of an animal may be necessary to preserve life or ease suffering, if deemed necessary, charges and fees associated with such treatment shall be discussed and approved prior to the treatment.

There is nothing in this Agreement that prevents ALAMO HEIGHTS KENNEL CLUB from entering into a business transaction with the owner or adopted owner of a canine or feline for services outside of those provided in this Agreement, provided it is with the understanding that the cost of those services are the responsibility of the canine or feline owner or adopted owner.

SECTION 8. The CITY OF WINDCREST will pay any and all authorized costs associated with boarding, vaccines, and animal care to ALAMO HEIGHTS KENNEL CLUB upon receipt of an itemized invoice submitted monthly for all the aforementioned services rendered by ALAMO HEIGHTS KENNEL CLUB or their designated veterinarians in the performance of this agreement. Applicable charges and fees for boarding, vaccinations, and other services shall not exceed those charges and fees that are applied to any other customer of ALAMO HEIGHTS KENNEL CLUB unless agreed upon by the CITY OF WINDCREST Chief of Police and approved by the CITY OF WINDCREST City Manager.

SECTION 9. It is not intended by this Agreement to create, and nothing contained in this Agreement shall create, any partnership, joint venture or similar arrangement among the parties hereto.

SECTION 10. No term or provision of this Agreement is intended to, or shall, create any rights in any person, firm, corporation, or other entity not a party hereto, and no such person or entity shall have any cause of action hereunder.

SECTION 11. The term of this agreement shall be three (3) years with either party having the right to terminate said agreement upon thirty (30) days written notice to the other party.

SECTION 12. Suggestions for revisions, improvements or other changes shall be made, in writing, and forwarded to the other party for review and comment. Both parties shall agree to an annual meeting to propose changes or corrections to the Agreement.

SECTION 13. Alamo Heights Kennel Club shall maintain during the term of this agreement liability insurance adequate to protect the club and the City of Windcrest from damage claims asserted against either of them on account of the activities of the club under this agreement. The club shall furnish a copy of such insurance to the City and will name the City as an additional insured on the insurance policy. ALAMO HEIGHTS KENNEL CLUB HEREBY INDEMNIFIES AND HOLDS THE CITY OF WINDCREST AND ITS OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY CLAIMS, DAMAGES OR LIABILITIES ASSERTED AGAINST THE CITY ON ACCOUNT OF THE ACTIVITIES OF THE ALAMO HEIGHTS KENNEL CLUB UNDER THIS AGREEMENT.

SECTION 14. Venue for any legal proceedings arising hereunder shall be in Bexar County, Texas.

SECTION 15. No changes in the Agreement shall be approved absent review and approval of both parties.

ENTIRE AGREEMENT: It is understood and agreed that this Agreement and the attachments hereto which are incorporated by reference as if set forth herein, contain the entire Agreement between the parties hereto.

The individuals executing the Agreement warrant that they have full authority to execute the Agreement on behalf of the entity for whom they are acting herein.

EXECUTED this 3rd day of July, 2012.

CITY OF WINDCREST

ALAMO HEIGHTS KENNEL CLUB

By: _____
Name: **Rafael Castillo**
Title: **City Manager**

By: _____
Name: **Lisa House**
Title: **Manager, Alamo Heights Kennel Club**

Alamo Heights Kennel Club

Fee Schedule:

Shelter \$10.00 per day per animal

Vaccinations are per dose:

DHLPP \$3.00 + .20 per needle

Bordetella \$3.70

Capstar \$4.75 small & \$5.15 large

Wormer \$1.50 small & \$3.20 large

Flea Prev \$1.00 a tube (Example: 3 tubes for an 80 lb dog = \$3.00)

Dip \$5.00 fleas & \$10.00 ticks (If found upon arrival)

Animals will receive a bath if covered in fleas and/or ticks and this is listed under the dip price.

If they are covered in mud, they would be bathed for a \$10.00 fee.

If the animal is severely matted, they will shaved for a fee that is dependant on the condition of the dog. (Staff will contact Windcrest Animal Control first to obtain clearance to do so).

Rabies vaccination is done by the vet (\$10.00) when spayed/neutered (\$40.00 to \$80.00). That cost will be determined by ADL or SPAYSA based on the weight of the dog.

RESOLUTION NO. 2012-379

**A RESOLUTION APPROVING AN AMENDED AND
RESTATED RACKSPACE US, INC. REDEVELOPMENT
PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT
AND AUTHORIZING THE MAYOR AND CITY MANAGER
TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY**

WHEREAS, the Windcrest City Council in Resolution No. 281 adopted on or about July 16, 2007 approved the Walzem Road Redevelopment Project Master Economic Incentives Agreement (hereinafter referred to as original MEIA) dated August 2, 2007; and

WHEREAS, the parties to said agreement were Rackspace US, Inc, the City of San Antonio, Texas, the County of Bexar, Texas, the City of Windcrest, Texas, the Windcrest Economic Development Corporation, and Windcrest Economic Development Company, LLC; and

WHEREAS, since the date of adoption of the original MEIA, due to the passage of time and changes in economic circumstances, certain terms of the agreement need to be revisited and revised; and

WHEREAS, the Windcrest City Council has determined that it would promote the health, safety and welfare of the citizens to enter into a revised MEIA (See Attachment 2A, 2B, 2C, 2D).

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDCREST that the attached Amended and Restated Rackspace US, Inc. Redevelopment Project Master Economic Incentives Agreement between the City of Windcrest, Rackspace US, Inc., the City of San Antonio, Texas, the County of Bexar, Texas, and the Windcrest Economic Development Corporation is hereby approved and the Mayor and City Manager are authorized to execute said agreement on behalf of the city.

Passed and approved this 2nd day of July, 2012.

Alan E. Baxter, Mayor

ATTEST:

Heather Weidenbach, City Secretary

APPROVED AS TO FORM:

City Attorney

AMENDED AND RESTATED
RACKSPACE US, INC.
REDEVELOPMENT PROJECT
MASTER ECONOMIC INCENTIVES
AGREEMENT

____, 2012

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AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT

MASTER ECONOMIC INCENTIVES AGREEMENT

THIS AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT (this "Agreement") is hereby made and entered into effective as of _____, 2012 (the "Effective Date") by and between the CITY OF WINDCREST, TEXAS (the "City of Windcrest"), the CITY OF SAN ANTONIO, TEXAS (the "City of San Antonio"), the COUNTY OF BEXAR, TEXAS (the "County"), the WINDCREST ECONOMIC DEVELOPMENT CORPORATION (the "Windcrest EDC"), and RACKSPACE US, INC., a Delaware corporation ("Rackspace"). The City of Windcrest, the City of San Antonio, the County, the Windcrest EDC, and Rackspace may hereinafter be referred to collectively as the "Parties."

JOINT RECITALS OF ALL PARTIES

WHEREAS, the Parties and WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC were parties to that certain WALZEM ROAD REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT dated August 2, 2007 (the "Original MEIA"); and

WHEREAS, the WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC is no longer involved in or in any way associated with the subject matter of the Original MEIA and no longer a party to the Original MEIA; and

WHEREAS, the Parties agree to amend and restate the Original MEIA so as to remove WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC as a party to the Original MEIA, to remove WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC as the "Developer" under the Original MEIA, to release WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC from any obligations under the Original MEIA and any documents or agreements entered into in furtherance of the Original MEIA, and to eliminate any rights of WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC under the Original MEIA; and

WHEREAS, the Parties desire to enter into this Agreement and agree that this Agreement shall supersede the Original MEIA in all respects and shall govern the rights, obligations, covenants and agreements of the Parties with respect to the subject matter contained herein; and

WHEREAS, Article III, Section 52-a of the Texas Constitution expressly authorizes the State of Texas (the "State") and local governments to use public funds for the public purposes of development and diversification of the economy of the State, the elimination of unemployment or underemployment in the State, or the development or expansion of transportation or commerce in the State; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, the Parties made specific proposals to Rackspace for the purpose of inducing Rackspace to relocate its corporate headquarters to the Leased Property, as defined below, and thereby advance the public purposes of developing and diversifying the economy of the State, eliminating unemployment or

underemployment in the State, and developing or expanding transportation or commerce in the State; and

WHEREAS, to ensure that the benefits the Parties provide under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, and other law, Rackspace has agreed to comply with certain conditions for receiving those benefits, including performance measures relating to job creation; and

WHEREAS, the Windcrest EDC is a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979, as amended, Texas Revised Civil Statutes Annotated, Article 5190.6 (the "EDC Act"); and

WHEREAS, it has been determined that Section 4B(a)(3) of the EDC Act allows the Windcrest EDC to use funds in connection with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that the board of directors of the Windcrest EDC believes would promote new or expanded business development in the City of Windcrest; and

WHEREAS, it has been determined that pursuant to Section 23(a) of the EDC Act and Article 1396-2.02.A.(4) of the Texas Nonprofit Corporation Act (Article 1396-1.01 *et seq.*, Vernon's Texas Revised Civil Statutes) (the "Nonprofit Corporation Act") the Windcrest EDC may acquire certain real estate located partially in the City of Windcrest and partially in the City of San Antonio; and

WHEREAS, it has been determined that as provided by Section 23(a) of the EDC Act and pursuant to Article 1396-2.02.A.(8) of the Nonprofit Corporation Act, the Windcrest EDC may make contracts and incur liabilities, borrow money at such rates of interest as the Windcrest EDC may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income; and

WHEREAS, pursuant to the Original MEIA, Rackspace joined with the Windcrest EDC to assist with the redevelopment of that certain tract of land and improvements comprising the property formerly known as the Windsor Park Mall (and hereinafter defined in Section 1.13 as the "Leased Property") into a corporate headquarters for Rackspace (the "Leased Property Project" as hereinafter defined in Section 1.14); and

WHEREAS, pursuant to the EDC Act, the Windcrest EDC acquired the Leased Property and leased it to Rackspace; and

WHEREAS, Rackspace has relocated its U.S. corporate headquarters to the Leased Property and as of December 31, 2011, Rackspace had in excess of 2400 employees located at the Leased Property; and

WHEREAS, Rackspace and the State of Texas are parties to that certain Economic Development Agreement dated August 1, 2007, as amended by Amendment Number One to the Economic Development Agreement dated July 24, 2009 ("TEF Amendment") which sets forth criteria for employment creation by Rackspace in the State of Texas for Rackspace's Texas Enterprise Fund grants; and

WHEREAS, the Parties acknowledge that the TEF Amendment triggered an automatic adjustment to the employment commitment as set forth in Section 2.1 of the Original MEIA, to wit under Section 2.f. of the TEF Amendment, the job requirement for Windcrest, Texas has been set at two-thirds of the entire state job requirement of 2,661 jobs, or a total of 1774 jobs at Windcrest, Texas, by December 31, 2012, therefore, the total Employment Commitment under the Original MEIA was automatically reduced to 1774 jobs at the Leased Property by December 31, 2012; and

WHEREAS, the Parties acknowledge that Rackspace has satisfied the employment commitment ahead of schedule due the fact that it had greater than 1774 jobs at the Leased Property effective December 31, 2011.

AGREEMENTS

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Reserved.

Section 1.2 “Agreement” means this Agreement and any addendum to this Agreement agreed to by the Parties.

Section 1.3 “Annexed Area” means the property described in Exhibit “A”.

Section 1.4 Reserved.

Section 1.5 “Boundary Change Agreement” means an agreement entered into effective August 2, 2007 between the City of San Antonio and the City of Windcrest pursuant to Section 43.035 of the Local Government Code containing the terms and provisions of Article 9 of this Agreement, attached hereto as Exhibit “B”, and made a part of this Agreement.

Section 1.6 “Business Activities” means the operation by Rackspace of an information technology services business, including acting as the U.S. corporate headquarters for such business, and the business operations of any assignee, tenant or subtenant of Rackspace approved by the City of Windcrest and located at the Leased Property.

Section 1.7 “City Economic Development Grant Agreement” means the agreement entered into between the City of Windcrest and Rackspace effective August 2, 2007 entered into pursuant to Chapter 380 of the Local Government Code, and containing the terms and provisions of Section 3.11 of this Agreement.

Section 1.8 “County Economic Development Grant Agreement” means the agreement entered into between the County and Rackspace effective August 2, 2007, pursuant to Chapter 381 of

the Local Government Code, and containing the terms and provisions of Section 3.12 of this Agreement.

Section 1.9 "Cure Period" means that if either party believes the other is in default under any of the terms set forth in this Agreement it shall notify the allegedly Defaulting Party of the nature of the breach as provided in Section 13.6. The party receiving notice of default shall have ninety (90) calendar days from the date such notice is received to cure the default. If the default has not been cured by that date this Agreement may be terminated after giving ten (10) calendar days written notice. The Nondefaulting Party shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if the Defaulting Party commences to cure said default within the ninety (90) day Cure Period and it is diligently pursuing such cure. Any extension of the Cure Period shall not operate or be construed as a further or continuing waiver of such default or as a waiver of any other or subsequent default under any of the terms of this Agreement.

Section 1.10 "Eisenhower Development Tract" means the property described in Exhibit "C."

Section 1.11 "Exemption Period" has the meaning provided in Section 3.4 of this Agreement.

Section 1.12 "Force Majeure" means the occurrence of any of the following events that results in the impossibility of performance: war, domestic terrorist acts, riots, strikes, embargoes, acts of God, earthquakes, fires, hurricanes, tornadoes, floods, wash outs, and unusually severe weather, interruption or unavailability of utilities, or due to failure of performance by suppliers.

Section 1.13 "Leased Property" means that certain tract of land and improvements comprising the real property located at 5000 Walzem Road, San Antonio, Texas, formerly known as the Windsor Park Mall and being more particularly described in Exhibit "D". The term also includes the improvements, additions and renovations made by Rackspace or Windcrest EDC to the Leased Property from time to time for use as part of the Leased Property Project that become subject to the terms of the Mall Lease. Further, the Leased Property shall be modified to reflect any boundary changes due to (a) the construction of Racker Road (as hereinafter provided in Section 5.1) or (ii) the acquisition by Rackspace or the Windcrest EDC of that certain tract of land and improvements as more particularly described on Exhibit "E" (the "Firestone Tract") which is a subject of the lawsuit styled Rackspace US, Inc. v. Michael White, Gary Cain, et al.; Cause No. 2009 CI 15428, 408th District Court, Bexar County, Texas.

Section 1.14 "Leased Property Project" means the Rackspace U.S. corporate headquarters at the Leased Property.

Section 1.15 "Mall Lease" means the lease agreement dated effective August 2, 2007 entered into between the Windcrest EDC, as landlord, and Rackspace, as tenant, for the lease of the Leased Property, as amended from time to time attached hereto as Exhibit "F."

Section 1.16 "Personal Property Improvements" means the tangible personal property for

use at the Leased Property Project, including that leased by Rackspace from the Windcrest EDC.

Section 1.17 "PILOT Payment" means a payment to the City of Windcrest or other taxing unit required by this Agreement that has ad valorem taxes as its basis of calculation, and includes any payment in lieu of the ad valorem property taxes that would otherwise be assessed for a given tax year against the Rackspace Corporate Headquarters Property if it was not property tax exempt.

The parties acknowledge that Bexar Appraisal District may have not previously determined the appraised value for property tax purposes that would typically be used to calculate the amount of taxes otherwise assessed against the Rackspace Corporate Headquarters Property since the property is exempt from appraisal for ad valorem property taxes. Therefore, it is the intent of the parties that whenever it is necessary to determine the appraised value of the Rackspace Corporate Headquarters Property for the purpose of calculating a PILOT Payment, the parties and any appraisers selected under this Agreement shall strive to determine what appraised value for property tax purposes would have been determined by the Bexar Appraisal District for the relevant time period. This shall be accomplished pursuant to the provisions in Section 3.5 below.

If the Bexar Appraisal District takes steps to determine the appraised value for property tax purposes of the Rackspace Corporate Headquarters Property or to determine the qualification of the Rackspace Corporate Headquarters Property for exemption under the EDC Act or other applicable law, Windcrest EDC and the City of Windcrest hereby automatically designate Rackspace to act as their agent for property tax matters involving the Rackspace Corporate Headquarters Property, including for filing and management of any necessary protests or appeals. ~~If Rackspace obtains an appraisal for the value for property tax purposes of the Rackspace Corporate Headquarters Property pursuant to Section 3.5 of this Agreement, the automatic designation of Rackspace as the agent for Windcrest EDC and the City of Windcrest does not apply.~~

Section 1.18 "Rackspace Corporate Headquarters Property" means the Leased Property, the Personal Property Improvements and the Real Property Improvements (and any taxable leasehold or other possessory interest in the property) located in Bexar County, Texas that are owned by the Windcrest Economic Development Corporation and leased to Rackspace (or its assignees, tenants or subtenants approved by the City of Windcrest) under this Agreement for use as part of the Leased Property Project.

Section 1.19 "Real Property Improvements" means the buildings and other property improvements owned by the Windcrest EDC (now existing or constructed in the future) and leased by Rackspace (or its assignees, tenants or subtenants approved by the City of Windcrest) for use at the Leased Property Project.

Section 1.20 "Related Organizations" means an entity or person who (a) is directly or indirectly controlled by, or under common control with Rackspace; (b) owns directly or indirectly fifty percent (50%) or more of the equity or voting interest of Rackspace; (c) is a successor by merger or other business combination with Rackspace such that substantially all of the business assets of Rackspace remain in the merged or combined entity; or (d) an approved purchaser or assignee of Rackspace.

Section 1.21 "Relocation" or "Relocate" shall mean that Rackspace (or a Related Organization, which has taken the place of Rackspace) moves all or substantially all of the Business Activities previously conducted at the Leased Property to a location outside the Leased Property.

Section 1.22 "Section 4B(k) of the EDC Act" shall mean Section 5190.6-4B(k) of the EDC Act and any other statute that enables the Rackspace Corporate Headquarters Property to be exempt from ad valorem property taxation.

Section 1.23 "Windcrest Development Site" means the property described on Exhibit "G".

ARTICLE 2

RACKSPACE COMMITMENT AND RECAPTURE

Section 2.1 The Parties agree that Rackspace has met or exceeded the employment commitment requirements as set forth in the Original MEIA during the Exemption Period through December 31, 2011. From and after December 31, 2011 and continuing through the end of the Exemption Period, Rackspace agrees to maintain 1774 employees at the Leased Property, with a median total annual payroll (salary and bonus) of not less than \$51,000 (the "Employment Commitment") throughout the Exemption Period. The Parties agree that this Employment Commitment was achieved effective December 31, 2011.

Section 2.2

(a) If Rackspace, a Related Organization, or a City of Windcrest-approved assignee or subtenant as provided below occupies and uses the Leased Property for Business Activities and subsequently all or substantially all Business Activities (or a substantial portion thereof) at the Leased Property are ceased for a continuous period of three (3) months (hereinafter referred to as a "Cessation of Business Activities") during the Exemption Period for any reason, except if such cessation is caused by a Force Majeure, then the City of Windcrest shall have the right to terminate this Agreement upon delivery of the notices and expiration of the Cure Period. Said termination shall be effective for the calendar year during which such Cessation of Business Activities occurred.

(b) Upon a termination under Section 2.2(a), an amount equal to the ad valorem taxes which would have been assessed by the City of Windcrest, Bexar County and North East Independent School District ("NEISD") (hereafter referred to collectively as the "Taxing Units") against the Rackspace Corporate Headquarters Property for the calendar year in which the Cessation of Business Activity occurred, as if the property had not been exempt from property taxes, shall be paid as a PILOT Payment by Rackspace to the City of Windcrest.

(c) In addition to the PILOT Payment under Section 2.2(b), upon a termination under Section 2.2(a), an amount equal to the ad valorem taxes which would have been assessed by the City of Windcrest and Bexar County against the Rackspace Corporate Headquarters Property for the previous years during the Exemption Period if the property had not been exempt from property

taxes shall be paid as a PILOT Payment by Rackspace to the City of Windcrest. The City of Windcrest shall pay to the County the County's portion of such PILOT Payment. A PILOT Payment shall also be made to NEISD (or its foundation, at the City of Windcrest's discretion) upon a termination under 2.2(a) for the same time period, but shall be calculated as follows. For each year of the Exemption Period, Rackspace shall pay the amount required to offset the net amount of actual tax revenue and state aid loss to the NEISD for the given year(s) caused as a result of the Texas school finance laws and the tax-exempt nature of the Rackspace Corporate Headquarters Property. The purpose of this payment is to make NEISD whole, but not to place it in any better position than if it had actually received the property taxes, after taking into account the effect such a receipt of property taxes would have had on state funding to NEISD. To assist in determining the amounts due, the parties agree to utilize the services of the school finance consulting firms of either Moak, Casey & Associates, LLC of Austin, Texas or Kavoussi & Associates of San Antonio, Texas, as determined by NEISD, the cost of which shall be paid by Rackspace but then credited as a reduction in the amount of the next PILOT Payment to NEISD.

(d) Any PILOT Payment under this Section 2.2 shall be paid by Rackspace to the City of Windcrest within ninety (90) calendar days from the date the Cure Period has expired. The City of Windcrest shall pay any portion of such PILOT Payment due to other governmental entities within thirty (30) days after its receipt of such PILOT Payment. If a Cessation of Business Activity is caused by a Force Majeure, Rackspace may continue or terminate this Agreement, for all or a portion of the Leased Property, without liability for any PILOT Payment or other penalty.

Section 2.3 If Rackspace, a Related Organization, or a City of Windcrest-approved assignee or subtenant as provided below fails to satisfy the Employment Commitment during a calendar year in the Exemption Period, then for each such calendar year of noncompliance, Rackspace shall pay the City of Windcrest a PILOT Payment representing the property taxes that would have been assessed against the Real Property Improvements or Personal Property Improvements by the City of Windcrest or Bexar County as if they were not property tax exempt, and the City of Windcrest shall distribute such PILOT Payments to the appropriate taxing entities. The amount of the PILOT Payment shall be computed by multiplying the amount of property taxes that would have been assessed against the Real Property Improvements and Personal Property Improvements by the City of Windcrest and Bexar County by the same percentage as the deficiency in the Employment Commitment. The NEISD amount shall be calculated using the methodology set forth in Section 2.2(c).

For example, if Rackspace creates and retains ninety percent (90%) of the minimum number of full-time employee positions required to comply with the Employment Commitment in a given year, Rackspace shall be required to pay 10% of the taxes that would have otherwise been assessed by the Taxing Units (which for purposes of this Section 2.3 excludes NEISD as it is already covered by the separate provisions of Section 2.2(c)) against the Real Property Improvements or Personal Property Improvements for the given year of deficiency, but subject to a floor of fifty percent (50%). Since the Employment Commitment requires that the median total annual payroll of the employees credited to meet the Employment Commitment be not less than \$51,000, when calculating the Employment Commitment the lowest paying jobs will be excluded from the number of jobs credited toward satisfying the Employment Commitment to the extent necessary to cause the median total compensation of the remaining employees to equal or exceed \$51,000. If Rackspace fails to create

and retain at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment in a given year then, at the option of the City of Windcrest, the City of Windcrest may terminate this Agreement. Said termination shall be effective for the calendar year during which at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment have not been created or retained by Rackspace. Upon said termination, a PILOT Payment equal to the ad valorem taxes that would otherwise have been assessed by the Taxing Units against the Real Property Improvements and Personal Property Improvements for that calendar year shall be calculated as set forth in Section 2.2(c). A PILOT Payment equal to the property taxes that would otherwise have been assessed by the Taxing Units against the Real Property Improvements and Personal Property Improvements for the years in the Exemption Period preceding the year of termination shall be paid to the Taxing Units and calculated as set forth at Section 2.2.(b). If the failure to create and retain at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment is caused by a Force Majeure, Rackspace shall have the right to continue or to terminate this Agreement, for all of or any remaining portion of the Leased Property, without recapture or other penalty. Rackspace may count employees of a subtenant or Related Organization that are located on a fulltime basis on the Leased Property as if they were Rackspace employees (including the median salary calculations) for purposes of meeting the Employment Commitment.

Section 2.4 During the Exemption Period the City of Windcrest may declare a default if Rackspace fails to comply with any of the conditions set forth in Sections 2.2 and 2.3 (but only below the 50% requirement) of this Agreement. Should the City of Windcrest determine that Rackspace is in default under any of the terms set forth in Sections 2.2 and 2.3 (but only below the 50% requirement) of this Agreement, the City of Windcrest shall notify Rackspace in writing, and if said default is not cured within the Cure Period, then the City of Windcrest shall have the right to terminate this Agreement upon ten (10) calendar days prior written notice. The City of Windcrest shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if Rackspace commences to cure said default within the Cure Period and Rackspace is diligently pursuing such cure. If this Agreement is terminated as a result of a default described under this Section 2.4, the Taxing Units shall be entitled to the PILOT Payments calculated in the amounts and paid in the manner set forth in Sections 2.2 and 2.3. For the purpose of calculating the PILOT Payments under Sections 2.2 and 2.3 there shall be no right of double recovery by any taxing unit entitled to a PILOT Payment. For example, if Rackspace ceases business activity under Section 2.2, and at the same time breaches its Employment Commitment under Section 2.3, the taxing unit shall elect as its remedy whether to proceed under Section 2.2 or Section 2.3. In addition, Rackspace shall be entitled to a credit against such PILOT Payments for any previous PILOT Payments or property taxes it has paid to the Taxing Units.

Section 2.5 If the Exemption Period expires and Rackspace Relocates or there is a Cessation of Business Activities at the Leased Property (other than as a result of a Force Majeure) during the one year period after the end of the Exemption Period, then the Taxing Units shall also have the right to a payment (by PILOT Payment, if necessary) from Rackspace equal to 20% of the property taxes (except for the payment to NEISD which shall be calculated in the manner set forth in Section 2.2(c)) that would have been assessed for the preceding tax year by the Taxing Units against

the Real Property Improvements or Personal Property Improvements had they not been exempt from property taxes.

Section 2.6 If during the term of the Mall Lease, as set forth therein (the "Lease Term"), (a) Rackspace allows a PILOT Payment to become delinquent or there is a default; and (b) Rackspace does not cure such delinquency or default within the Cure Period, the City of Windcrest shall have the right to terminate this Agreement. A PILOT Payment will then be due for the calendar year during which the termination occurred on the same basis set forth in Section 2.2(b). In addition a PILOT Payment shall be paid on the same basis set forth in Section 2.2(c) and 2.2(d).

Section 2.7 The Parties recognize, agree, and stipulate that the financial, civic, and social benefits to the City of Windcrest from the presence of Rackspace on the Leased Property are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of Rackspace on the Leased Property. Accordingly, the magnitude of the damages that would result from a violation of Sections 2.2 through 2.6 hereof would be significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of the City of Windcrest. Therefore, the Parties agree that in the event of a violation of Sections 2.2 through 2.6 hereof including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the City of Windcrest will be entitled to recover from Rackspace the PILOT Payments provided for in Sections 2.2 through 2.6 hereof, which are stipulated to be reasonable estimated damages, as reasonable liquidated damages and not as a penalty. The Parties hereby acknowledge that they have negotiated the above amounts in a good faith attempt to quantify the amount of damages arising due to a violation of Sections 2.2 through 2.6 hereof despite the difficulty in making such determination. Accordingly, in the event the City of Windcrest collects the above referenced liquidated damages, then the City of Windcrest hereby waives any right to collect additional monetary damages (other than legal fees and expenses) including lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary, or punitive damages.

Section 2.8 Other Remedies Available. Subject to the preceding paragraph, the City of Windcrest shall have the right to take appropriate action to which it may be entitled, at law or in equity, to enforce the obligations of Rackspace pursuant to this Agreement.

Section 2.9 Rackspace shall calculate the number of employees meeting the Employment Commitment and the median salary of such employees as of December 31 of each year and shall certify such numbers to the City of Windcrest. The City of Windcrest shall, at its expense, have the right to cause its auditor to audit Rackspace's and any other entities' books and records which make up part of the calculation of the Employment Commitment, for the sole purpose of calculating the Employment Commitment.

ARTICLE 3

LEASED PROPERTY REDEVELOPMENT

Section 3.1 The Parties agree that Rackspace and the Windcrest EDC entered into the Mall Lease and that it remains in full force and effect. If the Leased Property is modified as contemplated by the definition of “Leased Property” as set forth in Section 1.13, the Windcrest EDC and Rackspace will amend the Mall Lease from time to time to reflect those changes.

Section 3.2 Reserved.

Section 3.3 The Parties agree that Rackspace has fulfilled its obligation to make a cumulative investment of at least \$100 million in the acquisition of and improvements to the Rackspace Corporate Headquarters Property. During the term of this Agreement, Rackspace shall pay to the City of Windcrest an administrative fee of \$100,000 per year provided, however, Rackspace shall be obligated to pay an administrative fee in any year if, and only if, the tax exemption on the Leased Property, the Real Property Improvements and the Personal Property Improvements pursuant to Section 4B(k) of the EDC Act remains in effect and if such condition is not met Rackspace will not owe the administrative fee to the City of Windcrest for that year.

Section 3.4 The Rackspace Corporate Headquarters Property will be owned by the Windcrest EDC and therefore will be exempt from property taxation during the term of the Lease pursuant to Section 4B(k) of the EDC Act. Nonetheless, Rackspace has agreed to make PILOT Payments as provided elsewhere in this Agreement, except during a 14-year exemption period, (the “Exemption Period”). The Exemption Period began on January 1, 2009 pursuant to proper notice given to the City of Windcrest. The Exemption Period will be for a 14-year period regardless of whether the Leased Property is actually exempt during such period. The PILOT Payments shall be calculated in the manner and amounts as set forth in Section 2.2(c). Rackspace shall also make PILOT Payments as set forth in Section 3.5 after the Exemption Period has expired and until the Mall Lease is terminated.

Section 3.5 Except during the Exemption Period, the PILOT Payments shall be paid to the City of Windcrest (or other entity designated by the City of Windcrest) for distribution to each Taxing Unit in an amount equal to the taxes that would have been assessed by each Taxing Unit against the Fee Simple Interest in the Rackspace Corporate Headquarters Property (including any improvements or additions) as if the property was not exempt from property taxation. These payments will be due by February 28th of the year following the tax year for which they are being paid. In the event the Bexar Appraisal District does not determine an appraised value for property tax purposes for the Rackspace Corporate Headquarters Property, then the appraised value for property tax purposes will be determined in the following manner. Rackspace will obtain an appraisal for the Rackspace Corporate Headquarters Property for property tax purposes from a real estate appraiser designated as a Member of the Appraisal Institute to appraise the Real Property and an appraiser who has an ASA designation to appraise the Tangible Personal Property (“Qualified Appraisers”). If the City of Windcrest agrees with that appraised value, then that value shall be used for purposes of this Section 3.5. If the City of Windcrest does not agree with that appraised value, then Rackspace and the City of Windcrest will attempt to agree on Qualified Appraisers to determine the appraised value for property tax purposes to be used. If Rackspace and the City of Windcrest are unable to mutually agree on Qualified Appraisers, then the City of Windcrest will select Qualified Appraisers who will, along with Rackspace’s Qualified Appraisers, select a third set of Qualified Appraisers to assist the appraisers chosen by the parties to value the property, which value shall be as

determined by a majority of such appraisers for each type of property (real and personal). In determining the relevant appraised values for property tax purposes, Rackspace, the City of Windcrest, and the appraisers shall be guided by the definitions contained in Section 1.17. Upon collection by the City of Windcrest, the PILOT Payments under this Section shall be distributed within thirty (30) days to each taxing unit as appropriate.

Section 3.6 During the Lease Term, Rackspace agrees to make additional PILOT Payments to the City of Windcrest for the benefit of the NEISD and the City will distribute them to the NEISD or its foundation, at the City of Windcrest's discretion, as follows: (a) the first payment will be payable no later than February 28, 2008 and shall be equal to the taxes that the NEISD would have assessed for the 2007 tax year against the Leased Property, if it was not exempt from property taxes, based on the Leased Property's 2007 tax year appraised value as determined by the Bexar Appraisal District; and (b) each year thereafter until the end of the Exemption Period Rackspace will make a PILOT Payment to the City of Windcrest (or such other entity the City may designate) in an amount calculated by multiplying the appraised value for tax purposes of the Rackspace Corporate Headquarters Property times the debt service portion (as defined in Texas Education Code Section 45.001(a)(2) or its successor provision) of the NEISD's tax rate for each such year.

Section 3.7 At the election of Rackspace upon notice to the Windcrest EDC, the Windcrest EDC and Rackspace will enter into a sale/leaseback, rental or similar agreements for any of such Personal Property Improvements Rackspace determines to be part of any such transaction which are acquired for use by Rackspace at the Leased Property. At the end of the Exemption Period, Rackspace shall purchase any such Personal Property Improvements from Windcrest EDC for \$1.00. Rackspace will be responsible for all accounting associated with its leases from Windcrest EDC of the Personal Property Improvements.

Section 3.8 All additions to the Leased Property and the Rackspace Corporate Headquarters Property will also be subject to ownership by the Windcrest EDC and shall therefore be subject to property tax exemption under Section 4B(k) of the EDC Act for the Exemption Period and shall also be subject to the PILOT Payments and the appraisal process provided herein.

Section 3.9 At any time during the term of this Agreement, and at Rackspace's option in its sole discretion, Rackspace may terminate the Mall Lease by written notice thereof to the Windcrest EDC and a copy to Alamo Title Company, Attn: Chris Varley, 4 Dominion Drive, Bldg. 4, Suite 100, San Antonio, Texas 78257 (the "Title Company"), upon which notice of termination the Title Company shall release from escrow and record in the Official Public Records of Bexar County, Texas the special warranty deed (executed by the Windcrest EDC contemporaneously herewith and delivered to the title company in escrow) conveying the Leased Property and all improvements thereto to Rackspace in consideration of the prepaid lease payments under Section 3.1 above and an additional \$1.00 cash. The Parties hereby acknowledge and agree that Rackspace's options under Section 3.7 and this Section 3.9 are each supported by \$50.00 independent consideration (for a total of \$100.00 independent consideration) paid by Rackspace to Windcrest EDC as of August 2, 2007.

Section 3.10 The Windcrest EDC will work with Rackspace so that materials incorporated into improvements to the Leased Property and the Real Property Improvements will be exempt from

~~ad valorem~~ sales and use taxes. The Windcrest EDC shall take such action as reasonably requested by Rackspace to achieve such tax exemption. Rackspace will provide Windcrest EDC with an indemnification for any such actions.

Section 3.11 The City of Windcrest and Rackspace have entered into a City Economic Development Grant Agreement, pursuant to Chapter 380 of the Texas Local Government Code, which agreement provides that, in the event it is determined that Section 4B(k) of the EDC Act does not apply or exempt the Leased Property, the Real Property Improvements or the Personal Property Improvements from property taxes, the City of Windcrest will make a grant to Rackspace of the property and sales taxes the City of Windcrest collects from the Annexed Area, the Eisenhower Development Tract, and the Windcrest Development Site (less its cost of providing municipal services to the Annexed Area that are not covered by one-half of the local sales taxes collected as hereafter provided, and less any payments to the City of San Antonio under Section 10.4 (“the Boundary Change Agreement”) to reimburse Rackspace for any property taxes it must pay during the Exemption Period. These grants will be made each year until the sooner of (a) full reimbursement to Rackspace of any and all accrued property taxes paid by Rackspace on the Leased Property, the Real Property Improvements or the Personal Property Improvements, or (b) December 31, 2047, after which such grant payments shall cease. The City Economic Development Grant Agreement shall survive the expiration or the earlier termination of this Agreement. The City of Windcrest agrees it will not enter into any Economic Development Grants or other arrangements affecting any of the Annexed Area other than the Leased Premises (other than possibly as serving as the general contractor or owner in order to exempt the purchase of construction materials from sales taxes, similar to the arrangement described in Section 3.10 above) that have the effect of reducing or committing the property tax and sales tax revenues therefrom to other purposes not specifically provided for in this Agreement if such grant or arrangement, without the prior consent of Rackspace, would either (i) provide the described incentive for a period lasting longer than five (5) years after completion of construction of the incentivized improvement(s), or (ii) constitute an abatement, cumulatively with all other incentives or exemptions in effect on such property, in excess of fifty percent (50%) of the expected tax value of the Annexed Area other than the Leased Premises after construction of all anticipated improvement(s).

Section 3.12 As its sole obligation under this Agreement, the County has entered into a County Economic Development Grant Agreement with Rackspace, pursuant to Chapter 381 of the Texas Local Government Code, which agreement provides that, in the event it is determined that Section 4B(k) of the EDC Act does not apply or exempt the Leased Property, the Real Property Improvements or the Personal Property Improvements from property taxes, the County will make a grant to Rackspace of the property taxes the County collects in the Annexed Area (less the amount of property taxes the County is currently collecting in the Annexed Area) for ten (10) tax years following the first day of the Exemption Period. Ad valorem taxes eligible under this Agreement shall be the ad valorem taxes levied by the Commissioners Court for and on behalf of Bexar County only, and shall not include taxes levied by the Commissioners Court for and on behalf of the Bexar County Hospital District operating as University Health System, the Bexar County Flood Control District, or any other taxing entity. The County Economic Development Grant Agreement and the terms of this Agreement shall be Rackspace’s sole recourse against the County in the event that the Leased Property, the Real Property Improvements or the Personal Property Improvements becomes

subject to taxation. The County Economic Development Grant Agreement shall survive the early termination of this Agreement. The County agrees it will not enter into any Economic Development Grants or other arrangements affecting any of the Annexed Area other than the Leased Premises that have the effect of reducing or committing the property tax and sales tax revenues therefrom to other purposes not specifically provided for in this Agreement if such grant or arrangement, without the prior consent of Rackspace, would either (i) provide the described incentive for a period lasting longer than five (5) years after completion of construction of the incentivized improvement(s), or (ii) constitute an abatement, cumulatively with all other incentives or exemptions in effect on such property, in excess of fifty percent (50%) of the expected tax value of the Annexed Area other than the Leased Premises after construction of all anticipated improvement(s). Notwithstanding the foregoing, however, the County may make CDBG or EDA grants, a grant of its general funds, or another type of grant or incentive in the Annexed Area if it will not adversely affect the value of (or impair the ability of the County to pay) the grants to Rackspace under the County Economic Development Grant Agreement. Rackspace agrees that from the effective date of this Agreement throughout the term hereof, one-hundred percent (100%) of all Rackspace employment positions at the Rackspace Corporate Headquarters Property shall be paid a minimum wage, not including benefits, of at least nine dollars and ninety-three cents (\$9.93) per hour (or a salary that satisfies that requirement). Rackspace further agrees that within one (1) year of the commencement of Business Activities at the Rackspace Corporate Headquarters Property, seventy percent (70%) of all new and existing Rackspace employees at the Rackspace Corporate Headquarters Property shall be paid a minimum wage, not including benefits, of at least eleven dollars and forty-five cents (\$11.45) per hour (or a salary that satisfies that requirement). Subject to meeting the requirements of such statute, Bexar County shall grant Rackspace a one hundred percent (100%) property tax abatement for at least ten (10) years under Tax Code Chapter 312, with a base year of 2007.

Section 3.13 The commitment by Rackspace is subject to the granting by the Bexar Appraisal District of the initial property tax exemption for the Leased Property under Section 4B(k) of the EDC Act. The Parties agree to use their best efforts to support and defend the validity of the ad valorem tax exemption under Section 4B(K) of the EDC Act for the Rackspace Corporate Headquarters Property, provided that the Parties shall not be required to incur other than nominal expenses in their best efforts, and provided further that all reasonable and necessary expenses incurred by Rackspace in its best efforts to support and defend the validity of the ad valorem tax exemption shall be added to the amount of the grants under the City Economic Grant Agreement as if they were ad valorem taxes paid.

Section 3.14 Rackspace shall owe no PILOT Payment under this Agreement for any tax year in which the Rackspace Corporate Headquarters Property is not exempt from property taxation and it is required to pay property taxes for that tax year. If Rackspace is required to pay ad valorem property taxes to any taxing unit in connection with the Rackspace Corporate Headquarters Property, Rackspace shall be entitled to a credit in the amount of the property tax payments against any PILOT Payments made pursuant to this Agreement for the benefit of such taxing units.

Section 3.15 Subject to meeting the requirements of such statute, the City of Windcrest shall grant Rackspace and Windcrest EDC a one hundred percent (100%) property tax abatement for at least ten (10) years under Tax Code Chapter 312, with a base year of 2007.

ARTICLE 4

RESERVED

ARTICLE 5

RACKER ROAD CONSTRUCTION

Section 5.1 The Windsor Park Mall ring road will be renamed Racker Road and will be renovated by the City of Windcrest at its sole cost and expense in accordance with the plans set forth on Exhibit "H." The budget for the ring road construction (including soft costs) is approximately \$2,843.8 million. Any and all cost savings shall be used for lighting, landscaping, improvements to adjacent parking and other beautification work to be agreed upon by the Parties. After the road work is complete the road will be dedicated to the City of Windcrest which will be responsible for all maintenance and upkeep, including landscaping which is part of the dedicated road.

ARTICLE 6

WALZEM INTERCHANGE

Section 6.1 The City of Windcrest will use its best efforts to cause Walzem Road to be renamed Rackspace Boulevard/Walzem Road and for the signage to be changed on IH 35 at TXDOT's expense and in a manner that will not change the official mailing addresses located on Walzem Road.

Section 6.2 Reserved.

Section 6.3 Reserved.

Section 6.4 The City of Windcrest will use its best efforts to cause TXDOT to install overhead signage on IH 35 denoting Racker Road as part of the Walzem Road signage.

ARTICLE 7

UTILITIES

Section 7.1 The Parties will use their best efforts to cause CPS Energy to underground all utilities along Walzem Road from IH 35 to the end of the Leased Property within 30 months of the Effective Date, provided, however, that Rackspace shall not be required to incur other than nominal expenses in the exercise of such best efforts.

Section 7.2 Reserved.

ARTICLE 8

WALZEM ROAD

Section 8.1 The City of Windcrest will complete work to irrigate the landscaped, raised median area on Walzem Road no later than December 31, 2012.

Section 8.2 Reserved.

ARTICLE 9

RESERVED

ARTICLE 10

BOUNDARY CHANGE AND TAX SPLIT

Section 10.1 The Boundary Change Agreement contains specific terms under which the City of San Antonio agreed to release the Annexed Area from its jurisdiction and allow for the City of Windcrest to accept and annex the Annexed Area into the municipal limits of the City of Windcrest.

Section 10.2 As partial consideration to the City of San Antonio for entering into the Boundary Change Agreement, the City of Windcrest and the Windcrest EDC hereby represent to the City of San Antonio and the other Parties that as of the Effective Date:

- (a) They have executed an agreement with Rackspace to locate at the Leased Property.
- (b) They have the concurrence, with regard to the Boundary Change Agreement, of NEISD, Alamo Community College District, and the Bexar Appraisal District.

The City of San Antonio hereby represents to the other Parties that as of the Effective Date all of the foregoing consideration for entering into the Boundary Change Agreement has been received.

Section 10.2.1 The City of Windcrest, the Windcrest EDC, and the City of San Antonio acknowledge that while the City of San Antonio is relying upon the documentation presented under Section 10.2 (a) and (b), the City of San Antonio is in no way warranting or guaranteeing the legal effectiveness of such documents.

Section 10.2.2 Reserved.

Section 10.3 The City of San Antonio entered into the Boundary Change Agreement upon the representation that the City of San Antonio will receive not less than \$137,968 annually (the amount of property taxes being paid on the Annexed Area at the time of execution of this Agreement) for a period of thirty (30) years. For a period of thirty (30) years after the Effective Date, Rackspace shall pay to the City of San Antonio the amount of any shortfall of the actual amount paid to the City of San Antonio in property and sales tax revenue or PILOT Payments in a given calendar year compared to \$137,968. The City of Windcrest shall give Rackspace written notice of any amounts owed by Rackspace under this Section 10.3 by no later than March 31 of each year (including for years for which no such amounts are owed), and Rackspace shall pay such amount, if any, to the City of San Antonio on or before June 15 of that year. Any payments by Rackspace under this Section 10.3 shall be subject to reimbursement under Section 3.11.

Section 10.4 The Boundary Change Agreement provides for an effective date of October 2, 2007 (the "Boundary Change Date") for the Annexed Area. The Boundary Change Agreement also provides for the sharing of future tax revenue on the Annexed Area for the next thirty (30) years from the Boundary Change Date as follows:

- (a) The City of San Antonio and the City of Windcrest shall each receive fifty percent (50%) of the local sales taxes due to the City of Windcrest and distributed by the State Comptroller for taxable Business Activities conducted on the Annexed Area; provided, however, that the fifty percent (50%) of all such local sales taxes to be retained by the City of Windcrest under such agreement shall be subject to the terms of Section 3.11 of this Agreement, including possible distribution to Rackspace as part of the City of Windcrest's Chapter 380 economic development grant to Rackspace.
- (b) For those years when the Leased Property, Real Property Improvements and Personal Property Improvements are exempt from property taxes under Section 4B(k) of the EDC Act, the City of San Antonio and the City of Windcrest will each receive fifty percent (50%) of all property and sales taxes resulting from the Annexed Area.
- (c) For those years when the Leased Property, Real Property Improvements and Personal Property Improvements are exempt from property taxes under Section 4B(k) of the EDC Act and Rackspace makes a PILOT Payment as may be required under this Agreement (whether made before or after the Exemption Period or under Sections 2.2 through 2.7 of this Agreement), the City of San Antonio and the City of Windcrest shall each receive fifty percent (50%) of the city portion of the Rackspace PILOT Payment on the Leased Property determined at the City of Windcrest tax rate with the real and personal property valuation to be determined in Section 3.5.

- (d) In the event that the Windcrest EDC has or acquires the right to sell the Leased Property, and then sells the Leased Property, the City of San Antonio and City of Windcrest shall each receive fifty percent (50%) of the profit from the sale of the Leased Property after the payment of all liens, encumbrances and claims against the Leased Property and all other unreimbursed expenses the Windcrest EDC has incurred regarding the Leased Property.

Section 10.5 The City of Windcrest agrees that King Arthur and Ray Bon Streets will remain public streets in the Annexed Area to provide access to the Camelot Subdivision from Eisenhower Road, and that the speed limit for such streets shall remain thirty (30) miles per hour unless the City of San Antonio and the City of Windcrest mutually agree otherwise. Windcrest EDC agrees to consult with the City of San Antonio prior to taking any actions regarding this Agreement that would adversely affect the City of San Antonio's interest in the Project, provided that no additional consultation shall be required for the Windcrest EDC to take actions that the Windcrest EDC is directed or specifically authorized to take under this Agreement.

ARTICLE 11

SECURITY PROVISIONS

Section 11.1 Reserved.

Section 11.2 The City of Windcrest will continue its existing "mutual aid" agreement with the City of San Antonio.

Section 11.3 The City of Windcrest Police Department will provide routine patrols (at least eight (8) per eight (8) hour shift) for the perimeter of the buildings in the Leased Property.

Section 11.4 Reserved.

ARTICLE 12

BOND FINANCING

Section 12.1 If Rackspace requests that the City of Windcrest issue bonds, any such bonds shall: (a) be payable from lease payments on the Mall Lease received by the Windcrest EDC; (b) not be a liability of the City of Windcrest, the City of San Antonio or the County and no general fund, property taxes or sales taxes will be pledged; and (c) be issued solely on the credit of Rackspace.

Section 12.2 The Windcrest EDC will subordinate its fee interest in the Leased Property to the bond holders, provided that upon any foreclosure or deed in lieu of foreclosure, the Leased Property will be subject to property taxes and the recapture provisions of Sections 2.2 through 2.6 of this Agreement or the City Economic Development Grant Agreement or the County Economic

Development Grant Agreement, as applicable, continue to apply to Rackspace after the foreclosure or deed in lieu of foreclosure, and provided further that under the subordination agreement, the City of Windcrest will be given a ninety (90) day notice and cure period to pay the outstanding debt and to maintain ownership of the Leased Property.

ARTICLE 13

MISCELLANEOUS

Section 13.1 Reserved.

Section 13.2 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 13.3 Governing Law. The governing law of this Agreement shall be the law of the State of Texas, without giving effect to any choice-of-law standards that may require the application of the laws of another jurisdiction.

Section 13.4 Venue. Venue for any litigation under this Agreement shall be in Bexar County, Texas.

Section 13.5 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

Section 13.6 Notices. All communications and notices expressly provided herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by facsimile (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows, unless and until changed as described below:

County of Bexar, Texas:

County Judge Nelson W. Wolff
Bexar County Courthouse
100 Dolorosa, Suite 120
San Antonio, Texas 78205
Fax: (210) 335-2926

With a copy to:

Ms. Susan D. Reed
District Attorney
Justice Center, 5th Floor
300 Dolorosa
San Antonio, Texas 78205
Fax: (210) 335-2151

City of San Antonio, Texas:

Mayor Julian Castro
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4168

With a copy to:

Ms. Sheryl L. Sculley
San Antonio City Manager
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4217

With a copy to:

Mr. Michael Bernard
City Attorney
100 Military Plaza
San Antonio, Texas 78205
Fax: (210) 207-4004

City of Windcrest, Texas:

Mayor of Windcrest
City Hall
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

With a copy to:

City Administrator
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

With a copy to:

Scott Farrimond, Esq.
Farrimond Castillo & Bresnahan, P.C.
130 East Travis Street, Suite 350
San Antonio, Texas 78205
Facsimile: (210) 231-0004

Windcrest Economic Development
Corporation:

Director of Economic Development
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

With a copy to:

Scott Farrimond, Esq.
Farrimond Castillo & Bresnahan, P.C.
130 East Travis Street, Suite 350
San Antonio, Texas 78205
Facsimile: (210) 231-0004

Rackspace US, Inc.:

General Counsel
5000 Walzem Road
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to:

Manager of Real Estate Services
5000 Walzem Road
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to:

Mr. Stephen L. Golden, Esq.
300 Convent Street, Suite 2650
San Antonio, Texas 78205
Fax: (210) 745-3737

However, if a recipient listed above provides written notice to all other recipients, by registered or certified mail, of a change in their address or contact information, that information (and any subsequent changes of which the recipient gives such notice) controls.

Section 13.7 Cost and Expenses. Each Party agrees to pay its own costs incurred in connection with the project proposal, including attorneys' fees and all costs and expenses incurred in connection with the preparation of any studies or reports, surveys or approvals, this Agreement or otherwise.

Section 13.8 Press Releases. The Parties agree to cooperate fully to coordinate with each other and the State in connection with all press releases and publications concerning the Project.

Section 13.9 Assignment. This Agreement is not assignable without consent of the City of Windcrest except to a Related Organization.

Section 13.10 Further Actions; Equivalent Incentives. In the event that provisions of the Constitution and laws of the State of Texas limit the ability of a Party to perform its functions hereunder in any way, then such Party (and, if necessary, other applicable or appropriate Parties, without additional cost or liability to such other Parties that is not offset by new and additional sources of revenue or funds that arise in connection with such limitation) shall work with Rackspace to identify and provide Rackspace with a substitute incentive of equivalent economic value, and to the extent necessary, such Parties will make a good faith effort to seek and obtain appropriate legislation or other appropriate action to the extent necessary to allow performance hereunder or with respect to a substitute incentive of equivalent economic value.

Section 13.11 Further Assurances. The Parties agree to do all things and take all actions required, consistent with and subject to this Agreement, to establish the Project, including, without limitation, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds.

Section 13.12 Section Titles and Headings. The Section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 13.13 Survival of Representations and Warranties. The representations, warranties and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

Section 13.14 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue in effect through the earlier to occur of the date upon which Rackspace, a Related Organization, or an approved assignee, shall cease to operate the Project or the date which is thirty-one (31) years after the Effective Date.

Section 13.15 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties which are parties hereto.

Section 13.16 Cooperation in Event of Dispute. In the event of a dispute concerning this Agreement or the Parties' obligations hereunder, the Parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another

mutually agreeable dispute resolution process, the Parties agree to submit the matter in dispute to mediation. Written notice of the intent to submit a matter to mediation shall be given by the party requesting the same. Only one mediator (selected jointly by the Parties to the dispute) shall be used to mediate the outcome. Such mediation shall be held in San Antonio, Texas or if the parties agree upon another location, that other location.

Section 13.17 Recitals. The Recitals above are hereby incorporated into this Agreement for any and all purposes.

Section 13.18 Merger. This document constitutes the final entire agreement between the Parties and supersedes any and all oral or written agreements relating to the subject matter of this Agreement, except for the other agreements expressly contemplated to be entered into under this Agreement.

Section 13.19 RACKSPACE COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY OF WINDCREST, THE CITY OF SAN ANTONIO AND BEXAR COUNTY (THE "GOVERNMENT ENTITIES") AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE GOVERNMENT ENTITIES, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE GOVERNMENT ENTITIES, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO RACKSPACE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF RACKSPACE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR OF RACKSPACE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GOVERNMENT ENTITIES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW, PROVIDED, HOWEVER, THAT THIS INDEMNITY IS NOT INTENDED TO EFFECT THE EXEMPTIONS, GRANTS AND OTHER ECONOMIC INCENTIVES GIVEN TO OR FOR THE BENEFIT OF RACKSPACE HEREUNDER, EVEN IF THE SAME COME AT A COST, LOSS, OR EXPENSE TO ANY OF THE GOVERNMENT ENTITIES. RACKSPACE SHALL PROMPTLY ADVISE THE GOVERNMENT ENTITIES IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE GOVERNMENT ENTITIES OR RACKSPACE KNOWN TO RACKSPACE RELATED TO OR ARISING OUT OF RACKSPACE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT RACKSPACE'S COST. THE GOVERNMENT ENTITIES SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING RACKSPACE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

Section 13.20 RACKSPACE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE GOVERNMENT ENTITIES AND IN THE NAME OF THE GOVERNMENT ENTITIES, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE GOVERNMENT ENTITIES AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. RACKSPACE'S OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 13.21 Reserved.

Section 13.22 Reserved.

Section 13.23 Attorney Fees and Expenses. In the event that a Party (the "Defaulting Party") should default under any of the provisions of this Agreement and another Party (the "Nondefaulting Party") should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Defaulting Party, the Defaulting Party agrees to pay to the Nondefaulting Party reasonable fees of such attorneys and such other expenses so incurred by the Nondefaulting Party.

Section 13.24 Reserved.

[Signatures and Acknowledgments Begin on Following Page]

WHEREFORE, the Parties hereto have executed this Agreement and, as of the Effective Date, have agreed to the terms and conditions stated above that apply to them.

COUNTY OF BEXAR

By: _____
NELSON W. WOLFF,
County Judge

ATTEST:

GERARD RICKHOFF
County Clerk

APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

By: _____
LARRY ROBERSON,
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FINANCIAL CONTENT:

TOMMY J. TOMPKINS,
County Auditor

DAVID SMITH,
Executive Director of Planning/Budget Officer Planning
and Resource Management Dept.

APPROVED:

DAVID MARQUEZ,
Executive Director of Economic Development

CITY OF SAN ANTONIO, TEXAS

By: _____

Name: Sheryl L. Sculley

Title: City Manager

ATTESTED TO BY:

_____, City Clerk

APPROVED AS TO FORM:

Michael Bernard, City Attorney
City of San Antonio

CITY OF WINDCREST, TEXAS

By: _____

Name: Alan Baxter

Title: Mayor

By: _____

Name: Raphael Castillo

Title: City Administrator

APPROVED AS TO FORM:

Scott Farrimond, Special Counsel
City of Windcrest

WINDCREST ECONOMIC DEVELOPMENT
CORPORATION

By: _____

Name:

Title: Duly Authorized Representative

RACKSPACE US, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A

Annexed Area

EXHIBIT B

Boundary Change Agreement

EXHIBIT C

Eisenhower Development Tract

EXHIBIT D

Leased Property

Legal Description

EXHIBIT E

Firestone Tract

Legal Description

EXHIBIT F

Mall Lease

EXHIBIT G

Windcrest Development Site Map

EXHIBIT H

Racker Road Construction Plans

Heather Weidenbach

From: Michael Brenan <brenanlaw@gmail.com>
Sent: Wednesday, June 27, 2012 10:01 AM
To: Alan Baxter; Rafael Castillo; Heather Weidenbach; Scott Farrimond; Sharon- Harry Adams
Subject: Revised MEIA
Attachments: Revised MEIA Agreement.docx

Lady and gentlemen:

Attached is a proposed resolution approving the revised MEIA. I noticed from the signature page that Rafael's first name is misspelled and he is referred to as the City Administrator rather than the City Manager. I also noticed from the agreement that there are several obligations of the city going forward which may need to be explained to the City Council. In particular, I noticed that Racker Road will be dedicated to Windcrest so that the city will be responsible for maintaining the road and its landscaping. Also in section 6.1 the city will use its best efforts to cause Walzem Road to be renamed- what is the financial limit of "best efforts"? In section 7.1 the city will use best efforts (how much will that cost) to cause CPS to install underground utilities on Walzem Road within thirty months. Section 8.1 requires the city to irrigate the median area on Walzem Road by December 31, 2012. I also noticed in section 10.5 that King Arthur and Ray Bon Streets will remain public streets to provide access to Camelot and Eisenhower Road and that the speed limit shall remain 30 mph on those streets. Also in section 11.3 police department patrols are required of the Rackspace property and in section 12.1, Rackspace can request the issuance of bonds by the City of Windcrest.

--

Michael S. Brenan
Attorney at Law
3303 Oakwell Court #120
San Antonio, Texas 78218
Ph: (210) 824-0600
Fax: (210) 804-0802

Draft

EXHIBIT "B"

COUNTY CONSENT TO AMENDMENT

This Consent to Amendment ("Consent") is granted effective as of the ____ day of October, 2011 (the "Effective Date") by Bexar County, Texas ("County"), through its undersigned duly-authorized official.

WHEREAS, the County, the City of Windcrest, Texas, a Texas home rule municipality (the "City of Windcrest"), the City of San Antonio, a Texas general law municipality, Windcrest Economic Development Corporation, a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979 (the "City EDC"), Rackspace US, Inc., a Delaware corporation ("Rackspace"), and Windcrest Economic Development Company, LLC, a Texas limited liability company ("Developer LLC"), entered into that certain agreement entitled Walzem Road Redevelopment Project Master Economic Incentives Agreement dated August 2, 2007 (the "MEIA"); and

WHEREAS, the City of Windcrest, the City EDC and the Developer LLC have agreed to amend the MEIA and have requested that the County, the City of San Antonio and Rackspace consent to an amendment of the MEIA so as to remove the Developer LLC as a party to the MEIA, to release the Developer LLC from any obligations under the MEIA or any documents or agreements entered into in furtherance of the MEIA, and to eliminate any rights of the Developer LLC under the MEIA, and the County has agreed to grant this Consent.

NOW, THEREFORE, Bexar County, for itself and its successors and assigns, hereby irrevocably consents to the amendment of the MEIA so as to (a) remove the Developer LLC as a party to the MEIA, (b) to release the Developer LLC from any and all liabilities, duties and obligations under the MEIA and any documents or agreements to which the County is a party with the Developer LLC that were entered into in furtherance of the MEIA, and (c) to eliminate any rights of the Developer LLC under the MEIA, it being the intention of the County to grant to the Developer LLC the broadest, most comprehensive release from liability permitted by law in regard to the MEIA and any document or agreement executed contemporaneously with or in furtherance of the MEIA, such that any and all existing contractual or legal obligations between the County and the Developer LLC under the MEIA and any documents or agreements entered into in furtherance of the MEIA which relate or pertain in any way to the purchase, sale, or development of properties in Windcrest, Texas or San Antonio, Texas are fully released and discharged, and of no further force and effect, it being the County's intention to dissolve any and all express or implied contractual relationships between the County and the Developer LLC, so that the Developer LLC is completely free to pursue its own interest in the future without regard to any express or implied contractual obligation or other legal obligation of any kind owing to the County under the MEIA and under any documents or agreements entered into in furtherance of the MEIA or relating to or pertaining in any way to the purchase, sale or development of property in Windcrest, Texas or San Antonio, Texas.

E Edward S. Bexar. 019

AC

Draft

The County hereby further consents to the manner in which the City EDC, in its capacity as a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979, acquired and held title to property in the City of San Antonio and the City of Windcrest, so as to render said property exempt from the payment of ad valorem taxes and assessments while the City EDC held and may continue to hold title to such property and hereby acknowledges and agrees that, during the period while the City EDC holds and may continue to hold title to such property, such property shall remain exempt from the payment of ad valorem taxes and assessments imposed by Bexar County.

IN WITNESS WHEREOF, the County has executed this Consent, through its undersigned, duly-authorized official in the presence of the undersigned witnesses, to be effective as of the Effective Date.

WITNESSES:

BEXAR COUNTY, TEXAS

By: _____

Its: _____

AN ORDINANCE

2012-06-07-0409

APPROVING A CONSENT AGREEMENT AND AMENDMENT TO THE WALZEM ROAD REDEVELOPMENT MASTER ECONOMIC INCENTIVE AGREEMENT AMONG THE CITY OF WINDCREST, THE WINDCREST ECONOMIC DEVELOPMENT CORPORATION, WINDCREST ECONOMIC DEVELOPMENT COMPANY, L.L.C., BEXAR COUNTY, THE CITY OF SAN ANTONIO AND RACKSPACE US, INC d/b/a RACKSPACE HOSTING.

* * * * *

WHEREAS, the City Council approved a Master Economic Incentives Agreement (the "Agreement") and Boundary Change Agreement among the City of Windcrest, the Windcrest Economic Development Corporation, Windcrest Economic Development Company, L.L.C., Bexar County and Rackspace, U.S., Inc. through City Ordinance 2007-08-02-0811; and

WHEREAS, the Agreement provided for certain economic incentives for the relocation and expansion of Rackspace Hosting's operations including certain development obligations to be undertaken by the Windcrest Economic Development Company, L.L.C; and

WHEREAS, upon the dissolution of Windcrest Economic Development Company, L.L.C., the remaining parties seek to amend the Agreement by removing the dissolved party and continuing the remaining obligations in the Agreement by the remaining parties; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council approves the terms and conditions of the San Antonio Consent to Amendment of the MEIA (the "Consent Agreement") and Amendment to the Walzem Road Redevelopment Master Economic Incentive Agreement (the "Amendment") among the City of Windcrest, the Windcrest Economic Development Corporation, Windcrest Economic Development Company, L.L.C., Bexar County and Rackspace, U.S., Inc.

SECTION 2. The City Manager or her designee is authorized to execute the Consent Agreement and the Amendment. Copies of the Consent Agreement and the Amendment, in substantially final form, are attached to this Ordinance as **Attachment I and Attachment II**. The final agreements shall be filed with this Ordinance upon execution.

SECTION 3. This Ordinance shall be effective immediately upon its passage by eight (8) votes or after the 10th day after its passage by less than eight (8) affirmative votes.

PASSED AND APPROVED this 7th day of June, 2012.



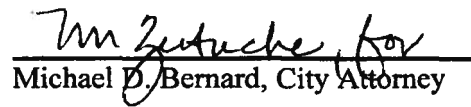
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 14

Name:	4, 7A, 7B, 8A, 8B, 9, 11, 12, 13, 14, 15						
Date:	06/07/2012						
Time:	09:25:30 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a consent agreement and amendment to the Walzem Road Redevelopment Master Economic Incentive Agreement among the City of Windcrest, the Windcrest Economic Development Corporation, Windcrest Economic Development Company, L.L.C., Bexar County, the City of San Antonio and Rackspace US, Inc dba Rackspace Hosting. [Pat DiGiovanni, Deputy City Manager; Rene Dominguez, Director, Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

SAN ANTONIO CONSENT TO AMENDMENT OF MEIA

This Consent to Amendment ("Consent") is granted effective as of the ____ day of October, 2011 (the "Effective Date") by the City of San Antonio, Texas ("City of San Antonio"), through its undersigned duly-authorized official.

WHEREAS, Bexar County, Texas (the "County"), the City of Windcrest, Texas, a Texas home rule municipality (the "City of Windcrest"), the City of San Antonio, Windcrest Economic Development Corporation, a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979 (the "City EDC"), Rackspace US, Inc., a Delaware corporation ("Rackspace"), and Windcrest Economic Development Company, LLC, a Texas limited liability company ("Developer LLC"), entered into that certain agreement entitled Walzem Road Redevelopment Project Master Economic Incentives Agreement dated August 2, 2007 (the "MEIA"); and

WHEREAS, the City of Windcrest, the City EDC and the Developer LLC have agreed to amend the MEIA and have requested that the County, the City of San Antonio and Rackspace consent to an amendment of the MEIA so as to remove the Developer LLC as a party to the MEIA, to release the Developer LLC from any obligations under the MEIA or any documents or agreements entered into in furtherance of the MEIA, and to eliminate any rights of the Developer LLC under the MEIA, and the City of San Antonio has agreed to grant this Consent.

NOW, THEREFORE, the City of San Antonio, for itself and its successors and assigns, hereby irrevocably consents to the amendment of the MEIA so as to (a) remove the Developer LLC as a party to the MEIA, (b) to release the Developer LLC from any and all liabilities, duties and obligations under the MEIA and any documents or agreements to which the City of San Antonio is a party with the Developer LLC that were entered into in furtherance of the MEIA, and (c) to eliminate any rights of the Developer LLC under the MEIA, it being the intention of the City of San Antonio to grant to the Developer LLC the broadest, most comprehensive release from liability permitted by law in regard to the MEIA and any document or agreement executed contemporaneously with or in furtherance of the MEIA, such that any and all existing contractual or legal obligations between the City of San Antonio and the Developer LLC under the MEIA and any documents or agreements entered into in furtherance of the MEIA which relate or pertain in any way to the purchase, sale, or development of properties in Windcrest, Texas or San Antonio, Texas are fully released and discharged, and of no further force and effect, it being the intention of the City of San Antonio to dissolve any and all express or implied contractual relationships between the City of San Antonio and the Developer LLC, so that the Developer LLC is completely free to pursue its own interest in the future without regard to any express or implied contractual obligation or other legal obligation of any kind owing to the City of San Antonio under the MEIA and under any documents or agreements entered into in furtherance of the MEIA or relating to or pertaining in any way to the purchase, sale or development of property in Windcrest, Texas or San Antonio, Texas.

The City of San Antonio hereby further consents to the manner in which the City EDC, in its capacity as a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979, acquired and held title to property in the City of San Antonio, so as to render said property exempt from the payment of ad valorem taxes and assessments while the City EDC held and may continue to hold title to such property and hereby acknowledges and agrees that, during the period while the City EDC holds and may continue to hold title to such property, such property shall remain exempt from the payment of ad valorem taxes and assessments imposed by the City of San Antonio.

IN WITNESS WHEREOF, the County has executed this Consent, through its undersigned, duly-authorized official in the presence of the undersigned witnesses, to be effective as of the Effective Date.

WITNESSES:

CITY OF SAN ANTONIO, TEXAS

By: _____

Its: _____

ATTACHMENT II

AMENDED AND RESTATED
RACKSPACE US, INC.
REDEVELOPMENT PROJECT
MASTER ECONOMIC INCENTIVES
AGREEMENT

____, 2012

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AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT

MASTER ECONOMIC INCENTIVES AGREEMENT

THIS AMENDED AND RESTATED RACKSPACE US, INC. REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT (this "Agreement") is hereby made and entered into effective as of _____, 2012 (the "Effective Date") by and between the CITY OF WINDCREST, TEXAS (the "City of Windcrest"), the CITY OF SAN ANTONIO, TEXAS (the "City of San Antonio"), the COUNTY OF BEXAR, TEXAS (the "County"), the WINDCREST ECONOMIC DEVELOPMENT CORPORATION (the "Windcrest EDC"), and RACKSPACE US, INC., a Delaware corporation ("Rackspace"). The City of Windcrest, the City of San Antonio, the County, the Windcrest EDC, and Rackspace may hereinafter be referred to collectively as the "Parties."

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JOINT RECITALS OF ALL PARTIES

WHEREAS, the Parties and WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC were parties to that certain WALZEM ROAD REDEVELOPMENT PROJECT MASTER ECONOMIC INCENTIVES AGREEMENT dated August 2, 2007 (the "Original MEIA"); and

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~~WHEREAS, the WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC is no longer involved in or in any way associated with the subject matter of the Original MEIA and no longer a party to the Original MEIA; and~~

~~WHEREAS, the Parties agree to amend and restate the Original MEIA so as to remove WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC as a party to the Original MEIA, to remove WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC as the "Developer" under the Original MEIA, to release WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC from any obligations under the Original MEIA and any documents or agreements entered into in furtherance of the Original MEIA, and to eliminate any rights of WINDCREST ECONOMIC DEVELOPMENT COMPANY, LLC under the Original MEIA; and~~

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WHEREAS, the Parties desire to enter into this Agreement and agree that this Agreement shall supersede the Original MEIA in all respects and shall govern the rights, obligations, covenants and agreements of the Parties with respect to the subject matter contained herein; and

WHEREAS, Article III, Section 52-a of the Texas Constitution expressly authorizes the State of Texas (the "State") and local governments to use public funds for the public purposes of development and diversification of the economy of the State, the elimination of unemployment or underemployment in the State, or the development or expansion of transportation or commerce in the State; and

WHEREAS, consistent with Article III, Section 52-a of the Texas Constitution, the Parties made specific proposals to Rackspace for the purpose of inducing Rackspace to relocate its corporate headquarters to the Leased Property, as defined below, and thereby advance the public purposes of developing and diversifying the economy of the State, eliminating unemployment or

underemployment in the State, and developing or expanding transportation or commerce in the State; and

WHEREAS, to ensure that the benefits the Parties provide under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, and other law, Rackspace has agreed to comply with certain conditions for receiving those benefits, including performance measures relating to job creation; and

WHEREAS, the Windcrest EDC is a Section 4B corporation created pursuant to the authority of the Development Corporation Act of 1979, as amended, Texas Revised Civil Statutes Annotated, Article 5190.6 (the "EDC Act"); and

WHEREAS, it has been determined that Section 4B(a)(3) of the EDC Act allows the Windcrest EDC to use funds in connection with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that the board of directors of the Windcrest EDC believes would promote new or expanded business development in the City of Windcrest; and

WHEREAS, it has been determined that pursuant to Section 23(a) of the EDC Act and Article 1396-2.02.A.(4) of the Texas Nonprofit Corporation Act (Article 1396-1.01 *et seq.*, Vernon's Texas Revised Civil Statutes) (the "Nonprofit Corporation Act") the Windcrest EDC may acquire certain real estate located partially in the City of Windcrest and partially in the City of San Antonio; and

WHEREAS, it has been determined that as provided by Section 23(a) of the EDC Act and pursuant to Article 1396-2.02.A.(8) of the Nonprofit Corporation Act, the Windcrest EDC may make contracts and incur liabilities, borrow money at such rates of interest as the Windcrest EDC may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income; and

WHEREAS, pursuant to the Original MEIA, Rackspace joined with the Windcrest EDC to assist with the redevelopment of that certain tract of land and improvements comprising the property formerly known as the Windsor Park Mall (and hereinafter defined in Section 1.13 as the "Leased Property") into a corporate headquarters for Rackspace (the "Leased Property Project" as hereinafter defined in Section 1.14); and

WHEREAS, pursuant to the EDC Act, the Windcrest EDC acquired the Leased Property and leased it to Rackspace; and

WHEREAS, Rackspace has relocated its U.S. corporate headquarters to the Leased Property and as of December 31, 2011, Rackspace had in excess of 2400 employees located at the Leased Property; and

WHEREAS, Rackspace and the State of Texas are parties to that certain Economic Development Agreement dated August 1, 2007, as amended by Amendment Number One to the Economic Development Agreement dated July 24, 2009 ("TEF Amendment") which sets forth criteria for employment creation by Rackspace in the State of Texas for Rackspace's Texas Enterprise Fund grants; and

WHEREAS, the Parties acknowledge that the TEF Amendment triggered an automatic adjustment to the employment commitment as set forth in Section 2.1 of the Original MEIA, to wit under Section 2.f. of the TEF Amendment, the job requirement for Windcrest, Texas has been set at two-thirds of the entire state job requirement of 2,661 jobs, or a total of 1774 jobs at Windcrest, Texas, by December 31, 2012, therefore, the total Employment Commitment under the Original MEIA was automatically reduced to 1774 jobs at the Leased Property by December 31, 2012; and

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WHEREAS, the Parties acknowledge that Rackspace has satisfied the employment commitment ahead of schedule due the fact that it had greater than 1774 jobs at the Leased Property effective December 31, 2011.

AGREEMENTS

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Reserved.

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Section 1.2 "Agreement" means this Agreement and any addendum to this Agreement agreed to by the Parties.

Section 1.3 "Annexed Area" means the property described in Exhibit "A".

Section 1.4 Reserved.

Section 1.5 "Boundary Change Agreement" means an agreement entered into effective August 2, 2007 between the City of San Antonio and the City of Windcrest pursuant to Section 43.035 of the Local Government Code containing the terms and provisions of Article 9 of this Agreement, attached hereto as Exhibit "B", and made a part of this Agreement.

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Section 1.6 "Business Activities" means the operation by Rackspace of an information technology services business, including acting as the U.S. corporate headquarters for such business, and the business operations of any assignee, tenant or subtenant of Rackspace approved by the City of Windcrest and located at the Leased Property.

Section 1.7 "City Economic Development Grant Agreement" means the agreement entered into between the City of Windcrest and Rackspace effective August 2, 2007 entered into pursuant to Chapter 380 of the Local Government Code, and containing the terms and provisions of Section 3.11 of this Agreement.

Section 1.8 "County Economic Development Grant Agreement" means the agreement entered into between the County and Rackspace effective August 2, 2007, pursuant to Chapter 381 of

the Local Government Code, and containing the terms and provisions of Section 3.12 of this Agreement.

Section 1.9 "Cure Period" means that if either party believes the other is in default under any of the terms set forth in this Agreement it shall notify the allegedly Defaulting Party of the nature of the breach as provided in Section 13.6. The party receiving notice of default shall have ninety (90) calendar days from the date such notice is received to cure the default. If the default has not been cured by that date this Agreement may be terminated after giving ten (10) calendar days written notice. The Nondefaulting Party shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if the Defaulting Party commences to cure said default within the ninety (90) day Cure Period and it is diligently pursuing such cure. Any extension of the Cure Period shall not operate or be construed as a further or continuing waiver of such default or as a waiver of any other or subsequent default under any of the terms of this Agreement.

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Section 1.10 "Eisenhower Development Tract" means the property described in Exhibit "C."

Section 1.11 "Exemption Period" has the meaning provided in Section 3.4 of this Agreement.

Section 1.12 "Force Majeure" means the occurrence of any of the following events that results in the impossibility of performance: war, domestic terrorist acts, riots, strikes, embargoes, acts of God, earthquakes, fires, hurricanes, tornadoes, floods, wash outs, and unusually severe weather, interruption or unavailability of utilities, or due to failure of performance by suppliers.

Section 1.13 "Leased Property" means that certain tract of land and improvements comprising the real property located at 5000 Walzem Road, San Antonio, Texas, formerly known as the Windsor Park Mall and being more particularly described in Exhibit "D". The term also includes the improvements, additions and renovations made by Rackspace or Windcrest EDC to the Leased Property from time to time for use as part of the Leased Property Project that become subject to the terms of the Mall Lease. Further, the Leased Property shall be modified to reflect any boundary changes due to (a) the construction of Racker Road (as hereinafter provided in Section 5.1) or (ii) the acquisition by Rackspace or the Windcrest EDC of that certain tract of land and improvements as more particularly described on Exhibit "E" (the "Firestone Tract") which is a subject of the lawsuit styled Rackspace US, Inc. v. Michael White, Gary Cain, et al.; Cause No. 2009 CI 15428, 408th District Court, Bexar County, Texas.

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Section 1.14 "Leased Property Project" means the Rackspace U.S. corporate headquarters at the Leased Property.

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Section 1.15 "Mall Lease" means the lease agreement dated effective August 2, 2007 entered into between the Windcrest EDC, as landlord, and Rackspace, as tenant, for the lease of the Leased Property, as amended from time to time attached hereto as Exhibit "F".

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Section 1.16 "Personal Property Improvements" means the tangible personal property for

use at the Leased Property Project, including that leased by Rackspace from the Windcrest EDC.

Section 1.17 "PILOT Payment" means a payment to the City of Windcrest or other taxing unit required by this Agreement that has ad valorem taxes as its basis of calculation, and includes any payment in lieu of the ad valorem property taxes that would otherwise be assessed for a given tax year against the Rackspace Corporate Headquarters Property if it was not property tax exempt.

The parties acknowledge that Bexar Appraisal District may have not previously determined the appraised value for property tax purposes that would typically be used to calculate the amount of taxes otherwise assessed against the Rackspace Corporate Headquarters Property since the property is exempt from appraisal for ad valorem property taxes. Therefore, it is the intent of the parties that whenever it is necessary to determine the appraised value of the Rackspace Corporate Headquarters Property for the purpose of calculating a PILOT Payment, the parties and any appraisers selected under this Agreement shall strive to determine what appraised value for property tax purposes would have been determined by the Bexar Appraisal District for the relevant time period. This shall be accomplished pursuant to the provisions in Section 3.5 below.

If the Bexar Appraisal District takes steps to determine the appraised value for property tax purposes of the Rackspace Corporate Headquarters Property or to determine the qualification of the Rackspace Corporate Headquarters Property for exemption under the EDC Act or other applicable law, Windcrest EDC and the City of Windcrest hereby automatically designate Rackspace to act as their agent for property tax matters involving the Rackspace Corporate Headquarters Property, including for filing and management of any necessary protests or appeals. If Rackspace obtains an appraisal for the value for property tax purposes of the Rackspace Corporate Headquarters Property pursuant to Section 3.5 of this Agreement, the automatic designation of Rackspace as the agent for Windcrest EDC and the City of Windcrest does not apply.

Section 1.18 "Rackspace Corporate Headquarters Property" means the Leased Property, the Personal Property Improvements and the Real Property Improvements (and any taxable leasehold or other possessory interest in the property) located in Bexar County, Texas that are owned by the Windcrest Economic Development Corporation and leased to Rackspace (or its assignees, tenants or subtenants approved by the City of Windcrest) under this Agreement for use as part of the Leased Property Project.

Section 1.19 "Real Property Improvements" means the buildings and other property improvements owned by the Windcrest EDC (now existing or constructed in the future) and leased by Rackspace (or its assignees, tenants or subtenants approved by the City of Windcrest) for use at the Leased Property Project.

Section 1.20 "Related Organizations" means an entity or person who (a) is directly or indirectly controlled by, or under common control with Rackspace; (b) owns directly or indirectly fifty percent (50%) or more of the equity or voting interest of Rackspace; (c) is a successor by merger or other business combination with Rackspace such that substantially all of the business assets of Rackspace remain in the merged or combined entity; or (d) an approved purchaser or assignee of Rackspace.

Section 1.21 "Relocation" or "Relocate" shall mean that Rackspace (or a Related Organization, which has taken the place of Rackspace) moves all or substantially all of the Business Activities previously conducted at the Leased Property to a location outside the Leased Property.

Section 1.22 "Section 4B(k) of the EDC Act" shall mean Section 5190.6-4B(k) of the EDC Act and any other statute that enables the Rackspace Corporate Headquarters Property to be exempt from ad valorem property taxation.

Section 1.23 "Windcrest Development Site" means the property described on Exhibit "C".

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ARTICLE 2

RACKSPACE COMMITMENT AND RECAPTURE

Section 2.1 The Parties agree that Rackspace has met or exceeded the employment commitment requirements as set forth in the Original MEIA during the Exemption Period through December 31, 2011. From and after December 31, 2011 and continuing through the end of the Exemption Period, Rackspace agrees to maintain 1774 employees at the Leased Property, with a median total annual payroll (salary and bonus) of not less than \$51,000 (the "Employment Commitment") throughout the Exemption Period. The Parties agree that this Employment Commitment was achieved effective December 31, 2011.

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Section 2.2

(a) If Rackspace, a Related Organization, or a City of Windcrest-approved assignee or subtenant as provided below occupies and uses the Leased Property for Business Activities and subsequently all or substantially all Business Activities (or a substantial portion thereof) at the Leased Property are ceased for a continuous period of three (3) months (hereinafter referred to as a "Cessation of Business Activities") during the Exemption Period for any reason, except if such cessation is caused by a Force Majeure, then the City of Windcrest shall have the right to terminate this Agreement upon delivery of the notices and expiration of the Cure Period. Said termination shall be effective for the calendar year during which such Cessation of Business Activities occurred.

(b) Upon a termination under Section 2.2(a), an amount equal to the ad valorem taxes which would have been assessed by the City of Windcrest, Bexar County and North East Independent School District ("NEISD") (hereafter referred to collectively as the "Taxing Units") against the Rackspace Corporate Headquarters Property for the calendar year in which the Cessation of Business Activity occurred, as if the property had not been exempt from property taxes, shall be paid as a PILOT Payment by Rackspace to the City of Windcrest.

(c) In addition to the PILOT Payment under Section 2(b), upon a termination under Section 2.2(a), an amount equal to the ad valorem taxes which would have been assessed by the City of Windcrest and Bexar County against the Rackspace Corporate Headquarters Property for the previous years during the Exemption Period if the property had not been exempt from property

taxes shall be paid as a PILOT Payment by Rackspace to the City of Windcrest. The City of Windcrest shall pay to the County the County's portion of such PILOT Payment. A PILOT Payment shall also be made to NEISD (or its foundation, at the City of Windcrest's discretion) upon a termination under 2.2(a) for the same time period, but shall be calculated as follows. For each year of the Exemption Period, Rackspace shall pay the amount required to offset the net amount of actual tax revenue and state aid loss to the NEISD for the given year(s) caused as a result of the Texas school finance laws and the tax-exempt nature of the Rackspace Corporate Headquarters Property. The purpose of this payment is to make NEISD whole, but not to place it in any better position than if it had actually received the property taxes, after taking into account the effect such a receipt of property taxes would have had on state funding to NEISD. To assist in determining the amounts due, the parties agree to utilize the services of the school finance consulting firms of either Moak, Casey & Associates, LLC of Austin, Texas or Kavoussi & Associates of San Antonio, Texas, as determined by NEISD, the cost of which shall be paid by Rackspace but then credited as a reduction in the amount of the next PILOT Payment to NEISD.

(d) Any PILOT Payment under this Section 2.2 shall be paid by Rackspace to the City of Windcrest within ninety (90) calendar days from the date the Cure Period has expired. The City of Windcrest shall pay any portion of such PILOT Payment due to other governmental entities within thirty (30) days after its receipt of such PILOT Payment. If a Cessation of Business Activity is caused by a Force Majeure, Rackspace may continue or terminate this Agreement, for all or a portion of the Leased Property, without liability for any PILOT Payment or other penalty.

Section 2.3 If Rackspace, a Related Organization, or a City of Windcrest-approved assignee or subtenant as provided below fails to satisfy the Employment Commitment during a calendar year in the Exemption Period, then for each such calendar year of noncompliance, Rackspace shall pay the City of Windcrest a PILOT Payment representing the property taxes that would have been assessed against the Real Property Improvements or Personal Property Improvements by the City of Windcrest or Bexar County as if they were not property tax exempt, and the City of Windcrest shall distribute such PILOT Payments to the appropriate taxing entities. The amount of the PILOT Payment shall be computed by multiplying the amount of property taxes that would have been assessed against the Real Property Improvements and Personal Property Improvements by the City of Windcrest and Bexar County by the same percentage as the deficiency in the Employment Commitment. The NEISD amount shall be calculated using the methodology set forth in Section 2.2(c).

For example, if Rackspace creates and retains ninety percent (90%) of the minimum number of full-time employee positions required to comply with the Employment Commitment in a given year, Rackspace shall be required to pay 10% of the taxes that would have otherwise been assessed by the Taxing Units (which for purposes of this Section 2.3 excludes NEISD as it is already covered by the separate provisions of Section 2.2(c)) against the Real Property Improvements or Personal Property Improvements for the given year of deficiency, but subject to a floor of fifty percent (50%). Since the Employment Commitment requires that the median total annual payroll of the employees credited to meet the Employment Commitment be not less than \$51,000, when calculating the Employment Commitment the lowest paying jobs will be excluded from the number of jobs credited toward satisfying the Employment Commitment to the extent necessary to cause the median total compensation of the remaining employees to equal or exceed \$51,000. If Rackspace fails to create

and retain at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment in a given year then, at the option of the City of Windcrest, the City of Windcrest may terminate this Agreement. Said termination shall be effective for the calendar year during which at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment have not been created or retained by Rackspace. Upon said termination, a PILOT Payment equal to the ad valorem taxes that would otherwise have been assessed by the Taxing Units against the Real Property Improvements and Personal Property Improvements for that calendar year shall be calculated as set forth in Section 2.2(c). A PILOT Payment equal to the property taxes that would otherwise have been assessed by the Taxing Units against the Real Property Improvements and Personal Property Improvements for the years in the Exemption Period preceding the year of termination shall be paid to the Taxing Units and calculated as set forth at Section 2.2.(b). If the failure to create and retain at least fifty percent (50%) of the minimum number of full-time employee positions required to comply with the Employment Commitment is caused by a Force Majeure, Rackspace shall have the right to continue or to terminate this Agreement, for all of or any remaining portion of the Leased Property, without recapture or other penalty. Rackspace may count employees of a subtenant or Related Organization that are located on a fulltime basis on the Leased Property as if they were Rackspace employees (including the median salary calculations) for purposes of meeting the Employment Commitment.

Section 2.4 During the Exemption Period the City of Windcrest may declare a default if Rackspace fails to comply with any of the conditions set forth in Sections 2.2 and 2.3 (but only below the 50% requirement) of this Agreement. Should the City of Windcrest determine that Rackspace is in default under any of the terms set forth in Sections 2.2 and 2.3 (but only below the 50% requirement) of this Agreement, the City of Windcrest shall notify Rackspace in writing, and if said default is not cured within the Cure Period, then the City of Windcrest shall have the right to terminate this Agreement upon ten (10) calendar days prior written notice. The City of Windcrest shall have the option, to be exercised reasonably and in good faith, to extend the Cure Period if Rackspace commences to cure said default within the Cure Period and Rackspace is diligently pursuing such cure. If this Agreement is terminated as a result of a default described under this Section 2.4, the Taxing Units shall be entitled to the PILOT Payments calculated in the amounts and paid in the manner set forth in Sections 2.2 and 2.3. For the purpose of calculating the PILOT Payments under Sections 2.2 and 2.3 there shall be no right of double recovery by any taxing unit entitled to a PILOT Payment. For example, if Rackspace ceases business activity under Section 2.2, and at the same time breaches its Employment Commitment under Section 2.3, the taxing unit shall elect as its remedy whether to proceed under Section 2.2 or Section 2.3. In addition, Rackspace shall be entitled to a credit against such PILOT Payments for any previous PILOT Payments or property taxes it has paid to the Taxing Units.

Section 2.5 If the Exemption Period expires and Rackspace Relocates or there is a Cessation of Business Activities at the Leased Property (other than as a result of a Force Majeure) during the one year period after the end of the Exemption Period, then the Taxing Units shall also have the right to a payment (by PILOT Payment, if necessary) from Rackspace equal to 20% of the property taxes (except for the payment to NEISD which shall be calculated in the manner set forth in Section 2.2(c)) that would have been assessed for the preceding tax year by the Taxing Units against

the Real Property Improvements or Personal Property Improvements had they not been exempt from property taxes.

Section 2.6 If during the term of the Mall Lease, as set forth therein (the "Lease Term"), (a) Rackspace allows a PILOT Payment to become delinquent or there is a default; and (b) Rackspace does not cure such delinquency or default within the Cure Period, the City of Windcrest shall have the right to terminate this Agreement. A PILOT Payment will then be due for the calendar year during which the termination occurred on the same basis set forth in Section 2(b). In addition a PILOT Payment shall be paid on the same basis set forth in Section 2(c) and 2(d).

Section 2.7 The Parties recognize, agree, and stipulate that the financial, civic, and social benefits to the City of Windcrest from the presence of Rackspace on the Leased Property are great, but that the precise value of those benefits is difficult to quantify due to the number of citizens and businesses that rely upon and benefit from the presence of Rackspace on the Leased Property. Accordingly, the magnitude of the damages that would result from a violation of Sections 2.2 through 2.6 hereof would be significant in size but difficult to quantify including, without limitation, damages to the reputation and finances of the City of Windcrest. Therefore, the Parties agree that in the event of a violation of Sections 2.2 through 2.6 hereof including, without limitation, any such breach arising pursuant to the provisions of section 365(g) of the United States Bankruptcy Code or similar provision of any successor thereto, the City of Windcrest will be entitled to recover from Rackspace the PILOT Payments provided for in Sections 2.2 through 2.6 hereof, which are stipulated to be reasonable estimated damages, as reasonable liquidated damages and not as a penalty. The Parties hereby acknowledge that they have negotiated the above amounts in a good faith attempt to quantify the amount of damages arising due to a violation of Sections 2.2 through 2.6 hereof despite the difficulty in making such determination. Accordingly, in the event the City of Windcrest collects the above referenced liquidated damages, then the City of Windcrest hereby waives any right to collect additional monetary damages (other than legal fees and expenses) including lost or prospective profits, or for any other special, indirect, incidental, consequential, exemplary, or punitive damages.

Section 2.8 Other Remedies Available. Subject to the preceding paragraph, the City of Windcrest shall have the right to take appropriate action to which it may be entitled, at law or in equity, to enforce the obligations of Rackspace pursuant to this Agreement.

Section 2.9 Rackspace shall calculate the number of employees meeting the Employment Commitment and the median salary of such employees as of December 31 of each year and shall certify such numbers to the City of Windcrest. The City of Windcrest shall, at its expense, have the right to cause its auditor to audit Rackspace's and any other entities' books and records which make up part of the calculation of the Employment Commitment, for the sole purpose of calculating the Employment Commitment.

ARTICLE 3

LEASED PROPERTY REDEVELOPMENT

Section 3.1 The Parties agree that Rackspace and the Windcrest EDC entered into the Mall Lease and that it remains in full force and effect. If the Leased Property is modified as contemplated by the definition of "Leased Property" as set forth in Section 1.13, the Windcrest EDC and Rackspace will amend the Mall Lease from time to time to reflect those changes.

Section 3.2 Reserved.

Section 3.3 The Parties agree that Rackspace has fulfilled its obligation to make a cumulative investment of at least \$100 million in the acquisition of and improvements to the Rackspace Corporate Headquarters Property. During the term of this Agreement, Rackspace shall pay to the City of Windcrest an administrative fee of \$100,000 per year provided, however, Rackspace shall be obligated to pay an administrative fee in any year if, and only if, the tax exemption on the Leased Property, the Real Property Improvements and the Personal Property Improvements pursuant to Section 4B(k) of the EDC Act remains in effect and if such condition not met Rackspace will not owe the administrative fee to the City of Windcrest for that year.

Section 3.4 The Rackspace Corporate Headquarters Property will be owned by the Windcrest EDC and therefore will be exempt from property taxation during the term of the Lease pursuant to Section 4B(k) of the EDC Act. Nonetheless, Rackspace has agreed to make PILOT Payments as provided elsewhere in this Agreement, except during a 14-year exemption period, (the "Exemption Period"). The Exemption Period began on January 1, 2009 pursuant to proper notice given to the City of Windcrest. The Exemption Period will be for a 14-year period regardless of whether the Leased Property is actually exempt during such period. The PILOT Payments shall be calculated in the manner and amounts as set forth in Section 2.2(c). Rackspace shall also make PILOT Payments as set forth in Section 3.5 after the Exemption Period has expired and until the Mall Lease is terminated.

Section 3.5 Except during the Exemption Period, the PILOT Payments shall be paid to the City of Windcrest (or other entity designated by the City of Windcrest) for distribution to each Taxing Unit in an amount equal to the taxes that would have been assessed by each Taxing Unit against the Fee Simple Interest in the Rackspace Corporate Headquarters Property (including any improvements or additions) as if the property was not exempt from property taxation. These payments will be due by February 28th of the year following the tax year for which they are being paid. In the event the Bexar Appraisal District does not determine an appraised value for property tax purposes for the Rackspace Corporate Headquarters Property, then the appraised value for property tax purposes will be determined in the following manner. Rackspace will obtain an appraisal for the Rackspace Corporate Headquarters Property for property tax purposes from a real estate appraiser designated as a Member of the Appraisal Institute to appraise the Real Property and an appraiser who has an ASA designation to appraise the Tangible Personal Property ("Qualified Appraisers"). If the City of Windcrest agrees with that appraised value, then that value shall be used for purposes of this Section 3.5. If the City of Windcrest does not agree with that appraised value, then Rackspace and the City of Windcrest will attempt to agree on Qualified Appraisers to determine the appraised value for property tax purposes to be used. If Rackspace and the City of Windcrest are unable to mutually agree on Qualified Appraisers, then the City of Windcrest will select Qualified Appraisers who will, along with Rackspace's Qualified Appraisers, select a third set of Qualified Appraisers to assist the appraisers chosen by the parties to value the property, which value shall be as

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determined by a majority of such appraisers for each type of property (real and personal). In determining the relevant appraised values for property tax purposes, Rackspace, the City of Windcrest, and the appraisers shall be guided by the definitions contained in Section 1.17. Upon collection by the City of Windcrest, the PILOT Payments under this Section shall be distributed within thirty (30) days to each taxing unit as appropriate.

Section 3.6 During the Lease Term, Rackspace agrees to make additional PILOT Payments to the City of Windcrest for the benefit of the NEISD and the City will distribute them to the NEISD or its foundation, at the City of Windcrest's discretion, as follows: (a) the first payment will be payable no later than February 28, 2008 and shall be equal to the taxes that the NEISD would have assessed for the 2007 tax year against the Leased Property, if it was not exempt from property taxes, based on the Leased Property's 2007 tax year appraised value as determined by the Bexar Appraisal District; and (b) each year thereafter until the end of the Exemption Period Rackspace will make a PILOT Payment to the City of Windcrest (or such other entity the City may designate) in an amount calculated by multiplying the appraised value for tax purposes of the Rackspace Corporate Headquarters Property times the debt service portion (as defined in Texas Education Code Section 45.001(a)(2) or its successor provision) of the NEISD's tax rate for each such year.

Section 3.7 At the election of Rackspace upon notice to the Windcrest EDC, the Windcrest EDC and Rackspace will enter into a sale/leaseback, rental or similar agreements for any of such Personal Property Improvements Rackspace determines to be part of any such transaction which are acquired for use by Rackspace at the Leased Property. At the end of the Exemption Period, Rackspace shall purchase any such Personal Property Improvements from Windcrest EDC for \$1.00. Rackspace will be responsible for all accounting associated with its leases from Windcrest EDC of the Personal Property Improvements.

Section 3.8 All additions to the Leased Property and the Rackspace Corporate Headquarters Property will also be subject to ownership by the Windcrest EDC and shall therefore be subject to property tax exemption under Section 4B(k) of the EDC Act for the Exemption Period and shall also be subject to the PILOT Payments and the appraisal process provided herein.

Section 3.9 At any time during the term of this Agreement, and at Rackspace's option in its sole discretion, Rackspace may terminate the Mall Lease by written notice thereof to the Windcrest EDC and a copy to Alamo Title Company, Attn: Chris Varley, ~~4 Dominion Drive, Bldg. 4, Suite 100~~, San Antonio, Texas 78257 (the "Title Company"), upon which notice of termination the Title Company shall release from escrow and record in the Official Public Records of Bexar County, Texas the special warranty deed (executed by the Windcrest EDC contemporaneously herewith and delivered to the title company in escrow) conveying the Leased Property and all improvements thereto to Rackspace in consideration of the prepaid lease payments under Section 3.1 above and an additional \$1.00 cash. The Parties hereby acknowledge and agree that Rackspace's options under Section 3.7 and this Section 3.9 are each supported by \$50.00 independent consideration (for a total of \$100.00 independent consideration) paid by Rackspace to Windcrest EDC as of August 2, 2007.

Section 3.10 The Windcrest EDC will work with Rackspace so that materials incorporated into improvements to the Leased Property and the Real Property Improvements will be exempt from

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ad valorem taxes. The Windcrest EDC shall take such action as reasonably requested by Rackspace to achieve such tax exemption. Rackspace will provide Windcrest EDC with an indemnification for any such actions.

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Section 3.11 The City of Windcrest and Rackspace have entered into a City Economic Development Grant Agreement, pursuant to Chapter 380 of the Texas Local Government Code, which agreement provides that, in the event it is determined that Section 4B(k) of the EDC Act does not apply or exempt the Leased Property, the Real Property Improvements or the Personal Property Improvements from property taxes, the City of Windcrest will make a grant to Rackspace of the property and sales taxes the City of Windcrest collects from the Annexed Area, the Eisenhower Development Tract, and the Windcrest Development Site (less its cost of providing municipal services to the Annexed Area that are not covered by one-half of the local sales taxes collected as hereafter provided, and less any payments to the City of San Antonio under Section 10.4 ("the Boundary Change Agreement") to reimburse Rackspace for any property taxes it must pay during the Exemption Period. These grants will be made each year until the sooner of (a) full reimbursement to Rackspace of any and all accrued property taxes paid by Rackspace on the Leased Property, the Real Property Improvements or the Personal Property Improvements, or (b) December 31, 2047, after which such grant payments shall cease. The City Economic Development Grant Agreement shall survive the expiration or the earlier termination of this Agreement. The City of Windcrest agrees it will not enter into any Economic Development Grants or other arrangements affecting any of the Annexed Area other than the Leased Premises (other than possibly as serving as the general contractor or owner in order to exempt the purchase of construction materials from sales taxes, similar to the arrangement described in Section 3.10 above) that have the effect of reducing or committing the property tax and sales tax revenues therefrom to other purposes not specifically provided for in this Agreement if such grant or arrangement, without the prior consent of Rackspace, would either (i) provide the described incentive for a period lasting longer than five (5) years after completion of construction of the incentivized improvement(s), or (ii) constitute an abatement, cumulatively with all other incentives or exemptions in effect on such property, in excess of fifty percent (50%) of the expected tax value of the Annexed Area other than the Leased Premises after construction of all anticipated improvement(s).

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Section 3.12 As its sole obligation under this Agreement, the County has entered into a County Economic Development Grant Agreement with Rackspace, pursuant to Chapter 381 of the Texas Local Government Code, which agreement provides that, in the event it is determined that Section 4B(k) of the EDC Act does not apply or exempt the Leased Property, the Real Property Improvements or the Personal Property Improvements from property taxes, the County will make a grant to Rackspace of the property taxes the County collects in the Annexed Area (less the amount of property taxes the County is currently collecting in the Annexed Area) for ten (10) tax years following the first day of the Exemption Period. Ad valorem taxes eligible under this Agreement shall be the ad valorem taxes levied by the Commissioners Court for and on behalf of Bexar County only, and shall not include taxes levied by the Commissioners Court for and on behalf of the Bexar County Hospital District operating as University Health System, the Bexar County Flood Control District, or any other taxing entity. The County Economic Development Grant Agreement and the terms of this Agreement shall be Rackspace's sole recourse against the County in the event that the Leased Property, the Real Property Improvements or the Personal Property Improvements becomes

subject to taxation. The County Economic Development Grant Agreement shall survive the early termination of this Agreement. The County agrees it will not enter into any Economic Development Grants or other arrangements affecting any of the Annexed Area other than the Leased Premises that have the effect of reducing or committing the property tax and sales tax revenues therefrom to other purposes not specifically provided for in this Agreement if such grant or arrangement, without the prior consent of Rackspace, would either (i) provide the described incentive for a period lasting longer than five (5) years after completion of construction of the incentivized improvement(s), or (ii) constitute an abatement, cumulatively with all other incentives or exemptions in effect on such property, in excess of fifty percent (50%) of the expected tax value of the Annexed Area other than the Leased Premises after construction of all anticipated improvement(s). Notwithstanding the foregoing, however, the County may make CDBG or EDA grants, a grant of its general funds, or another type of grant or incentive in the Annexed Area if it will not adversely affect the value of (or impair the ability of the County to pay) the grants to Rackspace under the County Economic Development Grant Agreement. Rackspace agrees that from the effective date of this Agreement throughout the term hereof, one-hundred percent (100%) of all Rackspace employment positions at the Rackspace Corporate Headquarters Property shall be paid a minimum wage, not including benefits, of at least nine dollars and ninety-three cents (\$9.93) per hour (or a salary that satisfies that requirement). Rackspace further agrees that within one (1) year of the commencement of Business Activities at the Rackspace Corporate Headquarters Property, seventy percent (70%) of all new and existing Rackspace employees at the Rackspace Corporate Headquarters Property shall be paid a minimum wage, not including benefits, of at least eleven dollars and forty-five cents (\$11.45) per hour (or a salary that satisfies that requirement). Subject to meeting the requirements of such statute, Bexar County shall grant Rackspace a ~~one hundred percent (100%)~~ property tax abatement for at least ten (10) years under Tax Code Chapter 312, with a base year of 2007.

Section 3.13 The commitment by Rackspace is subject to the granting by the Bexar Appraisal District of the initial property tax exemption for the Leased Property under Section 4B(k) of the EDC Act. The Parties agree to use their best efforts to support and defend the validity of the ad valorem tax exemption under Section 4B(K) of the EDC Act for the Rackspace Corporate Headquarters Property, provided that the Parties shall not be required to incur other than nominal expenses in their best efforts, and provided further that all reasonable and necessary expenses incurred by Rackspace in its best efforts to support and defend the validity of the ad valorem tax exemption shall be added to the amount of the grants under the City Economic Grant Agreement as if they were ad valorem taxes paid.

Section 3.14 Rackspace shall owe no PILOT Payment under this Agreement for any tax year in which the Rackspace Corporate Headquarters Property is not exempt from property taxation and it is required to pay property taxes for that tax year. If Rackspace is required to pay ad valorem property taxes to any taxing unit in connection with the Rackspace Corporate Headquarters Property, Rackspace shall be entitled to a credit in the amount of the property tax payments against any PILOT Payments made pursuant to this Agreement for the benefit of such taxing units.

Section 3.15 Subject to meeting the requirements of such statute, the City of Windcrest shall grant Rackspace and Windcrest EDC a ~~one hundred percent (100%)~~ property tax abatement for at least ten (10) years under Tax Code Chapter 312, with a base year of 2007.

ARTICLE 4

RESERVED

ARTICLE 5

RACKER ROAD CONSTRUCTION

Section 5.1 The Windsor Park Mall ring road will be renamed Racker Road and will be renovated by the City of Windcrest at its sole cost and expense in accordance with the plans set forth on Exhibit "H." The budget for the ring road construction is approximately \$2.84 million. After the road work is complete the road will be dedicated to the City of Windcrest which will be responsible for all maintenance and upkeep, including landscaping which is part of the dedicated road.

ARTICLE 6

WALZEM INTERCHANGE

Section 6.1 The City of Windcrest will use its best efforts to cause Walzem Road to be renamed Rackspace Boulevard/Walzem Road and for the signage to be changed on IH 35 at TXDOT's expense and in a manner that will not change the official mailing addresses located on Walzem Road.

Section 6.2 Reserved.

Section 6.3 Reserved.

Section 6.4 The City of Windcrest will use its best efforts to cause TXDOT to install overhead signage on IH 35 denoting Racker Road as part of the Walzem Road signage.

ARTICLE 7

UTILITIES

Section 7.1 The Parties will use their best efforts to cause CPS Energy to underground all utilities along Walzem Road from IH 35 to the end of the Leased Property within 30 months of the Effective Date, provided, however, that Rackspace shall not be required to incur other than nominal expenses in the exercise of such best efforts.

Section 7.2 Reserved.

ARTICLE 8

WALZEM ROAD

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Deleted: If the City of Windcrest does not maintain the road or landscaping as and when reasonably necessary, Rackspace may exercise self-help do so and the City of Windcrest shall reimburse Rackspace for its out of pocket costs immediately upon receipt of an invoice therefor.

Deleted: City of Windcrest will make available the maximum Community Infrastructure and Economic Development ("CIED") funds available for the utility undergrounding project and seek, if necessary, additional CIED funds from the CPS Energy Board of Directors. The Parties agree to assist the City of Windcrest in its efforts to obtain CIED funds, provided, however, that Rackspace shall not be required to incur other than nominal expenses for such assistance, and the City of San Antonio shall not be required to spend any of its CIED funds in the City of Windcrest.

Section 8.1 The City of Windcrest will complete work to irrigate the landscaped, raised median area on Walzem Road no later than December 31, 2012.

Section 8.2 Reserved.

ARTICLE 9

RESERVED

ARTICLE 10

BOUNDARY CHANGE AND TAX SPLIT

Section 10.1 The Boundary Change Agreement contains specific terms under which the City of San Antonio agreed to release the Annexed Area from its jurisdiction and allow for the City of Windcrest to accept and annex the Annexed Area into the municipal limits of the City of Windcrest.

Section 10.2 As partial consideration to the City of San Antonio for entering into the Boundary Change Agreement, the City of Windcrest and the Windcrest EDC hereby represent to the City of San Antonio and the other Parties that as of the Effective Date:

- (a) They have executed an agreement with Rackspace to locate at the Leased Property.
- (b) They have the concurrence, with regard to the Boundary Change Agreement, of NEISD, Alamo Community College District, and the Bexar Appraisal District.

The City of San Antonio hereby represents to the other Parties that as of the Effective Date all of the foregoing consideration for entering into the Boundary Change Agreement has been received.

Section 10.2.1 The City of Windcrest, the Windcrest EDC, and the City of San Antonio acknowledge that while the City of San Antonio is relying upon the documentation presented under Section 10.2 (a) and (b), the City of San Antonio is in no way warranting or guaranteeing the legal effectiveness of such documents.

Section 10.2.2 Reserved.

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Section 10.3 The City of San Antonio entered into the Boundary Change Agreement upon the representation that the City of San Antonio will receive not less than \$137,968 annually (the amount of property taxes being paid ~~on~~ the Annexed Area at the time of execution of this Agreement) for a period of ~~thirty~~ 30 years. For a period of ~~thirty~~ 30 years after the Effective Date, Rackspace shall pay to the City of San Antonio the amount of any shortfall of the actual amount paid to the City of San Antonio in property and sales tax revenue or PILOT Payments in a given calendar year compared to \$137,968. The City of Windcrest shall give Rackspace written notice of any amounts owed by ~~Rackspace~~ under this Section 10.3 by no later than March 31 of each year (including for years for which no such amounts are owed), and Rackspace shall pay such amount, if any, to the City of San Antonio ~~on or before~~ June 15 of that year. Any payments by Rackspace under this Section 10.3 shall be subject to reimbursement under Section 3.11.

Section 10.4 The Boundary Change Agreement provides for an effective date of October 2, 2007 (the "Boundary Change Date") for the Annexed Area. The Boundary Change Agreement also provides for the sharing of future tax revenue on the Annexed Area for the next ~~thirty~~ 30 years from the Boundary Change Date as follows:

(a) The City of San Antonio and the City of Windcrest shall each receive ~~fifty percent~~ (50%) of the local sales taxes due to the City of Windcrest and distributed by the State Comptroller for taxable ~~Business Activities~~ conducted on the Annexed Area; provided, however, that the ~~fifty percent~~ (50%) of all such local sales taxes to be retained by the City of Windcrest under such agreement shall be subject to the terms of Section 3.11 of this Agreement, including possible distribution to Rackspace as part of the City of Windcrest's Chapter 380 economic development grant to Rackspace.

(b) For those years when the Leased Property, Real Property Improvements and Personal Property Improvements are exempt from property taxes under Section 4B(k) of the EDC Act, the City of San Antonio and the City of Windcrest will each receive ~~fifty percent~~ (50%) of all property and sales taxes resulting from the Annexed Area.

(c) For those years when the Leased Property, Real Property Improvements and Personal Property Improvements are exempt from property taxes under Section 4B(k) of the EDC Act and Rackspace makes a PILOT Payment as may be required under this Agreement (whether made before or after the Exemption Period or under Sections 2.2 through 2.7 of this Agreement), the City of San Antonio and the City of Windcrest shall each receive ~~fifty percent~~ (50%) of the city portion of the Rackspace PILOT Payment on the Leased Property determined at the City of Windcrest tax rate with the real and personal property valuation to be determined in Section 3.5.

(d) In the event that the Windcrest EDC has or acquires the right to sell the Leased Property, and then sells the Leased Property, the City of San Antonio and City of Windcrest shall each receive ~~fifty percent~~ (50%) of the profit from the sale of the Leased Property after the payment of all liens,

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encumbrances and claims against the Leased Property and all other unreimbursed expenses the Windcrest EDC has incurred regarding the Leased Property.

Section 10.5 The City of Windcrest agrees that King Arthur and Ray Bon Streets will remain public streets in the Annexed Area to provide access to the Camelot Subdivision from Eisenhower Road, and that the speed limit for such streets shall remain ~~thirty~~ 30 miles per hour unless the City of San Antonio and the City of Windcrest mutually agree otherwise. Windcrest EDC agrees to consult with the City of San Antonio prior to taking any actions regarding this Agreement that would adversely affect the City of San Antonio's interest in the Project, provided that no additional consultation shall be required for the Windcrest EDC to take actions that the Windcrest EDC is directed or specifically authorized to take under this Agreement.

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ARTICLE 11

SECURITY PROVISIONS

Section 11.1 Reserved.

Section 11.2 The City of Windcrest will continue its existing "mutual aid" agreement with the City of San Antonio.

Section 11.3 ~~The~~ City of Windcrest Police Department will provide routine patrols (at least ~~eight~~ 8 per ~~eight~~ 8 hour shift) for the perimeter of the buildings in the Leased Property.

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Section 11.4 Reserved.

ARTICLE 12

BOND FINANCING

Section 12.1 If Rackspace requests that the City of Windcrest issue bonds, any such bonds shall: (a) be payable from lease payments on the Mall Lease received by the Windcrest EDC; (b) not be a liability of ~~the~~ City of Windcrest, the City of San Antonio or the County and no general fund, property taxes or sales taxes will be pledged; and (c) be issued solely on the credit of Rackspace.

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Section 12.2 The Windcrest EDC will subordinate its fee interest in the Leased Property to the bond holders, provided that upon any foreclosure or deed in lieu of foreclosure, the Leased Property will be subject to property taxes and the recapture provisions of Sections 2.2 through 2.6 of this Agreement or the City Economic Development Grant Agreement or the County Economic Development Grant Agreement, as applicable, continue to apply to Rackspace after the foreclosure or deed in lieu of foreclosure, and provided further that under the subordination agreement, the City of Windcrest will be given a ~~ninety~~ 90 day notice and cure period to pay the outstanding debt and to maintain ownership of the Leased Property.

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ARTICLE 13

MISCELLANEOUS

Section 13.1 Reserved.

Section 13.2 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 13.3 Governing Law. The governing law of this Agreement shall be the law of the State of Texas, without giving effect to any choice-of-law standards that may require the application of the laws of another jurisdiction.

Section 13.4 Venue. Venue for any litigation under this Agreement shall be in Bexar County, Texas.

Section 13.5 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

Section 13.6 Notices. All communications and notices expressly provided herein shall be sent, by registered first class mail, postage prepaid, by a nationally recognized overnight courier for delivery on the following business day or by facsimile (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), as follows, unless and until changed as described below:

County of Bexar, Texas:

County Judge Nelson W. Wolff
Bexar County Courthouse
100 Dolorosa, Suite 120
San Antonio, Texas 78205
Fax: (210) 335-2926

With a copy to:

Ms. Susan D. Reed
District Attorney
Justice Center, 5th Floor
300 Dolorosa
San Antonio, Texas 78205
Fax: (210) 335-2151

City of San Antonio, Texas:

Mayor Julian Castro
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4168

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With a copy to:

Ms. Sheryl L. Sculley
San Antonio City Manager
City Hall Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Fax: (210) 207-4217

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With a copy to:

Mr. Michael Bernard
City Attorney
100 Military Plaza
San Antonio, Texas 78205
Fax: (210) 207-4004

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City of Windcrest, Texas:

Mayor of Windcrest
City Hall
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

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With a copy to:

City Administrator
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

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With a copy to:

Scott Farrimond, Esq.
Farrimond Castillo & Bresnahan, P.C.
130 East Travis Street, Suite 350
San Antonio, Texas 78205
Facsimile: (210) 231-0004

Windcrest Economic Development
Corporation:

Director of Economic Development
8601 Midcrown
Windcrest, Texas 78239
Fax: (210) 655-8776

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With a copy to: Scott Farrimond, Esq.
Farrimond Castillo & Bresnahan, P.C.
130 East Travis Street, Suite 350
San Antonio, Texas 78205
Facsimile: (210) 231-0004

Rackspace US, Inc.: General Counsel
5000 Walzem Road
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to: Manager of Real Estate Services
5000 Walzem Road
San Antonio, Texas 78218
Fax: (210) 312-4848

With a copy to: Mr. Stephen L. Golden, Esq.
300 Convent Street, Suite 2650
San Antonio, Texas 78205
Fax: (210) 745-3737

However, if a recipient listed above provides written notice to all other recipients, by registered or certified mail, of a change in their address or contact information, that information (and any subsequent changes of which the recipient gives such notice) controls.

Section 13.7 Cost and Expenses. Each Party agrees to pay its own costs incurred in connection with the project proposal, including attorneys' fees and all costs and expenses incurred in connection with the preparation of any studies or reports, surveys or approvals, this Agreement or otherwise.

Section 13.8 Press Releases. The Parties agree to cooperate fully to coordinate with each other and the State in connection with all press releases and publications concerning the Project.

Section 13.9 Assignment. This Agreement is not assignable without consent of the City of Windcrest except to a Related Organization.

Section 13.10 Further Actions; Equivalent Incentives. In the event that provisions of the Constitution and laws of the State of Texas limit the ability of a Party to perform its functions hereunder in any way, then such Party (and, if necessary, other applicable or appropriate Parties, without additional cost or liability to such other Parties that is not offset by new and additional sources of revenue or funds that arise in connection with such limitation) shall work with Rackspace to identify and provide Rackspace with a substitute incentive of equivalent economic value, and to

the extent necessary, such Parties will make a good faith effort to seek and obtain appropriate legislation or other appropriate action to the extent necessary to allow performance hereunder or with respect to a substitute incentive of equivalent economic value.

Section 13.11 Further Assurances. The Parties agree to do all things and take all actions required, consistent with and subject to this Agreement, to establish the Project, including, without limitation, the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds.

Section 13.12 Section Titles and Headings. The Section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

Section 13.13 Survival of Representations and Warranties. The representations, warranties and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

Section 13.14 Term of Agreement. The term of this Agreement shall commence on the Effective Date and continue in effect through the earlier to occur of the date upon which Rackspace, a Related Organization, or an approved assignee, shall cease to operate the Project or the date which is ~~thirty-one~~ (31) years after the Effective Date.

Section 13.15 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties which are parties hereto.

Section 13.16 Cooperation in Event of Dispute. In the event of a dispute concerning this Agreement or the Parties' obligations hereunder, the Parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution process, the Parties agree to submit the matter in dispute to mediation. Written notice of the intent to submit a matter to mediation shall be given by the party requesting the same. Only one mediator (selected jointly by the Parties to the dispute) shall be used to mediate the outcome. Such mediation shall be held in San Antonio, Texas or if the parties agree upon another location, that other location.

Section 13.17 Recitals. The Recitals above are hereby incorporated into this Agreement for any and all purposes.

Section 13.18 Merger. This document constitutes the final entire agreement between the Parties and supersedes any and all oral or written agreements relating to the subject matter of this

Agreement, except for the other agreements expressly contemplated to be entered into under this Agreement.

Section 13.19 RACKSPACE COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY OF WINDCREST, THE CITY OF SAN ANTONIO AND BEXAR COUNTY (THE "GOVERNMENT ENTITIES") AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE GOVERNMENT ENTITIES, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE GOVERNMENT ENTITIES, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO RACKSPACE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF RACKSPACE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR OF RACKSPACE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GOVERNMENT ENTITIES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW, PROVIDED, HOWEVER, THAT THIS INDEMNITY IS NOT INTENDED TO EFFECT THE EXEMPTIONS, GRANTS AND OTHER ECONOMIC INCENTIVES GIVEN TO OR FOR THE BENEFIT OF RACKSPACE HEREUNDER, EVEN IF THE SAME COME AT A COST, LOSS, OR EXPENSE TO ANY OF THE GOVERNMENT ENTITIES. RACKSPACE SHALL PROMPTLY ADVISE THE GOVERNMENT ENTITIES IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE GOVERNMENT ENTITIES OR RACKSPACE KNOWN TO RACKSPACE RELATED TO OR ARISING OUT OF RACKSPACE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT RACKSPACE'S COST. THE GOVERNMENT ENTITIES SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING RACKSPACE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

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Section 13.20 RACKSPACE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE GOVERNMENT ENTITIES AND IN THE NAME OF THE GOVERNMENT ENTITIES, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE GOVERNMENT ENTITIES AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. RACKSPACE'S OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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Section 13.21 Reserved.

Section 13.22 Reserved.

Section 13.23 Attorney Fees and Expenses. In the event that a Party (the “Defaulting Party”) should default under any of the provisions of this Agreement and another Party (the “Nondefaulting Party”) should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Defaulting Party, the Defaulting Party agrees to pay to the Nondefaulting Party reasonable fees of such attorneys and such other expenses so incurred by the Nondefaulting Party.

Section 13.24 Reserved.

[Signatures and Acknowledgments Begin on Following Page]

WHEREFORE, the Parties hereto have executed this Agreement and, as of the Effective Date, have agreed to the terms and conditions stated above that apply to them.

COUNTY OF BEXAR

By: _____
NELSON W. WOLFF,
County Judge

ATTEST:

GERARD RICKHOFF
County Clerk

APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

By: _____
LARRY ROBERSON,
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FINANCIAL CONTENT:

TOMMY J. TOMPKINS,
County Auditor

DAVID SMITH,
Executive Director of Planning/Budget Officer Planning
and Resource Management Dept.

APPROVED:

DAVID MARQUEZ,
Executive Director of Economic Development

CITY OF SAN ANTONIO, TEXAS

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By: _____
Name: Sheryl L. Sculley
Title: City Manager

ATTESTED TO BY:

_____, City Clerk

APPROVED AS TO FORM:

Michael Bernard, City Attorney
City of San Antonio

CITY OF WINDCREST, TEXAS

By: _____
Name: Alan Baxter
Title: Mayor

By: _____
Name: Raphael Castillo
Title: City Administrator

APPROVED AS TO FORM:

Scott Farrimond, Special Counsel
City of Windcrest

WINDCREST ECONOMIC DEVELOPMENT
CORPORATION

By: _____
Name:
Title: Duly Authorized Representative

RACKSPACE US, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A

Annexed Area

EXHIBIT B

Boundary Change Agreement

**Deleted: Eisenhower Development
Tract**

EXHIBIT C

Eisenhower Development Tract.

Deleted: Leased Property
Legal Description

EXHIBIT D

Deleted: Firestone Tract

Leased Property

Legal Description

EXHIBIT E

Firestone Tract,

Legal Description

**Deleted: Winderest Development Site
Map**

EXHIBIT F

Mall Lease,

**Deleted: Racker Road Construction
Plans**

EXHIBIT G

Winderest Development Site Map

EXHIBIT A

Deleted: Mail Lease

Racker Road Construction Plans

GRANTING AN ELECTRIC & GAS FRANCHISE TO
CITY PUBLIC SERVICE

BE IT ORDAINED BY THE CITY COUNCIL

OF THE CITY OF WINDCREST

SECTION 1. Description. This agreement hereby grants the City of San Antonio, acting by and through the City Public Service Board, (CPS Energy), a twenty-year franchise commencing on July 2, 2012, for transmission, distribution and sale of electricity and gas within CPS Energy's certificated service area and within the City of Windcrest, Texas (Franchise Agreement). CPS Energy may construct, operate and maintain in, upon, over, under, and across the present and future streets, alleys, public ways and places within the City of Windcrest, Texas (City) all the facilities CPS Energy deems reasonably necessary for the rendition of safe, reliable and economical electric and gas service (CPS Energy Facilities).

SECTION 2. Payment for Street Rental. CPS Energy shall make a payment for street rental to the City in the amount of three percent (3%) of CPS Energy's gross receipts from the sale of electricity and gas within the City. "Gross receipts" excludes uncollectibles. The payment for street rental shall be treated by CPS Energy as a system-wide cost of service, and shall not be identified separately on the customer bill.

- 2.1. The payment for street rental will reflect CPS Energy's gross receipts for such sales, on a quarterly basis and will be due to the City within thirty (30) days after the close of each quarter in CPS Energy's fiscal year.

SECTION 3. Limitation on Assessments. The street rental charge is in lieu of all other fees or charges and the City shall not impose or collect, nor attempt to impose or collect, any charge or fee in connection with the construction, operation and maintenance of CPS Energy Facilities within the City other than the payment for street rental provided for under SECTION 2 above.

SECTION 4. Audits. Upon written notice to CPS Energy, the City shall be entitled, during normal working hours and at reasonable intervals during the term of this agreement, to audit records of CPS Energy supporting the payment for street rental, including customer lists, to the extent such information is public information.

SECTION 5. Construction, Operation and Maintenance of Facilities. CPS Energy may open cut streets, curbs and sidewalks, bore, or utilize any other methods it deems reasonably necessary to construct, operate and maintain CPS Energy Facilities within the City. The design and construction of CPS Energy Facilities and CPS Energy's access to and restoration of paved surfaces shall be in accordance with CPS Energy design and construction standards, which CPS Energy shall make available for review by the City upon request. Street cuts and restoration of paved surfaces shall be subject to ordinances that may be adopted by the City, to the extent that such requirements are not in conflict with the following provisions.

- 5.1 Prior to starting any work, CPS Energy shall give ten (10) days written notice of the scope and duration of the work to the official designated by the City. Prior notice may be reduced or waived by the City in order to allow the work to proceed. In the event CPS Energy determines there is an emergency, CPS Energy may act without any prior notice, but shall provide notice to the City as soon as practicable.

5.2 The surface of any street, alley, or public way or place disturbed by CPS Energy shall be restored by CPS Energy within a reasonable time after the completion of the work. No street, alley, or public way or place shall be encumbered by CPS Energy for a longer period than shall be reasonably necessary to execute the work. CPS Energy shall continue to maintain the integrity of the portion of any paved surface over CPS Energy Facilities, as restored by CPS Energy during the work, as long as CPS Energy Facilities remain in use by CPS Energy at that location. CPS Energy shall have no responsibility for any injuries to landscaping or improvements located over, under, or around CPS Energy Facilities, but shall use reasonable care to avoid such injuries.

SECTION 6. Civic Improvements. The City shall give reasonable prior written notice of street repaving, widening or straightening projects to CPS Energy. CPS Energy shall, at its expense, relocate CPS Energy Facilities in connection with activities reasonably related to the City's widening or straightening of streets.

SECTION 7. Use of Pole Space. CPS Energy shall permit the City to use existing CPS Energy poles for the City's communications conductors used for the City's governmental purposes, to the extent CPS Energy determines space is available. Such use shall be subject to the City's execution of CPS Energy's form of contract for pole attachment and payment of the CPS Energy fees applicable to such service.

SECTION 8. Rate Schedules. CPS Energy shall offer to serve the City's accounts under the rate schedules most favorable to the City, in accordance with CPS Energy's Rules and Regulations applying to Electric and Gas Service, a copy of which will be provided upon request.

SECTION 9. Furnishing of Information CPS Energy will make available to the City meeting agendas for CPS Energy's Board meetings, information packets, and rate filings, and will arrange periodic sessions for presentations by and discussions with knowledgeable CPS Energy employees.

CPS Energy will at times provide confidential and competitively sensitive information to the City, including, quarterly electrical and gas usage reports. The City agrees to keep such information confidential according to the Confidentiality Agreement for an Inter-Governmental Transfer of Information attached hereto as Exhibit A.

SECTION 10. Uniform Franchise Benefits. If at any time during the term of this Franchise Agreement, CPS Energy enters into another franchise agreement for the provision of electric and gas service which provides increased financial benefits to any incorporated community in excess of the percentages stated in SECTION 2, CPS Energy shall provide written notice of such event to the City. At the option of the City, which must be exercised in writing within thirty (30) days after the City's receipt of notice from CPS Energy, this Franchise Agreement shall be amended to incorporate such increased financial benefit. The amendment to the Franchise Agreement shall be effective from the same date shown in the franchise agreement with such other incorporated community.

SECTION 11. Limited indemnity. It is expressly understood and agreed by and between the City and CPS Energy that CPS Energy shall indemnify and hold the City harmless from any and all loss sustained by the City on account of any suit, judgment, claim or demand whatsoever to the extent that such loss is attributed to the negligence of CPS Energy, its agents or employees in the performance of services under this Franchise Agreement.

SECTION 12. Effective Date. This Franchise Agreement shall become effective upon its adoption by the City in the form authorized by the board of CPS Energy. It shall supersede and take precedence over inconsistent ordinances, resolutions, or regulations hereafter or heretofore passed by the City. The payments provided for in SECTION 2 shall be effective for CPS Energy's gross receipts from electric and gas sales within the City commencing July 2, 2012, if this Franchise Agreement is adopted by the City on or before July 2, 2012, or

otherwise shall be effective for CPS Energy's gross receipts from electric and gas sales within the City commencing the first day of the month following adoption by the City.

SECTION 13. Headings. The headings of the sections in this Franchise Agreement are for organizational purposes only. They have no separate meaning and shall not be read as affecting the language of the sections.

SECTION 14. Continuation of Agreement. This Franchise Agreement shall remain in effect beyond the expiration of its term until a new agreement becomes effective between the parties or until this Franchise Agreement is terminated by either party upon 180 days prior written notice, which notice may precede the expiration date by not more than 180 days.

SECTION 15. Assignment. This Franchise Agreement may be assigned by CPS Energy upon mutual written agreement of the City and CPS Energy.

Passed and Approved on this the 2nd day of July 2012

MAYOR: CITY OF WINDCREST

ATTEST:

City Secretary

EXHIBIT A

Confidentiality Agreement for an Inter-Governmental Transfer of Information

This Confidentiality Agreement for an Inter-Governmental Transfer (Agreement) is made on this the 2nd day of July, 2012 between the City of San Antonio, Texas, acting by and through the City Public Service Board ("CPS Energy") and the City of Windcrest ("City").

WHEREAS, the City will receive confidential and competitively sensitive information from CPS Energy throughout the term of the City and CPS Energy's franchise agreement ("Information");

WHEREAS, CPS Energy considers the Information excepted from required disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552 ("Act");

WHEREAS, the Texas Attorney General has recognized that governmental entities may share information without violating the confidentiality of the information or waiving exceptions to disclosure; and

WHEREAS, in the spirit of intergovernmental cooperation, CPS Energy is agreeable to sharing the Information with the City, subject to certain commitments by the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, CPS Energy and the City agree as follows:

1. CPS Energy will provide the Information to the City without waiving exceptions to disclosure under the Act.
2. CPS Energy, by providing the Information, is not agreeing to provide similar information to the City or to other governmental entities in response to subsequent requests for information and is not waiving its rights to withhold this type of information in the future.
3. Consistent with CPS Energy's assertion of confidentiality of the Information, the City shall (a) maintain the Information in a secure and non-public file; (b) permit access to the Information only to authorized personnel acting within their official capacity and only on a "need-to-know" basis; and (c) otherwise take all reasonable precautions to prevent the dissemination of the Information to any other employee, contractor, agent or other persons.
4. The City shall not provide the Information in response to a request for the information under the Act. The City shall immediately inform CPS Energy if the City receives a request under the Act for the Information so that CPS Energy can take the necessary actions under the Act to prevent disclosure of the Information.

City of Windcrest, Texas

Title: _____

Printed Name: _____

ORDINANCE NO. 2012-668

AN ORDINANCE APPROVING AND ADOPTING AN AMENDMENT TO THE BUDGET FOR OPERATING THE MUNICIPAL GOVERNMENT OF THE CITY OF WINDCREST FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND ENDING ON SEPTEMBER 30 2012; AND ESTABLISHING A SAVINGS CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, the City Council desires to amend the operating budget of the municipal government of the City of Windcrest for the fiscal year October 1, 2011 to September 30, 2012; and,

WHEREAS, said budget amendments have been submitted to the City Council by the City Manager, in accordance with the City's Fiscal and Budgetary Policy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS:

Section 1. That the City Council of the City of Windcrest does hereby ratify, approve and adopt the amendments to the budget considered for fiscal year of October 1, 2011 to September 30, 2012 as identified in Attachment "A" of this ordinance.

Section 2. That should any part, portion, or section of this ordinance be declared invalid or inoperative or void for any reason by a court of competent jurisdiction, such decision, opinion or judgment shall in no way affect the remaining portions, parts, or sections or parts of section of this ordinance, which provisions shall be, remain and continue to be in full force and effect.

Section 3. That this ordinance shall be effective upon passage.

PASSED AND APPROVED, on the 2nd day of July, 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

PACKET: 00285-Budget Adjustment 7/2/12

BUDGET CODE: CB-Current Budget

FUND ACCOUNT	DATE	DESCRIPTION	ADJUSTMENT	ORIGINAL BUDGET	PREVIOUS ADJUSTMENTS	NEW BUDGET	BUDGET BALANCE

Budget Adj. # 000347							
01 502-800	6/28/2012	New Laptops for PD/ CAPITAL EXPENDITURES	51,030.00	63,750.00	0.00	114,780.00	75,034.25
01 519-800	6/28/2012	additional equip fo CAPITAL EXPENDITURES	3,500.00	0.00	0.00	3,500.00	3,500.00
01 517-800	6/28/2012	additional equip fo CAPITAL EXPENDITURES	7,600.00	5,000.00	1,817.00	14,417.00	7,600.34
01 515-800	6/28/2012	CIP 1/20th of repla CAPITAL EXPENSE	22,000.00	40,000.00	0.00	62,000.00	15,481.84
18 500-800	6/28/2012	Replace total vehic CAPITAL EXPENDITURES	45,000.00	82,250.00	10,000.00-	117,250.00	49,760.68
TOTAL NO. ADJUSTMENTS--EXPENSE:						5	129,130.00
TOTAL IN PACKET--							129,130.00

*** NO WARNINGS ***

*** NO ERRORS ***

*** END OF REPORT ***

A RESOLUTION NO. 12-001 (R)

For The City of Windcrest Economic Development Corporation action requesting The City to consider allocating funds to The City of Windcrest Economic Development Corporation from those funds The City is to receive from CPS Energy per the Agreement Incident to Termination of the Community Infrastructure & Economic Development (CIED) Fund Program to be dedicated for improvements within the Windcrest Business District.

WHEREAS, per Resolution No. 2012-375 passed and approved by the City Council on May 21, 2012, the City entered into an Agreement Incident to Termination of the Community Infrastructure & Economic Development (CIED) Fund Program with CPS Energy (the "Agreement") as a result of the termination of the CPS Energy Community Infrastructure and Economic Development Fund on January 30, 2012.

WHEREAS, The City's final CIED Fund balance in the CIED Fund is \$201,677.10 ("CIED Fund Balance"), of which \$ 0.00 has been previously earmarked for projects meeting the requirements of the Policy ("Disbursable Amount").

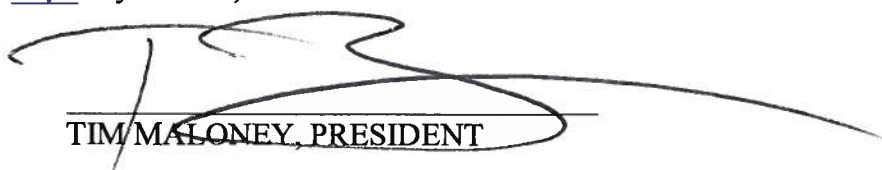
WHEREAS, per the Agreement, The City shall use its best commercial efforts to use the Disbursable Amount funds in a manner consistent with the purposes expressed in the Policy including but not limited to, energy efficiency and conservation projects, overhead electric line conversions, renewable distribution projects, upgraded streetlighting, and economic development involving new facility construction.

WHEREAS, since the Agreement provides that the Disbursement Amount funds can be utilized for economic development, The City of Windcrest Economic Development Corporation hereby respectfully requests that a portion of those funds be allocated to The City of Windcrest Economic Development Corporation to be dedicated for improvements within the Windcrest Business District; and

WHEREAS, the revitalization of the Windcrest Business District is of utmost importance to The City and This City of Windcrest Economic Development Corporation, therefore, it only seems appropriate to request the allocation of a portion of the above referenced funds to the Windcrest Economic Development Corporation to be dedicated for improvements within the Windcrest Business District.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF WINDCREST ECONOMIC DEVELOPMENT CORPORATION that it hereby formerly requests The City to allocate \$100,000.00 of the above referenced funds to the City of Windcrest Economic Development Corporation to be dedicated for improvements within the Windcrest Business District.

PASSED and **APPROVED** this 14th day of June, 2012.



TIM MALONEY, PRESIDENT

ATTEST:



HEATHER WEIDENBACH, CITY SECRETARY

APPROVED AS TO FORM:



HARRY B. ADAMS, WEDC ATTORNEY

**Texas Parks & Wildlife Department
Recreation Grants Branch**

**LOCAL PARK GRANT
PROGRAM**

Outdoor Recreation Grant Application
(PWD 1069-P4000)

SPECIAL CALL FOR APPLICATIONS
August 1, 2012
(SEE SPECIAL INSTRUCTIONS FOLLOWING PAGE)

This program is for government entities with populations of 500,000 or less.



Instructions for Special Call for Applications

August 1, 2012 Deadline!

SPECIAL CALL FOR APPLICATIONS

Recreation Grants Branch is announcing a call for applications to include the Outdoor Recreation and Urban Outdoor Recreation grant programs. With the passage of the omnibus spending bill in December by the U.S. Congress, Texas has received \$2,302,679 for its federal apportionment through the Land and Water Conservation Fund. Approximately one half of this amount or \$1,151,339 is available for the August 1st grant review. Of this amount, 40% is set aside for the Urban Outdoor Recreation grant and 60% is set aside for the Outdoor Recreation grant.

The 82nd Texas Legislature suspended all **State** funding for the Texas Recreation and Parks Account (TRPA), and all Large County & Municipality Recreation and Parks Account. Due to this suspension, available grant funds are limited to the federal LWCF apportionment and the following program guidelines apply for this call for applications:

Application Deadline

Applications must be postmarked no later than **August 1, 2012**

Match

Outdoor Recreation Grant maximum match amount = **\$100,000**
(Approximately \$690, 803 available)

Urban Outdoor Recreation Grant maximum match amount = **\$220,000**
(Approximately \$460, 535 available)

Existing government-owned lands cannot be used as a part of the non-federal matching share of a project unless such land is to be acquired by the sponsoring agency from another agency and there is a statutory requirement that the selling agency be reimbursed for the value of the property. Further, property cannot be "donated" between the State and its political subdivisions to serve as a match for grant assistance.

The ONLY federal funds allowed as match include grants from the Community Development Block Grant and the National Recreational Trails Fund programs.

Leased Land

Projects on leased land will only be considered if the lesser; 1) is another eligible government entity and 2) dedicates the land as public parkland in perpetuity.

Waiver of Retroactivity

If you are planning to use a Waiver of Retroactivity for your application, please contact our office to confirm eligibility prior to preparing your application.

Land Appraisals

If your project is selected for funding and it includes land acquisition, an appraisal in compliance with Uniform Appraisal Standards for Federal Land Acquisition (yellow book standards) will be required. These standards can be found on the U.S. Department of Justice's website at www.usdoj.gov/enrd/land-ack . Please note that the cost of the yellow book appraisal is NOT eligible for reimbursement.

TRACS

COG review no longer required.

All other program guidelines remain in effect.

For all other program guidelines, please review the relevant application by visiting our website at www.tpwd.state.tx.us/business/grants .

Due to limited funds and eligibility requirements, applications for all other Local Park Grant programs are NOT being accepted at this time. These include the Small Community, Indoor Recreation, Urban Indoor Recreation and Regional grant programs.

For questions regarding the application process, please contact:

Dana Lagarde
(512)389-8175
dana.lagarde@tpwd.state.tx.us

OR

Roxane Eley
(512)389-8109
Roxane.eley@tpwd.state.tx.us

LOCAL PARK GRANT PROGRAM

TEXAS PARKS AND WILDLIFE DEPARTMENT MISSION STATEMENT

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations.

RECREATION GRANTS BRANCH MISSION STATEMENT

To assist communities in providing recreation and conservation opportunities for the use and enjoyment of present and future generations.

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Recreation Grants Branch Directory

Mailing Address: Texas Parks & Wildlife Recreation Grants Branch 4200 Smith School Road Austin, Texas 78744	Office Location: Texas Parks & Wildlife Recreation Grants Branch 1340 Airport Commerce Drive Building 6, Suite 600A Austin, Texas 78741
Website: http://www.tpwd.state.tx.us/business/grants/ Email: Rec.Grants@tpwd.state.tx.us Telephone: (512) 389-8224 Fax: (512) 389-8242 TPWD Main Numbers: 1-800-792-1112 or 512 389-4800	

Tim Hogsett, Director	389-8224
Local Park Grants Section Manager	389-8175
Fiscal Section Manager.....	389-8210
Community Outdoor Outreach Program Manager.....	389-8745
Non-TRPA Grants (Boating, Trail, & Pump-out) Manager	389-8128
Office Manager.....	389-8171

LOCAL PARK GRANT PROGRAM

GENERAL INFORMATION

The Texas Parks & Wildlife Department, Recreation Grants Branch (the Department) administers the Local Park Grant Programs – **Outdoor Recreation, Indoor Recreation, Urban Outdoor Recreation, Urban Indoor Recreation, Small Community, and Regional** – to assist local units of government with the acquisition and/or development of public recreation areas and facilities throughout the State of Texas. The Program provides 50% matching-fund, reimbursement grants to eligible local governments. In other words, the Department can award \$1 for every dollar of eligible match provided by the sponsor, up to the program award ceiling.

The legal project sponsor is responsible for:

- application content
- project administration
- program compliance in perpetuity

If other individuals are used to write the application or assist with project administration, the Department can only recognize the legal sponsor as the responsible party. All project correspondence, documentation, and commitments must be made and submitted by the legal project sponsor.

The maximum amount which may be applied for in each Program is:

<u>GRANT PROGRAM</u>	<u>MAXIMUM MATCH AMOUNT</u>
Outdoor Recreation (communities <500,000 population)	\$500,000.00
Indoor Recreation (communities <500,000 population)	\$750,000.00
Urban Outdoor Recreation (communities >500,000 population)	\$1,000,000.00
Urban Indoor Recreation (communities >500,000 population)	\$1,000,000.00
Small Community (communities <20,000 population)	\$75,000.00
Regional Outdoor Recreation	currently suspended

Only one application per eligible sponsor per grant program cycle will be accepted.

WHO IS ELIGIBLE TO RECEIVE FUNDS

Eligible applicants include political subdivisions of the State of Texas legally responsible for providing public recreation services to their citizens. This includes cities, counties, river authorities, municipal utility districts, and other special districts. Questions regarding eligibility should be directed to the Department at 512-389-8224 or by email at Rec.Grants@tpwd.state.tx.us.

The following criteria will be used to determine sponsor eligibility for additional funding:

- Funding history and previous performance
- All previously completed Department sponsored grant projects must be in compliance with all the terms of the Project Agreement under which they received assistance and all program guidelines; and
- For active grants, all required project documentation (such as appraisals, construction plans, quarterly status reports, and reimbursement requests) must be complete and have been received on schedule, if due; and

- All active projects which are at least two years old must be reimbursed for a minimum fifty percent of the approved grant amount; and
- The total of approved grant funds which have not been reimbursed may not exceed \$2 million for all active grant projects.

A grantee may also be considered to be “high risk” based on financial stability or non conforming management standards, requiring additional special conditions and restrictions as determined by grant management standards.

FAILURE TO MEET ANY ONE OF THE ABOVE CRITERIA MAY BE GROUNDS FOR DENYING NEW GRANT FUNDS. ASSESSMENT OF THE ABOVE CRITERIA IN CONJUNCTION WITH REQUESTS FOR NEW GRANTS WILL BE MADE PRIOR TO SUBMISSION OF FUNDING RECOMMENDATIONS TO THE PARKS AND WILDLIFE COMMISSION.

WHAT IS ELIGIBLE & NON ELIGIBLE

Development projects may consist of basic outdoor recreation facilities (and related support facilities) to serve the general public, provided that the funding of the project is in the best public interest in accord with local plans, and endorsed by the regional planning council of governments with jurisdiction where the project is proposed. Facilities may be developed, renovated, or redeveloped on lands or waters owned or adequately controlled by the project sponsor. Plans for recreational development should be based on public needs, expected use, and the type and character of the project areas.

Facilities should be attractive to the public and consistent with the natural setting and topographic limitations of the site. Recreational improvements should be designed to be harmonious with the natural environment. Emphasis should be given to public health, safety, the natural environment, barrier-free access, and the protection of recreational and community values of the area. These considerations should be part of the planning, design, and maintenance criteria for all grant-assisted areas.

Development projects may consist of the complete or partial development of a public recreation area. All projects must be logical units of work to be accomplished within three years or less. Further details can be found in this *Local Park Grant Programs Manual* or by contacting the Recreation Grants Branch at 512-389-8224.

BARRIER-FREE ACCESS REQUIREMENT

All recreational facilities acquired and/or developed with grant assistance must be designed in accordance with the Texas Architectural Barriers Act ([Texas Civil Statutes – Article 9102](#)) and must comply with the Americans with Disabilities Act (ADA) ([Public Law 101-336](#)). Acceptable design criteria have been published for the Texas State Program for Preventing Architectural Barriers.

Copies of this publication may be obtained from:

Elimination of Architectural Barriers Program
Texas Department of Licensing & Regulation
P. O. Box 12157
Austin, TX 78711
512/463-6599
<http://www.license.state.tx.us/ab/ab.htm>

Sponsors are encouraged to make all recreational facilities accessible to users who are physically and/or mentally disabled. However, physical limitations of a site do not allow for total accessibility.

DEVELOPMENT ON SCHOOL PROPERTY

Although school districts are not eligible for grant assistance, facilities on public school grounds for joint school-general public use are allowed provided that the following conditions are met:

1. The property meets all requirements of the grant program, including requirements for development on leased property.
2. The proposed facilities are not required as part of the normal curriculum of the educational institution and must be primarily intended for general public use.
3. The lease agreement must include:
 - schedule of times the fund-assisted facilities are available to the public,
 - metes and bounds description of the project area, which includes the areas to be developed, and
 - ingress/egress route to the assisted facilities.
4. Adequate signage must be installed prior to the final grant payment/reimbursement that is:
 - maintained throughout the term of the lease at the project site
 - indicates when the fund-supported facilities are available to the public

DEVELOPMENT ON LEASED PROPERTY

Sponsors requesting development funds are required to have full legal control of the property proposed for development. Adequate legal control of the property means that the sponsor either has fee simple title to the property, is proposing to acquire the property as part of the project, or will lease the property from another educational or governmental entity.

Leased property will only be eligible for fund support if it meets all of the following requirements:

1. Sponsor has (or will have) full surface legal control of the property proposed for assistance; and
2. Sponsor and lessor can guarantee that the project area will remain dedicated to public recreation use throughout the term of the lease. The lessor must be willing to comply with all program guidelines for the entire term of the lease; and
3. Project area must be leased to the sponsor for a minimum of 25 years for most projects, and in some cases up to 40 years for major capital expenditures like aquatic and related facilities; and
4. The lease cannot be revocable at will by the lessor.

Prior to the submission of an application involving leased property the sponsor should contact the Recreation Grants Branch to discuss program requirements. Submit a copy of the draft lease agreement for Department approval prior to its execution to ensure eligibility and avoid unnecessary delays. The draft agreement should include a boundary map, project area metes and bounds (if possible), and a letter from the lessor indicating a willingness to enter into the agreement if the project is approved.

ELIGIBLE DEVELOPMENT COSTS

Development projects may include new construction, renovations, redevelopment, demolition, site preparation, site planning, application preparation costs, engineering and architectural services, and most activities necessary to accomplish project objectives. (Note: only costs incurred at the project site are eligible for support. Off-site work is not eligible for grant assistance.) The cost of conducting cultural resource surveys, U.S. Army Corps of Engineers permits, wetland determinations, and other required permitting costs may also be included as eligible costs to the project.

RENOVATION / REDEVELOPMENT VS. REPAIR / MAINTENANCE

Projects requesting assistance to renovate and/or redevelop facilities (or areas) are eligible for assistance. PROJECTS INVOLVING REPAIRS AND/OR MAINTENANCE OF FACILITIES ARE NOT ELIGIBLE FOR ASSISTANCE.

The following definitions are used by the Department to clarify the differences between these types of projects (Source: Webster's Dictionary):

- **REPAIRS:** Repair is defined in terms of “to restore to a sound or good state after decay...; to remedy...or mend.” Work on existing facilities which merely maintains portions of such facilities in a sound or useful state are classified as repair.
- **RENOVATION:** Renovate is defined in terms of “to renew, make over...” Work on existing facilities to completely renew, update, or modernize such facilities so the finished product will meet present-day standards and be comparable with newly constructed similar facilities is classified as renovation.

In this regard, repairs would normally consist of minor work intended to mend a specific part of a facility which has become broken or otherwise inoperative, to return it to a useful state, or periodic minor work designed to merely maintain a specific part of a facility so such facility will be in a good state of maintenance and repair. In contrast, renovation normally consists of major work to encompass all parts of a facility required to modernize and update such facility to meet current standards of design, construction, and usefulness.

- **REDEVELOPMENT:** Redevelop is defined in terms of “to develop again.” Redevelopment of existing park areas which includes demolition of obsolete facilities and the construction of new facilities (for either similar or different recreational uses) may be eligible for assistance.

ELIGIBLE TYPES OF DEVELOPMENT

- **BALLFIELDS:** Including, but not limited to site preparation/grading, lighting, fencing, irrigation, turf establishment, dugouts, bleachers, goals, bases, scoreboards, and scorekeeper booths.
- **BOATING, FISHING, AND HUNTING FACILITIES:** Including, but not limited to boat ramps, breakwaters, docks, piers, sewage pumping facilities, buoys, channels, mechanical launching devices, fish cleaning facilities, lighting, stream improvements, clearing and planting for food/cover, skeet/trap/rifle/pistol/archery ranges, wildlife management areas and trails.

Prior to consideration of funding for boating access facilities, sponsors must attempt to secure funding from the Department under the [State Boat Ramp Program](#) or [State Pumpout Program](#). To request assistance for these types of facilities through the Local Park Grant Program, the application must include documentation confirming the efforts to secure the alternative source of assistance. The Recreation Grants Branch can provide further information about these programs.

- **PICNIC FACILITIES:** Including, but not limited to pavilions, tables, shelters, grills, concrete pads, area lighting, and trash receptacles.
- **PLAYGROUNDS:** Including, but not limited to surfacing, borders, equipment, benches, and lighting.
- **AQUATIC FACILITIES:** Including, but not limited to swimming/wading/wave/spray pools, beaches, bathhouses, service/mechanical buildings, heaters, lifeguard towers, showers, fencing, deck areas, and lighting.
- **TRAILS:** Including, but not limited to jogging and exercise trails, nature and hiking trails, bicycle, motorcycle and multiple purpose trails, observation stations, overlooks, bridges, low-water crossings, boardwalks, exercise stations, interpretive and directional signage, sidewalks and barrier free access ways to other areas/facilities.

Grant applicants with trail-based projects should consider using the following as sources of funding: [TPWD Recreational Trails Grant Program](#) or the [TXDOT Transportation Enhancement Program](#). Contact the Recreation Grants Branch for details.

- **CAMPING FACILITIES:** Including, but not limited to tent and RV pads, group facilities, tables, grills, utility hook-ups, dump stations, information stations, service buildings, and area lighting (as long as these facilities do not create unfair competition with the private sector).
- **BEAUTIFICATION:** Including, but not limited to landscaping, burial/removal/relocation of overhead utility lines, erosion controls, dredging/restoration of water bodies, fountains, and gazebos.

NOTE: Grant funds **may not** be used to purchase or install **invasive plant species** at fund assisted sites. The State is currently compiling an official list. Until that list is adopted, use the link: <http://www.invasivespeciesinfo.gov/plants/main.shtml> for reference purposes.

- **RECREATIONAL SUPPORT FACILITIES:** Including, but not limited to park roads, parking, fencing, utilities, irrigation, small maintenance structures, restrooms, signs, trash receptacles, service buildings with restroom/concession/storage/ maintenance areas, drinking fountains, sidewalks, ramps, bleachers, scoreboards, security/area lighting, plus improvements to recreation and support facilities that promote energy conservation.
- **COMMUNITY GARDENS:** Including, but not limited to fencing, storage bins and sheds, irrigation, composting areas, benches, sidewalks, parking, and restrooms.
- **SPORT COURTS:** Including, but not limited to basketball, tennis, volleyball, badminton, and related lighting, fencing, surfacing, nets, goals, windbreaks, and bleachers.
- **CULTURAL AND EXHIBIT FACILITIES:** Only small amphitheaters, bandstands, rodeo arenas, and exhibit or interpretive facilities are eligible. This includes small demonstration arboretums, nature exhibits and interpretive centers. Assistance will not be provided if these facilities function primarily for professional, semi-professional, academic, historic, economic, or other non-recreational uses.
- **RENOVATIONS AND REDEVELOPMENT:** Projects involving the renovation or redevelopment of recreation facilities may be eligible for assistance. (For more information, refer to "Renovation/Redevelopment vs. Repair/Maintenance" in the previous section.
- **GOLF COURSES:** Including, but not limited to construction, irrigation, landscaping, roads, parking, utilities, moderate clubhouse and maintenance facilities, and cart paths.

INELIGIBLE TYPES OF DEVELOPMENT

Development projects which do not have a well-defined objective or do not directly contribute to public recreation activities are not eligible. Support facilities which are not directly related to public recreation are also not eligible. Projects for which the sponsor cannot demonstrate full legal control of the property proposed for development are not eligible for assistance.

Generally, development assistance will not be made for the following facilities:

- **RESTORATION/PRESERVATION OF HISTORIC STRUCTURES:** The restoration and renovation of historic structures are not eligible for grant assistance. Public recreation facilities, interpretation facilities, and support facilities in conjunction with historical structures or sites may, however, be eligible for assistance. These sites must be in accordance with the [Texas Antiquities Code](#) if redevelopment is adjacent to or on a site listed (or eligible to be listed) as a State Archaeological Landmark.

Funding and technical assistance to renovate, preserve, and dedicate historic structures may be available through the [Texas Historical Commission](#) as well as the [National Park Service](#).

- **AREAS/FACILITIES TO BE USED PRIMARILY FOR PROFESSIONAL OR SEMI-PROFESSIONAL ARTS AND ATHLETICS:** Including, but not limited to stadiums, amphitheaters, and rodeo arenas.
- **AMUSEMENT FACILITIES:** Including, but not limited to merry-go-rounds, Ferris wheels, miniature railroads, pioneer towns, livestock and produce facilities, convention facilities, or commemorative exhibits.
- **EMPLOYEE RESIDENCES AND FURNISHINGS**
- **LODGES, HOTELS, MOTELS, OR LUXURY CABINS**
- **SUPPORT FACILITIES FOR NON-ELIGIBLE FACILITIES:** If the support facility will serve both eligible and non-eligible facilities, assistance may be provided on a pro-rata basis for that portion of the facility which will support the public recreation facilities.
- **MARINAS AND RELATED SUPPORT FACILITIES**

Public boat ramp construction and public boat sewage pumpout stations are eligible projects through the Local Park Grant Program, the State Boat Ramp Construction Program, State Pumpout Program, and/or the Boating Infrastructure Grant. Please contact the Recreation Grants Branch for more details at 512-389-8224.

Some of the above facilities which are not eligible for grant assistance may be constructed in a fund assisted area if they are compatible with the public recreation uses of the area. Department approval must be received prior to the development of non-recreational facilities within grant assisted areas. Questions regarding development should be directed to the Recreation Grants Branch at 512-389-8224.

THIS IS A REIMBURSEMENT PROGRAM

Fifty percent (50%) of the actual expenditures, up to the support ceiling of the grant, will be reimbursed during the project period as billings are submitted. Your **original project estimates** will determine the support ceiling. Sponsors **must have start-up funds** available to cover project expenses until reimbursement requests can be processed.

LOCAL SOURCES OF MATCHING FUNDS

Grant funds are provided on a matching basis with the local sponsor providing fifty percent (50%) of the project costs. The sponsor's matching share may come from a number of sources including, but not limited to the following:

- General obligation, and revenue bonds must be already voter approved.
- Local appropriations (i.e. cash).
- Economic development sales tax (counts as local funds, not a donation).
- In-kind labor, equipment, and materials to be provided by the sponsor or other governmental entities.
- The value of sponsor or publicly-owned non-parkland (value must be included as acquisition in the budget and title must be transferred to the sponsor at the appropriate time **after** Department authorization is received). **Land leased from another governmental entity cannot be used as the sponsor's local match.**
- The value of the land to be received as the result of local mandatory park dedication requirements (existing park land is not eligible as donation match).
- Fees or cash in-lieu of land received as the result of local mandatory dedication can be used as "donation" match.
- The value of privately donated land, cash, labor, equipment, and materials.
- Other eligible state/federal grants or resources, including but not limited to: Coastal Management Program, Community Development Block Grants, Fish and Wildlife Service.

Match MUST be available at the time of application.

Questions regarding matching share eligibility should be directed to the Recreation Grants Branch at 512-389-8224 or by email at Rec.Grants@tpwd.state.tx.us.

WHEN TO SUBMIT APPLICATIONS

Submit four (4) full sets of all required documents - 1 with original signatures in a 3-ring binder and 3 copies clipped. Many of the required forms are now available as links to fillable forms. Application proposals are reviewed at approximately five-month intervals. Applications must be received by 5:00 p.m. on the submission date OR postmarked as mailed by the deadline.

<u>Program</u>	<u>Submission Date</u>	<u>Award Date</u>
Outdoor Recreation	March 1 st	late August
Outdoor Recreation	August 1 st	late January
Indoor Recreation	August 1 st	late January
Urban Outdoor Recreation	March 1 st	late August
Urban Indoor Recreation	August 1 st	late January
Small Community	March 1 st	late August

WHERE TO SUBMIT APPLICATIONS

Mailing Address:
Recreation Grants Branch
Texas Parks & Wildlife Department
4200 Smith School Road
Austin TX 78744

Physical Address (for delivery only)
Recreation Grants Branch
1340 Airport Commerce Drive
Bldg 6, Ste 600A
Austin TX 78741

PROJECT SCORING AND LOCAL NEED

Recreation Grants uses the Project Priority Scoring System ([Appendix A](#)) to evaluate and rank all applications. Although a local parks master plan is not required, priority is given to projects proposing to meet priority needs determined locally in a Department-approved recreation and open space master plan. A master plan is also the best way to document public input. See *Park, Recreation, & Open Space Master Plan Guidelines* in [Appendix D](#).

It is recommended that plans be reviewed by Recreation Grants prior to submission to the applicable governing body for final approval to preclude the sponsor from having to obtain additional approval from the governing body in the event the review finds changes to the plans are needed.

Plans must be delivered to or post-marked 60 days prior to the application deadline and must be in an approvable format (including resolution of adoption).

PUBLIC HEARING REQUIREMENTS

All grant applications must receive at least one public hearing prior to submission in compliance with the Texas Open Meetings Act. The hearing may be a separate public meeting, or it may occur at the time the governing body regularly meets. At this public hearing, the governing body must pass the resolution authorizing application submission. The public hearing must be properly posted and advertised in compliance with the Texas Open Meetings Act, and there must be an opportunity for public comment.

Projects involving floodplain or wetland areas are subject to additional requirements (see *Environmental Assessment Instructions* in this guide).

Sponsors must certify on the *Applicant's Certification & Program Assurances* form that the public hearing requirement has been met. For more information on the Open Meetings Act see:

<http://www.oag.state.tx.us/>

COUNCIL OF GOVERNMENTS REVIEW (TRACS)

You must submit a copy of the application to the appropriate regional planning council of governments (COG) for Texas Review and Comments System (TRACS) consideration. More information about TRACS can be found on the Governor's website at:

<http://www.governor.state.tx.us/divisions/tracs/>

WHAT TO EXPECT AFTER SUBMISSION

The process of reviewing grant applications requires about five months, and includes:

- technical review by the Recreation Grants Branch staff
- environmental review by the Department's Fisheries and Wildlife divisions staff
- historic/archeological review by the Texas Historical Commission staff

In order to create a more efficient application review and to provide improved customer service for approved projects, we will conduct site visits to projects approved by the TPWD Commission. The site visit will be combined with a pre-construction meeting to assist sponsors with launching their project.

When all of the information necessary to complete the application is received, the project is scored, put in priority order by score, and recommendations are presented to the Parks & Wildlife Commission.

The Texas Parks & Wildlife Commission makes all final decisions regarding awards of program funds. Each project sponsor will be notified of the staff's recommendation shortly before the Parks & Wildlife Commission hearing. The public is welcome to attend and participate at the hearing.

ENVIRONMENTAL RESOURCE REVIEW

Recreation Grants will coordinate the review of your project with the resources staff at TPWD. If endangered/threatened species have the potential to be located on the project site, additional environmental coordination and/or a survey may be required. You will be notified of the required survey. The environmental resource survey approval must be received prior to any construction or reimbursement. Guidelines will be provided on request. The cost of an environmental survey is eligible for 50% grant reimbursement, if budgeted in the application under Professional Services.

CULTURAL RESOURCES SURVEY

Recreation Grants will coordinate the review of your project with the Texas Historical Commission (THC). If a cultural resource survey is required, you will be notified. Cultural resource survey approval must be received prior to any construction or reimbursement. The cost of a survey required by THC is eligible for 50% grant reimbursement, if budgeted in the application under Professional Services.

General information on the cultural resource management process may be found at the THC website at: www.thc.state.tx.us/crm/crmdefault.html.

SINGLE AUDIT REQUIREMENTS

It is the responsibility of the sponsor to have a Single Audit done annually according to the Texas Single Audit Circular for state funded projects, and according to OMB Circular A-133 for federally funded projects. A copy of this audit must be furnished to the Department when completed. Contact the Fiscal Section of the Recreation Grants Branch for questions regarding this audit.

WE ARE JOINTLY COMMITTED

Both the Department and the project sponsor are committed to long-term program performance. This includes compliance at Local Park Grant Program assisted sites, and at previously assisted Land and Water Conservation Fund and Texas Local Parks, Recreation & Open Space Fund assisted grant sites. Even after the project is completed and all grant funds have been reimbursed, our commitments to the requirements of the programs continue in perpetuity. Information on *Post Project Responsibilities* is located in Appendix E.

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Fillable Application Forms

Click on the individual forms below for an online fillable version:

[Grant Application - Application Checklist](#)

[Grant Application - Authorizing Resolution](#)

[Grant Application - Applicant's Certification](#)

[Outdoor Grant Application - Information Part I](#)

[Outdoor Grant Application - Information Part II](#)

[Grant Application - Environmental Checklist](#)

[Grant Application - Acquisition Schedule](#)

[Grant Application - Assurance of Eligibility](#)

[Outdoor Grant Application - Budget Summary](#)

LOCAL PARK GRANT PROGRAM

APPLICATION CHECKLIST

This checklist is provided to assist with the preparation and submission of a grant application through the Local Park Grant Program. Please organize documents in the order listed below and submit four (4) full sets of all required documentation - 1 with original signatures in a 3-ring binder and 3 copies clipped. A fillable version of the Application Checklist is available as a link on page 11.

The Department reserves the right to return applications which are not complete, in fairness to other applicants competing for limited program funds. Please be sure to include all required documents, follow instructions closely, and call Recreation Grants at 512-389-8224 if you have any questions.

The following documents are required for a complete application:

- _____ Cover Letter
- _____ Resolution Authorizing the Application (executed)
- _____ Applicant's Certification and Program Assurances (executed)
- _____ Application Form Part I
- _____ Application Form Part II
- _____ Letters of Commitment for all Land, Cash, Labor, Equipment and Materials to be Donated
- _____ Letters of Commitment and Draft Agreements for all other Governmental/School Participation
- _____ Location Map of project site
- _____ Project Narrative
- _____ Environmental Assessment
- _____ Natural Area Verification (if applicable)
- _____ Wetland Verification (if applicable)
- _____ Permit or Evaluation Comments from U.S. Army COE, TCEQ, or other Agency (if applicable)
- _____ Maps (topographic and aerial)
- _____ Photographs of the Project Area (include existing facilities, water bodies, special features, overhead utility lines, etc.)

Acquisition Documentation (if applicable)

- _____ Acquisition Schedule
- _____ Five-Year History of Property Conveyance **(donations and publicly owned non-parkland)**
- _____ Boundary Map (w/ legal description)
- _____ Assurance of Eligibility **(publicly owned non-parkland only)**
- _____ Preliminary Valuation Letter
- _____ Waiver of Retroactivity (if previously approved)
- _____ Budget Summary of Project Elements and Costs
- _____ Site Plan
- _____ Floor Plan(s) (enclosed facilities only)
- _____ Regional Planning Commission "TRACS" Letter (or cover letter of submission)
- _____ Proof of Ownership and Legal Control (Recorded Deeds, Draft Lease/Easement Agreements)
- _____ Proof Sponsor Can Prevent Surface Drilling/Mining of the Project Site (ordinance, zoning, mineral rights, etc.)

LOCAL PARK GRANT PROGRAM

SAMPLE RESOLUTION AUTHORIZING APPLICATION

A RESOLUTION OF THE city/county/etc., TEXAS HEREINAFTER REFERRED TO AS "APPLICANT," DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE APPLICANT IN DEALING WITH THE TEXAS PARKS & WILDLIFE DEPARTMENT, HEREINAFTER REFERRED TO AS "DEPARTMENT," FOR THE PURPOSE OF PARTICIPATING IN THE LOCAL PARK GRANT PROGRAM, HEREINAFTER REFERRED TO AS THE "PROGRAM"; CERTIFYING THAT THE APPLICANT IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE APPLICANT MATCHING SHARE IS READILY AVAILABLE; DEDICATING THE PROPOSED SITE FOR PERMANENT (OR FOR THE TERM OF THE LEASE FOR LEASED PROPERTY) PUBLIC PARK AND RECREATIONAL USES; AND CERTIFYING THAT THE APPLICATION HAS BEEN SUBMITTED TO THE APPROPRIATE REGIONAL COUNCIL OF GOVERNMENTS FOR THE TEXAS REVIEW AND COMMENT SYSTEM (TRACS) REVIEW.

WHEREAS, the Applicant is fully eligible to receive assistance under the Program; and

WHEREAS, the Applicant is desirous of authorizing an official to represent and act for the Applicant in dealing with the Department concerning the Program;

BE IT RESOLVED BY THE APPLICANT:

SECTION 1: That the Applicant hereby certifies that they are eligible to receive assistance under the Program, and that notice of the application has been posted according to local public hearing requirements.

SECTION 2: That the Applicant hereby certifies that the matching share for this application is readily available at this time.

SECTION 3: That the Applicant hereby authorizes and directs its (title of individual – must be sponsor staff) to act for the Applicant in dealing with the Department for the purposes of the Program, and that (name of individual) is hereby officially designated as the representative in this regard.

SECTION 4: The Applicant hereby specifically authorizes the official to make application to the Department concerning the site to be known as (project name) in the (city/county) of (name of city or county) for use as a park site and is hereby dedicated (or will be dedicated upon completion of the proposed acquisition) for public park and recreation purposes in perpetuity (or for the lease term, if legal control is through a lease). Projects with federal monies may have differing requirements.

SECTION 5: That the Applicant hereby certifies that a copy of the application has been submitted to the appropriate regional council of governments for Texas Review and Comments System consideration.

Introduced, read and passed by the affirmative vote of the "Applicant" on this ____ day of ____, 20__.

Signature of Appropriate Official

Typed Name and Title

NOTE: ALL INFORMATION SHOWN IN THE "SAMPLE RESOLUTION" MUST BE INCLUDED IN THE RESOLUTION PASSED BY THE GOVERNING BODY OF THE SPONSOR APPLYING FOR PROGRAM FUNDS.

A fillable version of this form is available as a link on page 11.

LOCAL PARK GRANT PROGRAM

APPLICANT'S CERTIFICATION & PROGRAM ASSURANCES

As the duly authorized representative of the sponsor designated in the Resolution Section 3, I certify that the sponsor:

1. Has complied with all pertinent local and state laws, and Local Park Grant Program requirements regarding public hearings, including floodplain development, if appropriate.
2. Has submitted a copy of the proposed project documents to the appropriate regional council of governments for Texas Review and Comment System (TRACS) evaluation.
3. Has the required proportionate share of funds available and sufficient for the project as required by Section 13.309 of the Parks and Wildlife Code.
4. Will maintain and operate areas acquired or developed with program assistance at sponsor expense as required by Section 13.309 of the Parks & Wildlife Code.
5. Will permanently dedicate for public park and recreation use all project area(s) which receive program assistance, as required by Chapter 640.1.2 of the *Local Park Grant Program Manual*.
6. Has the legal authority to apply for program assistance, and the institutional, managerial and financial capability to ensure proper planning, management and completion of the project described in this application.
7. Will give the State of Texas, hereafter referred to as "State," through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
8. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the Texas Parks & Wildlife Department, and will record any federal interest in the title of real property in accordance with U. S. Department of Interior directives.
9. Will dedicate and permanently maintain any property designated as a natural area, wetland, or open space to meet program guidelines.
10. Will comply with all provisions of the "Summary of Guidelines for Administration of Local Park Grant Program Acquisition & Development Projects."
11. Will comply with the requirements of the Department with regard to the drafting, review and approval of construction plans and specifications.
12. Will obtain all required state and/or federal permits related to project development.
13. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.
14. Will furnish quarterly progress reports and such other information as may be required by the Department.
15. Will initiate and complete the work within the applicable time frame after receipt of approval from the Department.
16. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

APPLICANT'S CERTIFICATION & PROGRAM ASSURANCES - continued

17. Will comply with all State and Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) any other non-discrimination provisions in the specific statute(s) under which application for program assistance is being made, and (f) the requirements of any other non-discrimination statute(s) which may apply to the application.
18. Will comply with the flood insurance purchase requirements of Section 4012(a) of the Flood Disaster Protection Act of 1973 which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance in an amount at least equal to its development or project cost.
19. Will comply with environmental standards which may be prescribed to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplain in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S. C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air)Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
20. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
21. Will assist the Department in assuring compliance with the Texas Antiquities Code.
22. Will cause to be performed the required financial and compliance audits in accordance with the state or federal Single Audit requirements.
23. Will comply with all applicable requirements of all other State and Federal laws, regulations and policies governing this program.

Sponsor/ Project Name

Signature of Official Authorized in Resolution

Print Name and Title of Official

Date

A fillable version of this form is available as a link on page 11.

OUTDOOR RECREATION - LOCAL PARK GRANT PROGRAM

APPLICATION FORM PART I – GENERAL INFORMATION

I. SPONSOR - Authorized Official

- A. Name: _____
B. Title: _____
C. Address (including zip code): _____
D. Comptroller Identification Number: _____
E. Contact Name/Title: _____
F. Email Address: _____

SPONSOR – Administrative Official (day-to-day contact, **must be sponsor staff)**

- A. Name: _____
B. Title: _____
C. Phone Number: _____
D. Email Address: _____

II. PROJECT (If project includes more than 1 site, provide the following information for each site)

- A. Name: _____
B. Physical Address: _____
C. GPS Coordinates: _____

III. CITY & COUNTY: _____

IV. STATE LEGISLATIVE DISTRICTS

State Legislative District Numbers: (www.senate.state.tx.us. Go to Senators/Who Represents Me?). Key in the **project location address** (not the sponsor address) to look up your district numbers. Please print the webpage and include with your application.

Texas Senate: _____

Texas House: _____

IV. FEDERAL CONGRESSIONAL DISTRICT: _____

VI. MATCHING FUNDS REQUESTED (50% OF PROJECT): \$ _____
(Not to exceed **\$500,000**)

* * * * *

To the best of my knowledge and belief, all documentation in this application is true and correct; the application has been duly authorized by the governing body of the sponsor; and the sponsor agrees to comply with all program rules and procedures if grant assistance is awarded.

Signature of Official Authorized in Resolution

Date

Printed Name, Title

Area Code/Telephone Number

A fillable version is available as a link on page 11.

OUTDOOR RECREATION - LOCAL PARK GRANT PROGRAM

APPLICATION FORM – PART II – BUDGET INFORMATION

A. SPONSOR MATCHING SHARE

- | | |
|---|----------|
| 1. Voter-Approved Capital Improvement Bonds | \$ _____ |
| 2. Sponsor Appropriations: cash, 4-B, EDC, etc. | \$ _____ |
| 3. Sponsor In-House Labor, Equipment, Materials | \$ _____ |
| 4. Sponsor/Publicly Owned Non-Parkland (Include Assurance of Eligibility) | \$ _____ |
| 5. Private Donations of Land * | \$ _____ |
| 6. Private Donations of Cash * | \$ _____ |
| 7. Private Donations of Labor, Equipment, Materials * | \$ _____ |
| 8. Other Governmental/Educational Resources * (Specify in Section C) | \$ _____ |
| 9. Other Grants * (Specify in Section C) (must already be awarded) | \$ _____ |
| 10. Other Funds/Resources * (Specify in Section C) | \$ _____ |
| 11. TOTAL SPONSOR SHARE (Add Lines 1 through 10) | \$ _____ |
- NOT EXCEED \$500,000**

*** = Include letter(s) of commitment for donations of land, cash and labor, equipment and/or materials. These letters must include value of the contribution, and how the value was determined.**

B. ESTIMATED TOTAL COST OF PROJECT \$ _____

Show additional resources and/or additional sponsor costs, if any, in excess of \$1,000,000 in Section C

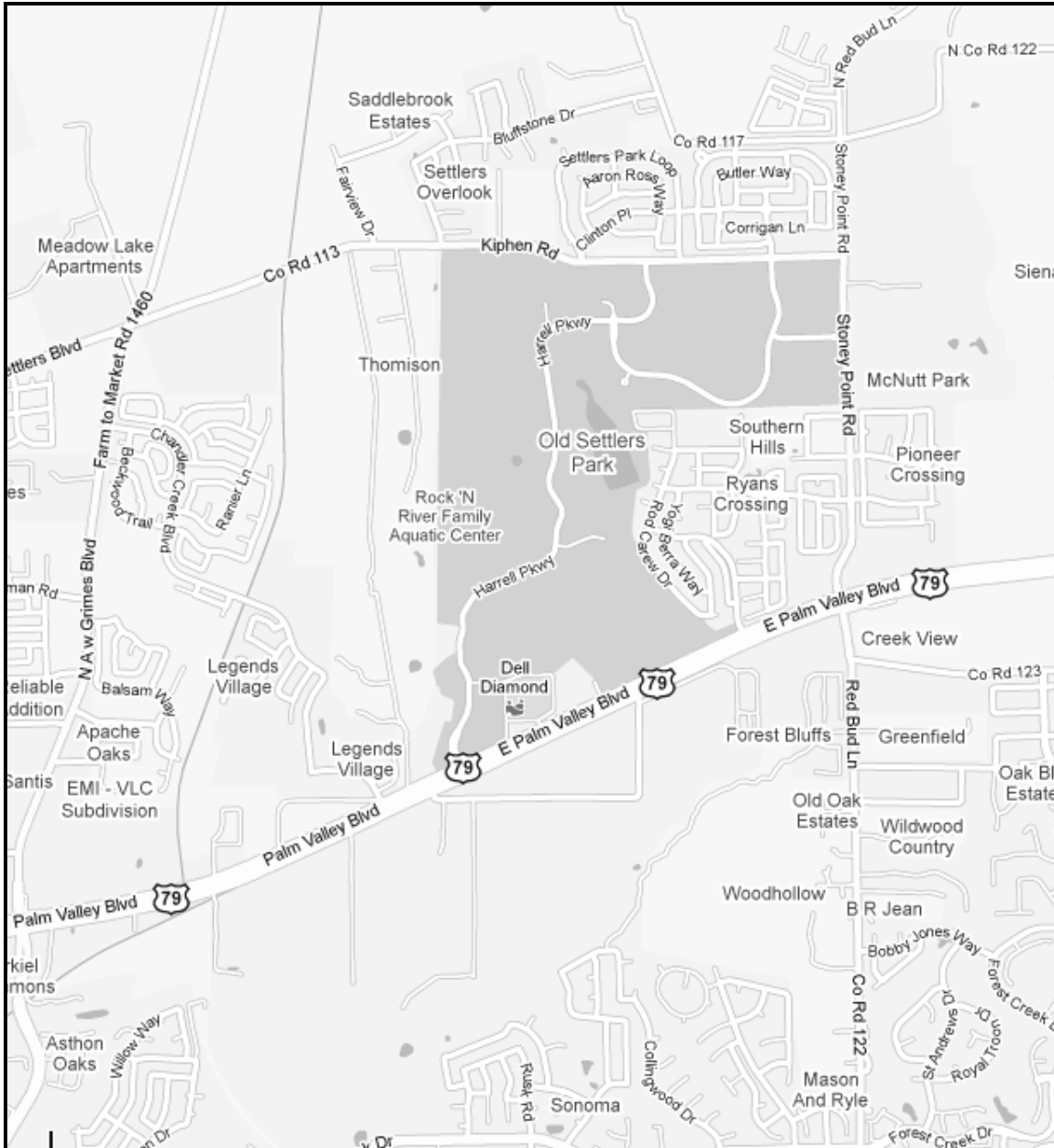
C. EXPLANATIONS

Type or print explanations; include additional pages if necessary

LOCAL PARK GRANT PROGRAM

SAMPLE LOCATION MAP

The Location Map should be a city map and/or county map with **legible** street names and identification of the proposed project site(s). A vicinity map may be needed to locate the general area where site is located. Using any internet search engine, print the location map. Outline the project location.



Map(s) should not exceed 8 ½" x 11"

LOCAL PARK GRANT PROGRAM
PROJECT NARRATIVE INSTRUCTIONS

The Narrative describes all elements of the project and the need for assistance. Each section of the Narrative should be clear and concise. If the application is to be successful you ***must*** clearly state **what** is proposed, **why** it is needed, and **how** it is to be accomplished. Make sure all information is consistent with similar information elsewhere in the application.

GENERAL INFORMATION

- Name of the project sponsor and the project name
- Who prepared the project narrative.

DESCRIPTION OF PROPOSED PROJECT

Briefly describe elements of the project for which assistance is requested.

- If land is to be acquired (see Appendix B for Acquisition Criteria)
 - o give the acreage
 - o method of acquisition (purchase, donation, condemnation, dedication, use of sponsor-owned non-parkland, or any combination), and
 - o if a Waiver of Retroactivity has been obtained for the acquisition site(s) prior to the application. (see Appendix C regarding Waivers of Retroactivity)
- If development is proposed
 - o specify what new facilities are to be constructed
 - o specify any existing facilities that are to be retained, renovated, removed, or demolished and when they were constructed (**Include pictures of all facilities to be renovated**)
 - o describe which improvements will be constructed by:
 - contract, force account/in-kind services,
 - the assistance of other governmental entities,
 - through volunteer efforts, or
 - any combination of these methods.
 - o proposed landscaping **must not** include **invasive species**. For reference, use the link: <http://www.invasivespeciesinfo.gov/plants/main.shtml>
 - o provide a list of proposed plants for landscaping or habitat revegetation, use the link: www.wildflower.org
- Identify the project service area. If the project is to serve the entire jurisdiction, state this fact. If the project is to serve a portion of a city or county, any or all of a special district (MUD, river authority, etc.) provide the census tract number(s) for the area to be served, supported by an approved master plan (if available).

PROJECT JUSTIFICATION

Thoroughly describe:

- **What** recreational needs will be accomplished through the project, and
- **Why** they are needed. If renovation is proposed, state the age of the facilities.

- If such facilities are not available:
 - o at the project site,
 - o in the project's intended service area, or
 - o within the sponsor's jurisdiction.
- If the project service area is determined to be something other than the entire sponsor's jurisdiction
- **How** the project relates to current and future public recreation needs
 - o in the intended project service area, and/or
 - o the sponsor's jurisdiction area.
- If you do not have an approved master plan, please provide documentation regarding public input related to the grant proposal. Acceptable documentation includes a copy of the public meeting notice, sign-in sheet, and the minutes for the public meeting certified by an official sponsor representative. If a public survey is completed, an explanation of how the survey was distributed along with a copy of the survey results will be required. Please contact us if you have any questions regarding acceptable public input documentation.
- **Describe** who will benefit from the project.
 - o include the economic benefit of the project to the community
 - o if the project will lead to growth of a conservation constituency
- **Identify** specific project elements that addresses the Project Priority Scoring System in Appendix A
 - o do not just state the criteria and the presumed score
 - o be specific in your description of results and benefits to be realized, and
 - o provide supporting documentation as necessary
- **Address** any unique or innovative project:
 - o design features
 - o special land uses
 - o planning, or community involvement
- **Describe** any relationships between the proposed project and other work planned, anticipated, presently underway

PROJECT ACTION PLAN

This is an outline and tentative time schedule for implementing the proposed project. Sponsors are allowed approximately three years from the date of Commission approval to complete all project elements.

Approved projects shall be pursued in a timely manner by the sponsor, unless delays result from extraordinary circumstances beyond the sponsor's control. Failure to meet the following time frames may be grounds for the Department to initiate cancellation of the affected project in order to recommend reallocation of available funds to other projects, or to deny requests for additional grant funds for new projects:

ACTIVITY	TIME FRAME
Commission Approval	Begin 3-year project period (4-year max)
Grant Agreement Execution (Department & Sponsor)	As soon as possible after Commission approval
Pending Documentation such as: • U.S. Army Corps of Engineers 404 • TCEQ Permits • Environmental Resources Survey • THC Cultural Resources Survey and Clearance • TPWD Biological Consultations • ROW Abandonment • Lease/Joint-Use Agreement Execution, etc.	Within 6 months of grant agreement date
Quarterly Status Reports (beginning with Commission approval)	On or before January 15 th , April 15 th , July 15 th & October 15 th
Appraisal Submission	As soon as possible after grant agreement date
Appraisal Approval	Within 6 months of appraisal submission
Land Acquisition	As soon as possible after appraisal approval
Construction Plan Submission	Within 6 months of land acquisition for projects involving acquisition, or Within 6 months of grant agreement date for development only projects
Periodic Reimbursement Billings	Every 90 days <u>if possible</u> (minimum \$10,000 request)
Project Completion and Grant Close-Out	Within 3 years after Commission approval (but in no case after the 4 th fiscal year)

SOURCE OF LOCAL MATCH

Explain the method(s) for financing the required local 50% matching share of the project.

- Describe any federal/state grants or other governmental assistance
 - o If federal/state assistance has been received or awarded for this project, identify the project name, number, and briefly describe the assistance with details of the project elements.
 - o If no assistance has been received, is anticipated, or presently underway, state that fact.
- Describe any private/non-profit/corporate grants, contributions or donations of cash, labor, equipment and/or materials and provide:
 - o Letter(s) of commitments with stated value and how determined
 - o Letter(s) of donations with stated value and how determined
 - o Grant award letter(s)

MAINTENANCE AND OPERATION

- State who will operate and maintain the project area. The applicant (legal project sponsor) is responsible to the Department for the maintenance and operation of the fund supported area(s)/facilities.
- Affirm maintenance of the permanent program acknowledgement sign provided by the Department at project completion.
- If agreements exist (or are anticipated) for others to perform operation, programming and/or maintenance duties, describe such arrangements.
- Project sponsors must ensure that:
 - o such written agreements are approved by the Department prior to implementation, and
 - o legal control of the site remains with the grant sponsor (see Post Project Responsibilities in Appendix E).

LOCAL PARK GRANT PROGRAM
ENVIRONMENTAL ASSESSMENT INSTRUCTIONS

PURPOSE, NEED AND BACKGROUND

To implement the National Environmental Policy Act of 1969 (Public Law 91-190) all projects proposed for assistance must be assessed for their environmental effects. The assessment must address the elements below so the Department can determine **IF** an environmental impact statement is needed. The assessment need not be overly detailed or lengthy. It must provide pertinent information of sufficient scope and depth to allow a sound, defensible position to be taken. It must be factual and concise documentation and not merely additional justification for a project. A listing of the Applicable Environmental Laws and Regulations are available on page 71.

If the project involves more than one site, an environmental assessment should be completed for each site.

DESCRIPTION OF PROPOSED ACTION

BRIEFLY describe the project (including a list of the facilities to be developed), the need for the undertaking, and how and when the project is to be carried out. This should match the information provided in the Project Narrative.

The description should also include

- Acres to be acquired
- Acres to be developed
- A general location description (including street access)
- Project's relation to any federal, state, or local projects (if applicable)
- If applicable, provide documentation of initial contact and coordination with agencies such as:
 - o U.S. Army Corps of Engineers 404 permit
 - o archeological/historical sites or surveying
 - o Health Department clearance (pools)
 - o General Land Office (coastal areas)
 - o Texas Department of Environmental Quality (former landfills, etc.)
 - o Other permitting agencies

ALTERNATIVES TO THE PROPOSED ACTION

Describe any and all available alternatives to the proposed project. The alternative of ***no action*** must be specifically addressed. Also discuss the basis for rejections of any alternatives.

DESCRIPTION OF THE ENVIRONMENT

The actual project site and surrounding areas should be described. Information that should be addressed includes at a minimum:

Natural Characteristics

- Surrounding land uses N, S, E, W (residential, commercial, agricultural)
- Vegetation – species, dominant plants, vegetation
- Topography
- Natural water features on site
- Soils

- Wildlife habitat
- Existing site development (extent of impervious cover, structures, etc.)
- Utilities available on site
- Overhead utility lines on site
- Any history of contamination
- Any rights-of-way or easements
- Located in a flood plain or wetland (see page 26 for required documentation.)
- Current property ownership
- Sites that are a federal, state, or local government identified area recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife

NOTE: Grant funds **may not** be used to purchase or install **non-native or invasive plant species** at fund assisted sites. For your reference, use this link for examples of invasive species: <http://www.invasivespeciesinfo.gov/plants/main.shtml>. See <http://www.wildflower.org> for listings of acceptable native plants. A plant list will be required if the approved project includes landscaping.

ENVIRONMENTAL IMPACTS OF THE PROPOSED PROJECT

IMPACTS (or effects) are defined as direct or indirect changes in the existing environment which are anticipated as a result of the proposed action or related future actions. These impacts may be either beneficial or adverse, and should be identified in your description.

Describe the impacts (negative and/or minor) in the table of environmental elements that would be affected, including any anticipated short and long-term impacts of the project in the following table:

A fillable version of this form is available as a link on page 11.

ENVIRONMENTAL RESOURCES	N/A	Negative Impacts	Minor Impacts	Briefly Describe the Potential Impacts
Geological resources: soils, slopes, streambeds, landforms, etc.				
Air quality				
Sound (noise impacts)				
Water quality/quantity				
Stream flow characteristics				
Marine/estuarine				
Floodplains/wetlands				
Land use/ownership patterns; property values; community livability				
Circulation, transportation				
Plant/animal/fish species of special concern and habitat; state/ federal listed or proposed for listing				
Unique ecosystems, i.e. biosphere reserves, World Heritage sites, old growth forests, etc.				
Unique or important wildlife/ wildlife habitat				
Unique or important fish/habitat				
Introduction or promotion of invasive species (plant or animal)				
Recreation resources, including parks, open space, conservation areas, rec. trails, facilities, services, opportunities, public access, etc.)				
Overall aesthetics, special characteristics/features				
Historical/cultural resources, including landscapes, ethnographic, archeological, structures, etc.				
Socioeconomics, including employment, occupation, income changes, tax base, infrastructure				
Minority and low-income populations				
Energy resources (geothermal, fossil fuels, etc.)				
Other agency or tribal land use plans or policies				
Land/structures with history of contamination/hazardous materials even if remediated				
Other important environmental resources that should be addressed				

Any off-site impacts such as downstream water quality, increased traffic on neighborhood roads or increased noise levels in surrounding areas, residential disturbance resulting from overflow lighting systems, etc., should be described.

UNAVOIDABLE ADVERSE IMPACTS

Those effects which cannot be mitigated should be explained and the effects weighed against the beneficial impacts of the project. Be objective as well as analytical, and avoid trying to justify or rationalize proposed actions.

MITIGATING MEASURES FOR ADVERSE IMPACTS

Adverse impacts may have short-term or long-term effects. They should be identified as such and explained in this section.

For those impacts considered *adverse*, and caused as a result of actions proposed in the application, explain how they will be minimized or eliminated. *Adverse impacts which cannot be mitigated should be identified and discussed in the next section.* (You may not be able to mitigate every adverse impact, but each one should be considered and weighed against the effects considered beneficial to the community and environment.)

For example:

- The utilization of erosion controls to prevent soil run-off during construction.
- The routing or re-routing of vehicles or the installation of traffic controls to regulate increased traffic to, from, and around the project area.
- Specialized facility/area/design which includes: measures to
 - o ensure public safety
 - o minimize environmental pollution
 - o conserve energy
 - o allow for cost-efficient maintenance
 - o operation and security
 - o the aiming of, or timed-use of lighting systems to minimize disturbances to adjacent property owners and nocturnal wildlife
- Replacement/reestablishment of specialized fish, vegetation, or wildlife habitat which will be lost or partially lost as a result of the project's actions.
- Relocation of persons or businesses located within the project area(s).

LISTING OF PUBLIC AND PRIVATE AGENCIES OR ORGANIZATIONS CONSULTED

- List entities contacted for assistance, permitting, or technical documentation.
- Identify who prepared the Environmental Assessment, include name, title, address and contact information.

A copy of all applications will be reviewed by the Fisheries and Wildlife divisions at TPWD.

MAPS AND PHOTOGRAPHS

- Provide a USGS 7.5' topographic quadrangle map that clearly delineates exact location of the site and its boundaries. This can be printed for free at the following website: <http://www.usgs.gov/pubprod/>, under "maps" click "download digital scans of topo maps" and click "map locator".
- Attach aerial photo of site and indicate the year the photo was taken.
- Provide color photos of the site and surrounding area with captions or narratives.

FLOODPLAIN AND WETLAND DOCUMENTATION

All projects within a *floodplain, floodway, or wetland* area **must** include this documentation. Exemptions from this documentation are no longer valid. This section is necessary only if the project involves floodplain or wetland areas, pursuant to Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). If the project does not involve floodplain or wetland areas, **state that fact.**

DEFINITIONS

Floodplain: The lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum the 100-year floodplain.

Wetlands: Those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

DOCUMENTATION REQUIREMENTS

Public Notification: The project must inform the public that the proposed project will be located in a floodplain/wetland area, and that the project will have certain environmental impacts on that floodplain/wetland area, and must allow public comment. The following actions must be taken:

- The applicant must publish a notice in the local media describing the proposed action in the floodplain or wetland area and invite the public to provide their views on the proposal. This may be done by holding a public hearing or making the plans and other pertinent materials available for review at a public place (i.e., city hall, courthouse, library, etc.).
- The application must contain a copy of the published notice and any public comments received. If no public comments are received, this must be clearly stated.

Any public hearing or comments received within two years of the application submission will be accepted.

ADDITIONAL INFORMATION

The following environmental information focusing on the floodplain or wetland activity must be included:

- The extent of the direct and indirect impacts of the project on the floodplain/wetland area.
- Measures to be taken to minimize harm to lives and property and to the natural and beneficial floodplain/wetland values.
- Alternative actions and locations considered in the event of an adverse impact of the project on floodplain/wetland values.
- Assurance that all state and local floodplain and wetland regulations are being met.
- A map delineating the floodplain/wetland area as it applies to the proposed project (highlight the project area).

DEVELOPMENT AND MAINTENANCE CONSIDERATIONS

The following suggestions developed by the Fisheries and Wildlife divisions should be considered when proposing and designing a project in order to minimize adverse environmental impacts and establish appropriate maintenance procedures:

1. Trails along creek banks and lake shores should be set back far enough that they do not cause or exacerbate erosion of banks, either from construction activities or long-term use. Pedestrian creek crossovers should be located in areas where vegetation removal or disturbance can be avoided or minimized. The crossovers should span the entire creek channel with the headwalls at or above the top of the bank in order to avoid destabilizing the bed and banks.
2. Impervious vehicular and pedestrian use areas such as roads, walking tracks and parking areas should not impede natural surface water drainage. Stormwater runoff should be treated before discharging into nearby waterways by directing runoff into vegetated swales, retention or detention ponds, or similar pre-treatment areas.
3. Landscaping and revegetation plans should incorporate native plants, including grasses, whenever possible. Locally adapted natives can increase survival and reduce maintenance and watering needs while providing benefits to wildlife. Mowing only essential use areas will allow native grasses to prosper, generally without additional irrigation. Maintenance activities should be reduced as much as feasible in all areas except sport fields and playgrounds, and restricted to after seed-set (late fall) to promote reseeding and increase wildlife value. Enhancement of existing native grasses or prairie remnants can be assisted by limiting mowing practices and reseeding exposed areas with native grasses and forbs. After all, as many communities are learning, access to wildlife for casual recreation is not only a valued public benefit itself, but also a potential boost to the local economy.
4. Disturbance of native vegetation should be avoided or minimized during land alteration activities by using site planning and construction techniques designed to preserve existing native trees, shrubs, grasses and forbs, as well as aquatic and wetland systems. Should any losses be deemed unavoidable, it is recommended that native plant and forage species be used in mitigation and landscaped areas that are beneficial to fish and wildlife endemic to the area. Also, where possible, clearing of understory vegetation should be minimized because it provides habitat to small mammals and birds. Natural buffers contiguous to wetlands and aquatic systems should remain undisturbed to preserve wildlife cover, food sources, and travel corridors.
5. Soil erosion should be minimized using haybales, silt screens, or similar soil erosion prevention techniques. In order to enhance the stabilization of exposed soils, newly graded areas should be seeded or sodded with native grasses, while graded embankments should not exceed a 4:1 slope.
6. Park sites containing ponds or proposing the construction of a pond should take measures to ensure that any domesticated waterfowl that take up residence at the pond are removed immediately by legal means. Domestic waterfowl pose a danger to native wild duck populations by providing a disease vector for duck plague, New Castle Disease, avian cholera, avian tuberculosis, chlamydiosis, bird flu and West Nile virus. Furthermore, the close genetic relationship between domestic and wild waterfowl can result in hybrid offspring, which has the effect of diluting the gene pool of wild populations and presents the possibility of breeding native species out of existence. Signs should be placed in the vicinity of park ponds to educate the public on the negative impacts of the release and feeding of domestic waterfowl.

No person may import, possess, sell, or place into water of this state exotic, harmful, or potentially harmful fish, shellfish, or aquatic plants except as authorized by rule or permit issued by Texas Parks & Wildlife. (Go to <http://www.tpwd.state.tx.us/huntwild/wild/species/exotic/> for a list of "Invasive, Prohibited and Exotic Species")

LOCAL PARK GRANT PROGRAM
ACQUISITION INSTRUCTIONS AND FORMS

APPLICATIONS PROPOSING ACQUISITION

This section must be completed if assistance is being requested to acquire land (or if sponsor/publicly-owned non-parkland is proposed as the local matching share of the project). When land is to be acquired by donation, by eminent domain or condemnation, by negotiated purchase, or by any combination of these methods, the application must include the following:

- Acquisition Schedule
- Boundary Map (with a legal description)
- Preliminary Value Letter
- Five-Year History of Property Ownership (for land donations, and sponsor/publicly-owned non-parkland proposed as match; not needed for purchases)
- Assurance of Eligibility (for sponsor or publicly-owned non-parkland proposed as match)

Additional information on these items is included later in this section.

Acquisitions which occur prior to grant approval, department authorization, or which do not meet the acquisition criteria, are not eligible for assistance (see Acquisition Criteria in Appendix B for more information).

The value of sponsor owned non-park land may only be used as the sponsor's matching share if it has **never been**:

- dedicated, or
- platted, or
- managed, or
- used, or
- acquired **for public park or recreation use.**

For projects proposing to use sponsor-owned non-parkland as match, certification affirming these conditions is required (see the sample "Assurance of Eligibility" form, a fillable version is available on page 11). Land eligibility questions should be directed to Recreation Grants staff for clarification.

When proposing the acquisition of land or real property:

- it is not appropriate to negotiate a price prior to grant and appraisal approval
- may contact the land owner to determine if the land is available for acquisition
- may determine if the owner is willing to donate, sell or partially donate the subject property.

Negotiation of an acquisition price prior to grant and appraisal approval may jeopardize the eligibility of the proposed acquisition for grant assistance. The level of grant assistance will be determined by an independent appraisal, approved by the Department. Appraisal details are outlined in the *Instructions for Approved Projects - Appraisal Instructions* at <http://www.tpwd.state.tx.us/business/grants/trpa/>.

NOTE: Projects approved for federal (LWCF) funding are required to complete appraisals in compliance with Uniform Appraisal Standards for Federal Land Acquisition ("yellow book" standards), which can be found on the U. S. Department of Justice's Internet Website at:

<http://www.usdoj.gov/enrd/land-ack/>

PRELIMINARY VALUATION LETTER

All projects proposing the acquisition of land must submit a valuation letter from a real estate professional stating the approximate value of the subject property. The purpose of this requirement is to:

- ensure that enough money is budgeted to acquire the property **by purchase**
- ensure the amount of match available for property by acquired by donation, or bargain sale

In either case, the cost estimates for property acquisition are very important. If property values are estimated below the budgeted amount and the land is to be donated, the sponsor will be required to supplement the match amount to offset the deficit. On the other hand, if the property is to be purchased and the appraised value turns out to be higher than the estimated value, the sponsor may not be reimbursed above that amount proposed in the application and approved in the grant.

Refer to the *Instructions for Approved Projects - Appraisal Instructions*, available on our Website at <http://www.tpwd.state.tx.us/business/grants/trpa/>, if the land to be acquired includes structures or improvements to ensure that the structures or improvements are properly valued.

IT IS NOT NECESSARY TO PREPARE A FORMAL APPRAISAL TO APPLY FOR GRANT FUNDS.
Formal appraisals will be required only if the grant is approved.

WAIVER OF RETROACTIVITY

For land which may be under eminent threat of loss as an acquisition opportunity, the Department **may** authorize such acquisitions to occur prior to grant approval through a waiver of retroactivity (see *Waiver of Retroactivity Guidelines* in Appendix C). In addition, land may be transferred to a non-profit holding organization until an application has been reviewed and approved.

RETENTION AND USE

Property acquired or developed with grant assistance shall be retained and used for public recreation. Any property acquired or developed shall not be converted to other than public recreation uses without Department approval. Such approval will be given only with the substitution of other properties of at least equal fair market value and equivalent usefulness, quality, and location. Contact Recreation Grants at 512-389-8224 with any questions.

LOCAL PARK GRANT PROGRAM
APPLICATION ACQUISITION SCHEDULE

SAMPLE

Project Sponsor and Project Name (A)

ACQ TYPE (B)	PARCEL NUMBER (C)	ACREAGE (D)	LAND VALUE (E)	IMPROVEMENT VALUE (F)	CURRENT OWNER (G)	TOTAL VALUE OF PARCEL (H)
3	A	96.74	\$ 275,000.00	\$	ABC Developer	\$275,000.00

TOTAL ACREAGE:

96.74 (I)

TOTAL ACQUISITION: (J)

\$275,000.00

SAMPLE ACQUISITION SCHEDULE

A fillable version of the Acquisition Schedule is available as a link on page 11.

(A) PROJECT SPONSOR AND PROJECT NAME

(B) TYPE OF ACQUISITION

- 1 = Purchase
- 2 = Eminent Domain/Condemnation
- 3 = Donation
- 4 = Sponsor/Publicly Owned Non-Parkland
- 1-3 = Bargain Sale, Partial Donation

(C) PARCEL NUMBER

Each parcel requested for acquisition must be individually identified and match the boundary map

(D) ACREAGE

Show the number of acres for each parcel of land, to the nearest one-hundredth of an acre.

(E) LAND VALUE

Show the estimated value for each parcel. Include a Preliminary Value Letter to support the estimate value of all property proposed for acquisition from a person knowledgeable about local real estate values or from county tax valuation records (an appraisal is NOT required at the time of application).

(F) IMPROVEMENTS VALUE

If structures or other improvements exist on the subject property, show the value. The Preliminary Value Letter should state how the value was determined. The Project Narrative should explain how the improvements will be used.

(G) CURRENT OWNER

Provide the name of the current land owner for each parcel. For sponsor/publicly owned non-parkland, state the eligible sponsor. If a Waiver of Retroactivity has been obtained, also indicate under current owner.

(H) TOTAL VALUE OF PARCEL

The total will be automatically calculated in the fillable version.

(I) TOTAL ACREAGE

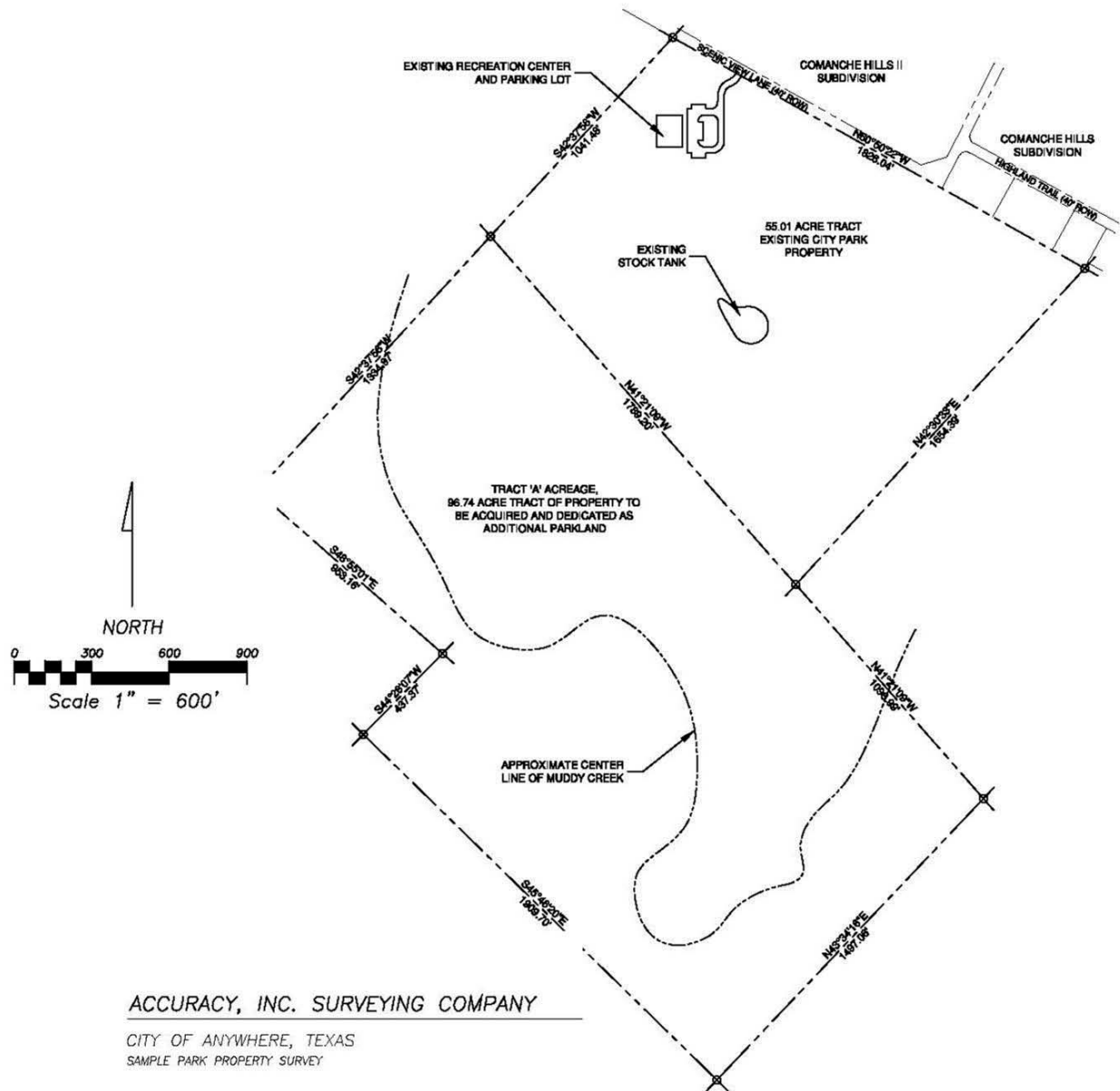
The total will be automatically calculated in the fillable version.

(J) TOTAL ACQUISITION

The total will be automatically calculated in the fillable version.

LOCAL PARK GRANT PROGRAM

SAMPLE BOUNDARY MAP



Map should be full page, maximum 11" x 17"

BOUNDARY MAP

A boundary map is required for all projects requesting acquisition assistance or using sponsor or publicly owned property as match. This map should be a scaled drawing no larger than 11" x 17" which includes all of the following:

1. Sponsor and project name;
2. Directional arrow and scale;
3. Acquisition area and parcel boundaries with each parcel to be acquired labeled in the same manner as the "Acquisition Schedule." Boundaries should be drawn to scale, or if possible, identified using a metes and bounds legal description.

NOTE: For projects proposing acquisition of land which will expand an existing park, the boundary map should include the entire area of the existing park and the parcels to be acquired;

4. Locate and label all easements, overhead utilities, structures & improvements, water bodies, adjoining streets (including designated right-of-ways), and future or proposed streets.

A "Sample Boundary Map" is included for your assistance.

FIVE-YEAR HISTORY OF PROPERTY CONVEYANCE

If land, structures, or improvements are to be acquired by donation, by partial donation through a bargain sale, or if the property is owned by the sponsor or some other public entity, a five-year history of property conveyance must be included in the application. This is to ensure that the property is eligible to serve as all or part of the sponsor's matching share for this project.

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LOCAL PARK GRANT PROGRAM

SAMPLE ASSURANCE OF ELIGIBILITY FOR PUBLICLY OWNED LAND

For use only when sponsor or publicly owned land is proposed as all or a portion of the local matching share for a grant application.

On behalf of the _____ **Entity in ownership of the land to be used as match**

I hereby certify that all property described below has never been DEDICATED, PLATTED, MANAGED, USED OR ACQUIRED FOR PUBLIC PARK OR RECREATION USE, and that said property is eligible to serve as the grant matching share for the

_____ **Name of Project**

Pursuant to the local park grant program guidelines.

(Insert or attach legal description of the property)

As the official representative of the land owner, I fully understand that the false certification of said assurance will cause the aforementioned project to be withdrawn from consideration, and that future eligibility for grant consideration may be jeopardized.

Signature

Print Name and Title

Date

A fillable version is available as a link on page 11.

OUTDOOR RECREATION - LOCAL PARK GRANT

SAMPLE BUDGET SUMMARY

I. PROFESSIONAL SERVICES				(A)	\$ 15,000.00	
	Pre-Agreement Costs					
	Beginning Date: (B)					
	A. Site planning and application preparation			\$ 2,000.00		
	B. Resource surveys (historical, environmental, etc.)			\$ 3,000.00		
	C. Construction plans and specifications (C)			\$ 10,000.00		
II. LAND ACQUISITION					\$ 233,200.00	
	A. 92.3 acres by donation (D)			\$ 225,000.00		
	B. Appraisal and boundary survey (E)			\$ 8,200.00		
III. CONSTRUCTION					\$ 311,300.00	
	A. Site preparation			\$ 8,000.00		
	B. Utilities					
	1. Water			\$ 3,000.00		
	2. Electricity			\$ 4,500.00		
	C. Roads and parking			\$ 20,000.00		
	D. Buildings					
	1. Restroom			\$ 8,000.00		
	2. Restroom/concession			\$ 18,000.00		
	E. Recreational facilities					
	1. Soccer fields (2, unlighted)			\$ 9,000.00		
	2. Playscape			\$ 45,000.00		
	3. Skate park			\$ 65,000.00		
	4. Trail (1.75 mile, asphalt/crushed granite)			\$ 100,000.00		
	5. Pavilion with 10 picnic tables			\$ 18,000.00		
	6. Benches (10, along trail)			\$ 3,500.00		
	F. Miscellaneous					
	1. Xeriscape garden (0.25 acres, w/drip irrigation)			\$ 2,800.00		
	2. Site landscaping (native plants, w/ drip irrigation)			\$ 5,000.00		
	3. Program acknowledgement sign (required) (F)			\$ 1,500.00		
	TOTAL PROJECT COST			(G)	\$ 559,500.00	
	MATCH REQUEST			(H)	\$ 279,750.00	

BUDGET SUMMARY INSTRUCTIONS

The Budget Summary provides the complete **estimated costs** for the proposed project. Estimate for cost escalation throughout the construction period. If additional development is proposed, discuss in the Project Narrative and show the entire project costs and the grant project costs in separate columns. A fillable version of the [Budget Summary](#) is available as a link on page 11.

Multiple-site projects require a separate Budget Summary for each site.

(A) PROFESSIONAL SERVICES *

- The total cost of Professional Services **cannot** exceed 12% of grant construction estimates
- Costs for required permits (COE, TCEQ, TDLR) or surveys (THC, environmental resources) should be included if it is anticipated that these actions may be necessary
- The cost to prepare the grant application is an eligible pre-agreement expense

(B) PRE-AGREEMENT COSTS

A beginning date must be provided for site planning and application preparation

(C) CONSTRUCTION PLANS/SPECIFICATIONS AND INSPECTIONS

- Plans must be prepared and sealed by an engineer, architect or landscape architect registered in Texas or other competent professions depending on the scope of work
- Plans must be submitted to the Texas Department of Licensing and Regulation for compliance with handicap accessibility. The fee is an eligible expense.

(D) LAND ACQUISITION

All land to be acquired must be shown in the Budget Summary based on the estimated value letter. The value of donated land and/or sponsor-owned non-parkland is considered an expense of the project.

(E) APPRAISAL AND BOUNDARY SURVEY

Appraisals and boundary survey costs cannot exceed \$10,000 or 5% of the land value, whichever is less.

(F) PROGRAM ACKNOWLEDGEMENT SIGNS

A temporary funding acknowledgement sign installed during construction is eligible for reimbursement. A permanent program acknowledgment sign is also eligible for reimbursement. The Department has permanent signs available at no cost by request.

(G) TOTAL PROJECT COST

The grant project total cannot exceed \$1,000,000.00

(H) MATCH REQUEST

The grant match amount cannot exceed \$500,000.00

*Contact Recreation Grants Branch at 512-389-8224
if an Environmental Resources Survey is required regarding costs in excess of the 12% limit.

LOCAL PARK RECREATION GRANT
SAMPLE SITE PLAN



Site Plan should be full page not to exceed 11" x 17".

LOCAL PARK GRANT PROGRAM
SITE PLAN AND FLOOR PLAN INSTRUCTIONS

ALL APPLICATIONS MUST INCLUDE A DEVELOPMENT SITE PLAN.

Applications involving enclosed structures including pool bathhouses, restrooms, concession stands, storage buildings, and entrance stations **must include a schematic floor plan.**

Even if the application process proposes to only acquire land and does not include a request for development, a conceptual site plan is still needed. The conceptual plan should indicate how and where the site is to be developed for public recreation use and for other non-recreation uses, if applicable. If non-recreation uses are planned or anticipated, such areas/facilities should be identified on the conceptual site plan. Only land and facilities to be utilized for public recreation are eligible for program assistance. If the site will not be developed immediately, please discuss in the "Project Narrative" when this development is expected to occur.

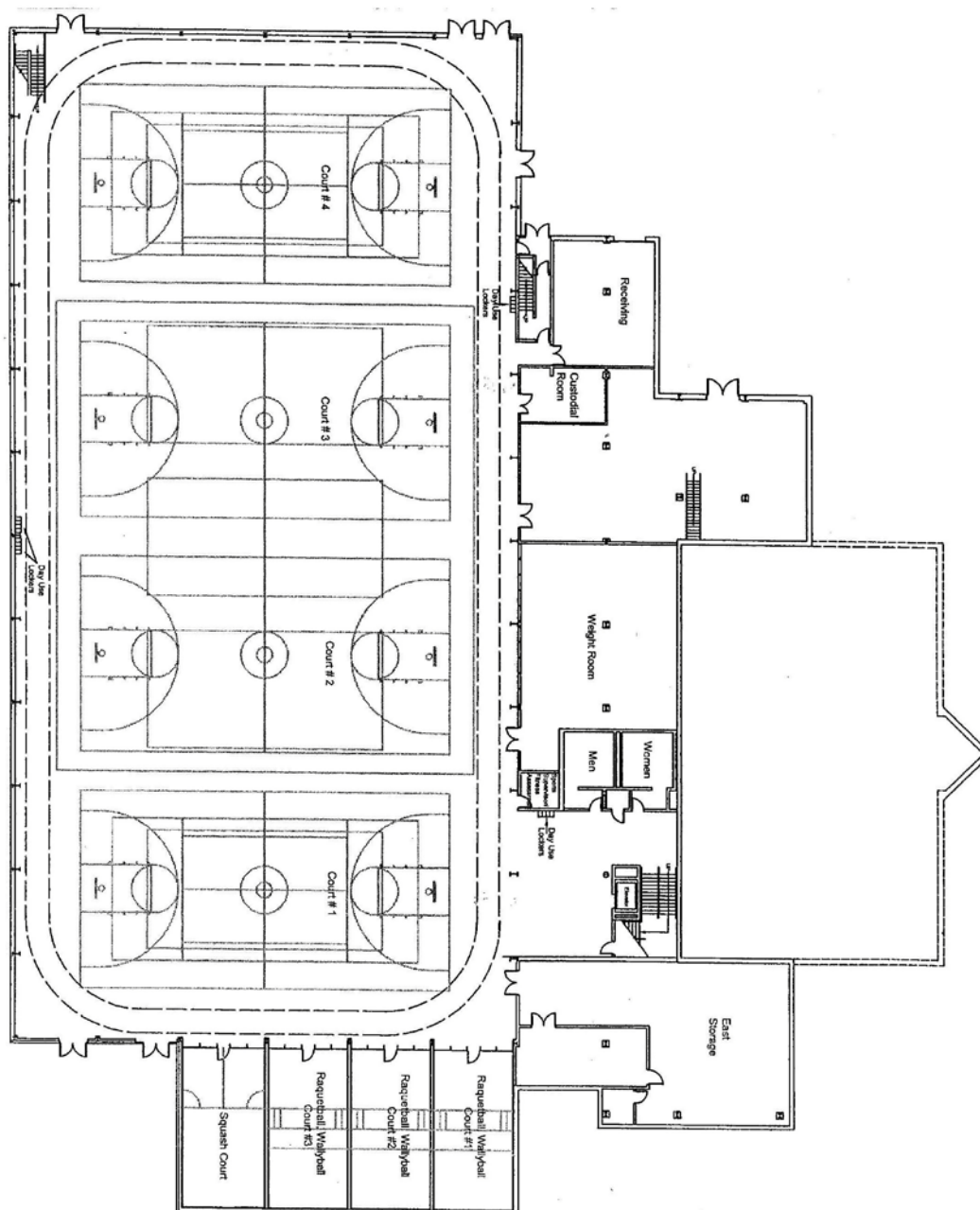
For applications requesting development assistance, provide a site plan which accurately reflects all development proposed. The plan does **not** have to be "construction ready," nor prepared by an engineer or architect. It should, however, reflect to the best of your ability, the development plan to be followed if the grant is approved.

REQUIREMENTS FOR SITE PLANS

1. Maximum Size (11" x 17"), Minimum Size (8 ½" x 11")
2. Provide information which includes the sponsor's name, project title, directional arrow, scale, and date.
3. Identify the project boundaries to scale, or with an actual metes and bounds description. If only a portion of the park is proposed for development assistance, identify the area to be assisted and include an ingress/egress way for the public to gain access to those facilities which will receive program assistance.
4. Identify significant natural features such as tree lines, water bodies, tributaries, geologic features, floodway and floodplain areas, etc. (label and/or provide a key when appropriate.)
5. Identify man-made features such as structures, utilities, easements, pipelines, internal and adjacent roads, all overhead utility lines on and adjacent to the site(s), known historic/archaeological sites, existing facilities, etc. Such man-made features should be labeled as "existing" and an indication should be given as to whether or not these features are to remain, or to be demolished, relocated, buried, or renovated.
6. Proposed improvements and future improvements, whether for public recreation use or other uses, should be located and labeled. Be sure to label all facilities for which funding assistance is requested as "proposed." Facilities which are to be constructed at a later date should be labeled "future." **Do not use a legend, label the site plan.**
7. If applicable, identify facilities (or areas) which received **previous** Department assistance through the Land & Water Conservation Fund; Texas Local Park, Recreation & Open Space Fund; Urban Park and Recreation Recovery Program; or the Texas Recreation & Parks Account Program.

LOCAL PARK GRANT PROGRAM

SAMPLE FLOOR PLAN



Floor Plan should be full page.

REQUIREMENTS FOR FLOOR PLANS

1. Maximum Size (11" x 17")
2. Minimum Size (8 ½" x 11")
3. Scaled drawing showing size, function, and spatial relationships of all building elements

Finishes, specialties, and mechanical details are not required in the application.

LOCAL PARK GRANT PROGRAM

FINAL APPLICATION ELEMENTS

REGIONAL PLANNING COMMISSION “TRACS” LETTER

- A complete copy of the Local Park Grant Program application must be submitted to the sponsor's regional planning commission (RPC) or Council of Governments (COG).
- The application may be submitted to the COG simultaneously with submission to the Department.
- The review comments from the COG must be received by the Department prior to Parks & Wildlife Commission action.
- Include COG submittal cover letter if the TRACS letter is unavailable.

PROOF OF OWNERSHIP AND/OR LEGAL CONTROL

For all properties already under the legal control of the sponsor and proposed for development, the sponsor must provide copies of:

- Recorded deed(s),
- Lease agreements,
- Easement agreements, or
- Drafts of the lease or easement, with a letter of intent from the landowner to enter into the agreement

PROOF SPONSOR CAN PREVENT SURFACE DRILLING/MINING OF THE PROJECT SITE

The sponsor must provide evidence that the surface of the project site is protected from any drilling or mining, or can demonstrate protection through the following:

- Existing ordinance or resolution,
- Zoning,
- Ownership of mineral rights by sponsor,
- Designated drill sites on the project site (will be excluded from project assistance)
- Draft of ordinance, resolution or zoning, and statement that if funded, will authorize the ordinance or resolution.

Contact the Recreation Grants staff at 512-389-8224 if there are questions related to these items.

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APPENDIX **A**

Project Priority Scoring System

LOCAL PARK GRANT PROGRAM

OUTDOOR RECREATION GRANT – PROJECT PRIORITY SCORING SYSTEM

(Effective January 2008)

All Outdoor Recreation Grant Program applications submitted to TPWD are evaluated for program eligibility and prioritized with the criteria, rating factors, and points shown in the following “Project Priority Scoring System.” Each site of a multiple site project will be scored individually using the “Project Priority Scoring System,” and individual site scores will be weighted on a pro-rata share of the total project score.

A project’s priority ranking will depend on its score in relation to the scores of other projects under consideration. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. Funding of projects will depend on the availability of funds.

Projects which have been considered twice by the Parks & Wildlife Commission without significant alterations to raise the project score shall be withdrawn from further consideration.

1. SPONSOR ELIGIBILITY

Sponsor is in full compliance with previously approved projects and the Recreation Grants Branch – *Local Park Grant Program Manual*

YES. If yes, the application will be scored and presented for award consideration.

NO. If no, the application will not be scored or considered further.

NA. No previous grant funding received.

2. MASTER PLAN

Total Range: 1-15 points

Project Sponsor has locally adopted TPWD approved, parks, recreation and open space master plan that addresses outdoor recreation needs. (5 points)

Project meets 3 of the top 3 priorities identified in the TPWD approved master plan (10 points)

Project meets 2 of the top 3 priorities identified in the TPWD approved master plan (6 points)

Project meets 1 of the top 3 priorities identified in the TPWD approved master plan (3 points)

3. RECREATION DIVERSITY

Total Range: 1-10 points

Project will provide a diversity of park and recreation opportunities and facilities within the sponsor’s jurisdiction or intended project service area.

1 point will be awarded for each type of significant recreation category addressed in the proposal, up to 10 points, if and only if, the recreation elements are identified as a need in a locally adopted parks, recreation and open space master plan or by a documented public input process if the Sponsor does not have an adopted plan.

RECREATION DIVERSITY CATEGORIES

- Campgrounds
- Sports fields & courts
- Playgrounds
- Picnic areas – tables and pavilions
- Golf courses
- Swimming facilities
- Trails
- Passive recreation – overlooks, gardens
- Amphitheater
- Natural area
- Fishing/hunting facilities

of categories addressed: _____

4. WATER-BASED RECREATION OPPORTUNITIES

Total Range: 6 points

Project will provide improved water-based park and recreation opportunities.

Project provides for the development of direct and appropriate park and recreation opportunities which do not degrade the resource along existing quality natural water bodies according to the following ranking (only the highest ranking water body will receive points) (1 – 6 points):

Gulf Coast or Lake (6 points)
Bay or Estuary (5 points)
River (4 points)*
Stream – continuous flow (3 points)
Pond (2 points)**
Wetland (1- 3 points, based on size/quality)

*Only water bodies so named as “rivers” may receive points under this category. All others, e.g., creeks, brooks, bayous, branches, etc., are considered “streams.”

**“Ponds” are generally man-made and no larger than five surface acres. Points will not be awarded for constructing ponds under this category.

5. GEOGRAPHIC DISTRIBUTION / INNOVATIVE USE

Total Range: 1-10 points

Project will improve the geographic distribution or innovative use of park and recreation lands and facilities in the project’s intended service area or within the sponsor’s jurisdiction.

- A. Project provides the first public park in the sponsor’s jurisdiction or intended service area (10 points); or
- B. Project provides significantly new and different recreation opportunities (other than school facilities) in the sponsor’s jurisdiction or intended service area (1 - 10 points). Points awarded based on significance to the community and originality, and calculated based on:

$$\frac{\text{New \& different costs}}{\text{Total construction costs}} \times 10 = \underline{\hspace{2cm}}$$

In order to qualify for points under 5B, the need for “new and different” recreation elements must be supported in the Sponsor-adopted parks, recreation and open space master plan or through a documented public input process if the Sponsor does not have an adopted plan.

6. RECREATION vs. SUPPORT COSTS

Total Range: 1-20 points

Project maximizes the use of development funds for basic park and recreation opportunities.

$$\frac{\text{Direct recreational facilities costs}}{\text{Total construction costs}} \times 20 = \underline{\hspace{2cm}}$$

“Direct Recreational Facilities Costs” include only facilities related directly to recreation as opposed to support facilities, except that trees and drip irrigation may be included as recreational items. “Total Construction Costs” include park and/or recreation as well as support/infrastructure facilities, contingency, and all required program sign costs in excess of \$1,000.

7. SPECIAL POPULATIONS

Total Range: 15 points

Project improves park and recreation opportunities for low income, minority, and/or elderly citizens.

- A. Project improves opportunities for low income citizens (income defined by the 2000 U.S. Census Income by Place and Median Household Income by State). (1 – 5 points)

$$\frac{\text{Low income \%}}{100} \times 5 = \underline{\hspace{2cm}}$$

- B. Project improves opportunities for minority citizens (based on most recent U.S. Census figures for the service area). (1 – 5 points)

$$\frac{\text{Minority \%}}{100} \times 5 = \underline{\hspace{2cm}}$$

- C. Project improves opportunities for elderly citizens (1 point for each related facility or activity that is identified as a needed or desired recreation opportunity for this special population in a locally adopted master plan or by a documented public input process if the Sponsor does not have an adopted plan). (1 – 5 points)

Appropriate elderly activities:

8. PARTNERSHIPS

Total Range: 1-20 points

Project involves matching funds from sources other than the sponsor and/or additional outside cooperation not involving match.

- A. Project involves the contribution of resources from other public or private entities, including publicly owned non-parkland, which serves as all or part of the sponsor’s matching share of funds. Points are awarded on a percentage basis, dependent on the amount of matching funds provided by outside sources. (1 – 15 points)

$$\frac{\text{Matching funds provided by others}}{\text{Total matching funds}} \times 15 = \underline{\hspace{2cm}}$$

and/or,

- B. Project involves cooperation between the project sponsor and other public or private entities where resources are contributed to the overall project for non-grant assisted facilities (Example: The county constructs roads/parking facilities for the city, but no grant funds are requested for roads/parking; 1 point per documented activity). (1 - 5 points)

Documented activities: _____

9. LAND ACQUISITION

Total Range: 1-30 points

Project provides for the ACQUISITION AND PRESERVATION/CONSERVATION of park and recreation lands, including publicly owned non-parkland, which consist of regionally representative natural resources or provide desirable wetlands, open space, water access, or needed parkland. Only the highest rank-order category below for which the criteria are met for the project will be allowed for scoring credit.

- A. Project provides for the acquisition and preservation/conservation of a federal, state, or local government identified area which is recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife (5 - 30 points, based on quality and/or acreage); or
- B. Project provides for the acquisition and preservation/conservation of a significant wetland area (5 - 25 points, based on quality and/or acreage); or
- C. Project provides for the acquisition and preservation/conservation of natural open space land or water for human use and enjoyment that is relatively free of man-made structures (including creek corridors, floodways, natural drainage basins, and areas which may be enhanced for native habitat), 2 acres or larger in size, which is identified in an acceptable, published and adopted local jurisdiction-wide open space plan (5 - 20 points, based on quality and/or acreage); or
- D. Project proposes the acquisition of land which would provide needed public access to park and recreational waters, according to the following ranking (only the highest ranking water body will receive points). (See definitions under criteria 4.) (1 - 5 points)

Gulf Coast or Lake (5 points)

Bay or Estuary (4 points)

River (3 points)

Stream – continuous flow (2 points)

Pond (1 point)

or,

- E. Project provides for the acquisition of needed recreational land proposed for future development. (1 - 10 points)

10. RENOVATION OR ADAPTIVE REUSE

Total range: 1-25 points

Project provides for the renovation or adaptive reuse of an existing obsolete park and recreation area or facilities.

$$\frac{\text{Renovation cost}}{\text{Total construction cost}} \times 25 = \underline{\hspace{2cm}}$$

11. ENVIRONMENTALLY RESPONSIBLE ACTIVITIES

Total Range: 1-10 points

Project promotes environmentally responsible activities and development.

Points for this category will be awarded based on the diversity, innovative nature and/or cost of the project elements. Examples of eligible activities include: the use of xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant native tree plantings where no trees exist, alternative energy sources, water catchment systems, etc. (1 - 10 points)

Environmentally responsible activities/development: _____

12. LINKAGE

Total range: 1-3 points

Project provides a significant linkage to other parks and recreation areas, neighborhoods, or public facilities (through means other than streets and sidewalks), based on the number and significance of the linkage(s). Trails and green corridors are allowable linkages, for example.

Significant linkages: _____

13. CULTURAL RESOURCES

Total range: 1-3 points

Project provides park and recreation opportunities which enhance and encourage an appreciation and preservation of site-based cultural (historical and archaeological) resources through interpretation facilities or preservation strategies.

Points are awarded based on the number and significance of the site-based resource(s).

Site-based resources: _____

ADDITIONAL SCORING CRITERIA:

14. TPWD Land and Water Resources Conservation and Recreation Plan

Total Range: 1-5 points

In 2010, TPWD updated the *Land and Water Resources Conservation and Recreation Plan* (2005 Plan). In order to make changes to the Priority Scoring System, public hearings must be held, followed by approval by the TPWD Commission. In the interim, applicants should use the 2005 Plan to address the above scoring criteria.

The project supports the TPWD 2005 *Land and Water Resources Conservation and Recreation Plan* (2005 Plan). Sponsor must specifically address how the project meets the goals of the 2005 Plan in the Project Narrative. Points will be awarded based on evidence in the project proposal of the extent to which the proposal meets one or more of the following goals of the 2005 plan:

- Goal 1: Improve access to the outdoors.
- Goal 2: Conserve, manage, operate, and promote agency sites for recreational opportunities, biodiversity, and the cultural heritage of Texas.
- Goal 4: Increase participation in hunting, fishing, boating and outdoor recreation.

Additional priority will also be given based on the extent to which the proposed project will stimulate sustainable economic impact, and will lead to the development or support of a conservation constituency (i.e. nature tourism participants thus creating new customers of outdoor, conservation-related recreation).

http://www.tpwd.state.tx.us/publications/pwdpubs/pwd_pl_e0100_0867/

15. Post Completions:

Sponsor has not sufficiently addressed issues related to post completion inspections of previously funded projects (-5 points)

16. Application materials:

A complete application was received by the application deadline (5 points)

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APENDIX **B**

Acquisition Criteria

LOCAL PARK GRANT PROGRAM

ACQUISITION CRITERIA

ELIGIBLE ACQUISITIONS

Acquisition of lands, man-made improvements and waters, additions to existing parks, forests, wildlife areas, beaches, wetlands, and other similar areas dedicated to public outdoor recreation may be eligible for assistance. The following are examples of acquisitions which are eligible for assistance:

1. Land with frontage on the Gulf of Mexico, bays, estuaries, rivers, lakes, streams, ponds, and wetlands that will provide water-based public recreation opportunities, and the acquisition of water bodies themselves.
2. Land for creating water impoundments to provide for water-based public recreation opportunities.
3. Land that provides special recreation opportunities such as floodplains, wetlands, areas adjacent to scenic highways, and open space.
4. Natural areas, preserves and outstanding scenic areas where the objective is to preserve the natural/aesthetic values. This includes areas of physical or botanical importance and wildlife areas. These areas must be open to the general public for recreation use to the extent that the natural attributes/resources of the areas will not be seriously impaired or lost.
5. Land within urban areas for neighborhood parks, community parks, athletic complexes for non-professional sports, golf courses, greenbelts, and both passive and active recreational uses.

MEANS OF ACQUISITION

Acquisition of lands/waters or interests therein may be accomplished through purchase, eminent domain or condemnation, dedication, transfer, donation, or a combination of these methods. When the acquisition is proposed by donation, the nature of any restriction on the use of the area or condition of donation will be examined to ensure that it is compatible with the purpose of the project. Full title must rest with the sponsor with no outstanding liens on the property.

Sponsor or publicly-owned lands which have ***never been dedicated, platted, managed, used, or acquired for public park or recreation uses*** may be used as the sponsor's matching share for a project. All acquisition procedures and documentation requirements must be followed, as outlined in this Procedural Guide (even though technically these are not true acquisitions). Land owned by another governmental entity which meets the non-parkland criteria must be proposed for acquisition by the sponsor in a grant application. Leased land cannot be used as the local matching share. After the grant is approved, other government-owned non-parkland must be deeded to the sponsor in accordance with the program acquisition procedures.

Land which will be deeded to the sponsor as a result of a local ordinance requiring the mandatory dedication of land for park, recreation, and open space purposes will be eligible for acquisition assistance if the dedication does not occur prior to Department authorization.

ACQUISITION OF STRUCTURES

Acquisition projects may include structures and impoundments which are:

1. To be used for public recreation or related support facilities; or
2. A part of the recreation area to be acquired and are to be removed, demolished, or drained in the case of an impoundment.

Grant applications must identify all improvements and discuss the proposed use, disposition, or mitigation of these structures.

ACQUISITION OF LESSER INTERESTS

Proposed acquisitions of interests in lands/waters of less than fee simple title are acceptable where such lesser rights will ensure the desired public use. Proposals such as a permanent park or conservation easements will be evaluated on their merit and contribution to public recreation.

RESERVATIONS AND RIGHTS NOT ACQUIRED

Reservations and rights held by others (i.e. - mineral rights, property liens, easements, etc.) are permissible only if it is determined that the outdoor recreation activities and environment would not be adversely affected. The applicant shall list all outstanding rights or interests held by others on the boundary map. Reservations must also be discussed in the environmental assessment to explain how these outstanding rights are to be dealt with to assure that recreation interests and the environment will not be adversely affected.

DELAYED DEVELOPMENT

Assistance may be available to acquire property on which recreational development is not planned until a future time. During the interim between the time the property is acquired and the time it is developed, the property should be open for those public recreational purposes which the land is capable of supporting, or which can be achieved with minimum public investment. Sponsors submitting grant applications to acquire land for future development must submit a master plan for development with the application. Non-recreational uses, such as agriculture or grazing, which are occurring on the property at the time of acquisition may continue for up to three years, or the remainder of the grant period, contingent on prior Department approval. In such cases the project sponsor shall not receive reimbursement for the land until the non-recreational use is terminated.

If development will be delayed for more than two years from the date of acquisition, the following information must be included in the grant application:

1. Justification as to why the immediate acquisition is necessary;
2. A schedule for development, pursuant to the master plan;
3. Discussion of any non-recreational property uses, including when such uses will terminate. Non-recreational uses must terminate within three years from the date of acquisition;
4. Assurance that any income derived during the interim period will be used on the project site only;
5. Identification of the type of public recreational access to be provided during the interim period.

It is not necessary that the eventual development be carried out with grant assistance, or that such unassisted recreational development be Department approved as long as it is in accordance with the master plan and purpose for which the application was made. Once developed, all improvements on land acquired with fund assistance must be operated and maintained in accordance with program requirements. If acquisition assistance is received, development on the property must begin within three years of project approval. Public access to the site must be made available immediately after the site is acquired.

ACQUISITIONS NOT ASSISTED UNDER THE LOCAL PARK GRANT PROGRAM

Generally, grant assistance will not be made for the following:

1. Historic sites and structures. Exceptions may be made with Department approval only when it is clearly demonstrated that the acquisition is primarily for public recreation purposes. This exclusion need not prevent the consideration of a project calling for the acquisition of real property interest contiguous to (or near) historic sites/structures which meet priority recreation needs. The acquisition must be in accordance with the [Texas Antiquities Code](#) if it is adjacent to or includes a site listed as a State Archaeological Landmark (SAL) or if it is a site eligible for listing as a SAL.
2. Museums, sites for museums or sites primarily for archaeological excavation.
3. Public school property. Acquisition will not be made for school property to help meet minimum acreage requirements, as established by state law or local regulations.
4. Areas and facilities to be primarily used for semi-professional or professional arts or athletics (such as amphitheaters, rodeo arenas, stadiums, etc.).
5. Game refuges or fish hatcheries. Acquisition of areas/facilities to be used solely for game refuges or fish production.
6. Areas containing luxury lodges, motels, cabins or similar elaborate facilities. Acquisition of sites containing elaborate facilities which are to be operated by the project sponsor or a concessionaire to service the public with food or lodging.
7. Agricultural land primarily for agricultural purposes.
8. Areas for which the primary purpose of the acquisition is for non-recreational uses (such as an area to be impounded or excavated to serve as a future public water supply).
9. Lands already within the public domain which were previously dedicated, platted, managed, used, or acquired for public park, recreation and open space use are not eligible to serve as the sponsor's matching project share.
10. Land which has been designated for **acquisition as mitigation** for other public domain activities **may not be used for matching fund purposes** and will **not be eligible for acquisition assistance**. Land acquired for mitigation of projects undertaken by the private sector are, however, eligible for acquisition under this program and may be used as matching funds if proposed as a donation in the grant application.

Acquisition eligibility questions should be directed to the Recreation Grants Branch at 512-389-8224 **prior** to the submission of a grant application.

APENDIX C

Waiver of Retroactivity

LOCAL PARK GRANT PROGRAM

WAIVER OF RETROACTIVITY GUIDELINES - LAND ACQUISITION

Waivers of Retroactivity are available to eligible grant applicants to allow for land acquisition **prior to grant approval**. For land which may be **under eminent threat of loss as an acquisition opportunity**, the Department **may** authorize acquisition to occur prior to grant approval through a Waiver of Retroactivity. Waivers may be considered for convenience purposes with the understanding that if a grant is approved, this may limit funding opportunities for the project. Contact the Recreation Grants staff with any questions.

An approved waiver does not constitute future grant approval, nor is it implied. A Waiver of Retroactivity simply preserves the matching potential of a park site for a limited period and allows the local sponsor to utilize the value of the land as all or part of the project's matching share.

Waivers of Retroactivity are only one means of securing park land prior to project approval while maintaining the match potential for a future grant application. Other means of securing property include the transferring of title to a private non-profit trust/foundation for holding, or through the use of certain right-of-first-refusal contracts which receive prior Department approval. Waivers will not be granted if it is determined by the Department that an environmental impact statement will be required.

Waivers are available for land acquisitions only – waivers will not be considered for development or construction.

THE FOLLOWING RESTRICTIONS APPLY WHEN A WAIVER IS GRANTED:

1. Waivers and land acquisition costs are incurred at the sponsor's expense and risk. The granting of a waiver does not in any way ensure grant approval or site eligibility, or imply Department commitment to the project.
2. Waivers are valid only for a limited period of time. A waiver will expire at the end of the second state fiscal year following the state fiscal year in which the waiver was granted. A state fiscal year is September 1st to August 31st. Extensions up to three additional fiscal years will only be granted on a case-by-case basis.

The granting of extensions beyond the original expiration date may limit the funding options for projects as Land and Water Conservation Fund guidelines preclude waivers beyond the two fiscal year limit.

3. A complete grant application must be submitted by the sponsor as soon as possible after the granting of the waiver. The grant must be approved by the Department prior to the waiver's expiration.
4. Waivers are for land acquisition only. Construction/development costs will not be made retroactive.
5. The level of grant acquisition assistance will be determined by an independent appraisal approved by the Department after grant approval (see "Acquisition Methods and Appraisals" in the *Instructions for Approved Projects*). It is strongly recommended that the appraisal be prepared prior to the transfer of any property, and prior to application submission. This will ensure that the land value is known, and that there will be no budgeting surprises if the grant is later approved.

TO REQUEST A WAIVER, THE FOLLOWING MUST BE SUBMITTED FOR REVIEW:

1. Cover letter addressing the scope and **urgency** of the waiver and an assurance that it is understood that the granting of a waiver will in no way commit the Department to the future funding of a grant project
2. Location and boundary maps
3. Proposed conceptual development plan
4. Environment Assessment - provide a description of the site and environment (refer to the Environmental Assessment beginning on page 22 for more information), and including:
 - Vegetation
 - Topography
 - Geology
 - Soils
 - Wildlife
 - Water resources
 - Access to the site
 - Outstanding characteristics
 - Existing structures and improvements
 - Utilities and easements
 - Surrounding land uses
 - Current property ownership
5. Other pertinent information should be addressed such as:
 - Threatened or endangered species of flora or fauna
 - Significant mineral values
 - Unique geological formations
 - Unique animal or plant ecosystems
 - Cultural/archeological/historical sites
 - Located in a designated floodplain, or
 - Contains wetlands

On review and acceptance by the Department, a waiver agreement will be executed by both the Department and the applicant. A copy of the agreement should be included in the forthcoming application submission.

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APPENDIX D

Master Plan Guidelines

LOCAL PARK GRANT PROGRAM

PARK, RECREATION AND OPEN SPACE MASTER PLAN GUIDELINES

The following guidelines have been developed to help local governments prepare park, recreation, and open space master plans in accordance with the Local Park Grant Programs Manual. Points may be received through the applicable "Project Priority Scoring System" for projects which meet priorities identified in Department-approved, locally-endorsed parks, recreation, and open space master plans.

**** Please note that a master plan is not required to participate in the grant program, nor does Texas Parks & Wildlife Department approval of a plan guarantee that points will be awarded for any project. ****

At a minimum, all master plans and/or updates must meet the requirements below for approval. For questions or assistance, please contact the Recreation Grants office at 512/389-8322.

Submit plans and/or updates to Recreation Grants for review as early as possible, but no later than sixty days before the application deadlines:

Local Park Grant Program	Master Plan Submission Date	Grant Application Submission Date
Outdoor	June 2 nd	August 1 st
Outdoor	January 2 nd	March 1 st
Indoor	June 2 nd	August 1 st
Urban Outdoor	January 2 nd	March 1 st
Urban Indoor	June 2 nd	August 1 st

Because of the large number of review requests, early submission of master plans for review and approval is strongly encouraged.

It is also recommended that plans be reviewed by Recreation Grants prior to submission to the applicable governing body for final approval to preclude the sponsor from having to obtain additional approval from the governing body in the event the review finds changes to the plans are needed. Plans must be approved or submitted or postmarked in an approvable format (including resolution of adoption) by the deadlines to be eligible for project priority points.

Please provide the name and address of the contact person in the local government submitting the plan as well as the name and address of the preparer, if other than the sponsor.

The following documentation is required for approval by Recreation Grants:

PROOF OF ADOPTION

Once plans are complete, the applicable governing body (city council, county commissioner's court, district or authority board) must pass a formal resolution (or ordinance) adopting the plan and list of priority needs.

JURISDICTION-WIDE PLAN

Plans must be comprehensive and include the sponsor's entire area of jurisdiction, i.e., the entire city, county, or district, etc. Plans may be broken into planning areas, regions, districts or precincts, as needed for larger communities or counties. All planning areas, regions, districts, or precincts must be included in the plan as partial plans are unacceptable.

Plans must address the present and future needs of the community or area, not merely short-term needs. Plans that justify only one grant project will not be approved.

Regional (multi-jurisdictional) Park, Recreation and Open Space Master Plans may be submitted to the Department for review. This plan may be utilized by those communities located within the planning region. In order for any application to be eligible for priority planning points the project sponsor must adopt the regional plan by resolution. The plan must also include all of the required master plan elements for each community wishing to utilize the regional plan; **or** the project sponsor must submit a supplement, by the applicable master plan deadline, that includes any required information pertaining to their community that is not included in the regional plan. Please compare the regional plan's elements to the following plan content list to determine if supplemental information will be required by the Department.

PLAN DURATION

Plans must cover at least a ten year period. Plans must be **updated every five years to remain eligible**. At a minimum, updates should include a summary of:

- Accomplishments
- New public input
- Most recent inventory data
- Updated needs assessment
- Priorities
- New implementation plan
- Demographics
- Population projections
- Goals and objectives
- Standards, and
- Maps

Priorities should be updated as high priority items are accomplished and lower priorities move up. A new resolution is not required when updating priorities; however if you change or revise your priorities, submit a new resolution adopting the new priorities.

A completely new plan is required every ten years.

PLAN CONTENTS

All master plans must meet the following minimum requirements.

I. INTRODUCTION

This section should discuss the unit of government for which the plan is created. Include socio-economic data; demographics on ethnicity, age, and income; current and projected population figures and their source; growth or non-growth patterns; and the government's or agency's role in providing parks and recreation opportunities.

II. GOALS AND OBJECTIVES

Identify your parks and recreation service goals and follow with specific objectives for each goal. These should be given careful thought. State the time period of the plan.

III. PLAN DEVELOPMENT PROCESS

This section is very important so that we can understand how you identified and prioritized your needs. Include who wrote the plan and when the process began. Briefly but thoroughly discuss planning committees utilized and public input received through hearings, meetings, and surveys. You must also provide public input documentation. Acceptable documentation includes a copy of the public meeting notice, sign-in sheet, and the minutes for the public meeting certified by an official sponsor representative. If a public survey is completed, an explanation of how the survey was distributed along with a copy of the survey results will be required. Please contact us if you have any questions regarding acceptable public input documentation.

IV. AREA AND FACILITY CONCEPTS AND STANDARDS

This section of the plan is also very important and contributes directly to the assessment and identification of needs. You cannot properly identify needs without establishing local standards and concepts.

Area/Facility standards should be determined locally. Local standards are influenced by preferences and available economic and natural resources. A good source of information on this topic can be found in the National Recreation & Park Association's Park, Recreation, Open Space & Greenway Guidelines publication (formerly the Recreation, Park & Open Space Standards & Guidelines). All of the guidelines identified in this document may or may not apply to your community or county. Adjustments to those standards may be necessary to reflect your needs and resources. Contact the NRPA at <http://www.nrpa.org> or 703/858-2190 to obtain a copy of this publication.

V. INVENTORY OF AREAS AND FACILITIES

Assess what parks, recreation and open space areas and facilities are currently within your system. You should also include school and private recreational facilities that are open to the public. If inventory data are broken out by park, include a summary table for all parks and facilities. This inventory information is essential for assessing needs.

VI. NEEDS ASSESSMENT AND IDENTIFICATION

The following three approaches may be employed in determining parks and recreation needs: (1) demand-based, (2) standard-based, and (3) resource-based. Or a combination of these approaches may help you more accurately assess your needs.

The demand-based approach relies on information gathered from participation rates, surveys, and other information that indicates how much of the population wants certain types of facilities.

The standard-based approach uses established standards to determine facilities and park areas needed to meet the needs of a given population size. The standards may be based on demand studies, the professional judgment of park and recreation planners and designers, etc.

The resource-based approach examines the assets and resources of the area for open space, parks and recreation facilities, and defines how these resources can be utilized. For example – the availability of a lake or river within an area is a resource which can be utilized in developing a park system.

Sponsors with large jurisdiction areas may wish to divide their jurisdiction into planning areas, regions, districts or precincts. Specific needs can then be assessed and identified within each planning unit.

Clearly identify needs and explain the methodology for determining them. Consider both outdoor and indoor recreation needs, if applicable.

VII. PLAN IMPLEMENTATION AND PRIORITIZATION OF NEEDS

A priority list of needs should be ranked in order from highest to lowest priority and state when the needs will be met.

If your plan is broken into specific planning areas, regions, districts or precincts, you may prioritize needs within each of the planning regions.

Separate priority lists may be provided for indoor and outdoor needs. Lists must be area and/or facility specific, and be ranked according to priority order. It is the option of the sponsor to present the priority lists as park/site-based or recreational element-based. However, be aware that there are more points available in the current scoring system if priorities are compiled by recreational elements, and separated by indoor and outdoor.

Example of recreational facility-based priority lists:

Outdoor Priorities:

- #1 = Trails
- #2 = Picnic Tables
- #3 = Pavilions
- #4 = Adult softball fields
- #5 = Tennis courts, etc.

Indoor Priorities:

- #1 = Indoor pool
- #2 = Gym and basketball court
- #3 = Walking track
- #4 = Arts and crafts room
- #5 = Meeting room, etc.

Specific areas intended for open space acquisition and preservation should be located on a map, identified as a need, discussed, and prioritized in your plan.

Where appropriate, renovation/redevelopment needs must be discussed and may be ranked as a priority.

Renovation is defined as “to renew, make over...” Work on existing facilities to completely renew, update, or modernize such facilities so the finished product will meet present-day standards and be comparable with newly constructed similar facilities is classified as renovation.

Redevelopment means the removal of obsolete facilities and construction of new ones.

Repairs and/or maintenance may be listed as a priority, but are not eligible for grant assistance.

Identify resources for meeting your needs (e.g., city funds, in-house labor, bonds, grants, donations, etc.), and include a proposed timeline for accomplishing the plan's priorities.

CAUTION! Do not just focus on short-term needs and actions. Plan for the future also.

VIII. ILLUSTRATIONS, MAPS, SURVEYS, ETC.

Required: City or County map, or map of jurisdiction, as appropriate.

Include maps, surveys, charts, plates, graphics, and photographs in the plan which help explain and support your planning process and conclusions.

APPENDIX E

Post Project Responsibilities

LOCAL PARK GRANT PROGRAM

RETENTION, OPERATION & MAINTENANCE RESPONSIBILITIES

RETENTION AND USE

Property acquired or developed with grant assistance shall be retained and used for public recreation. Any property acquired or developed shall not be converted to other than public recreation uses without Department approval. Such approval will be given only with the substitution of other properties of at least equal fair market value and equivalent usefulness, quality, and location. Conversion Guidelines are available in Appendix N.

CHANGES IN RECREATIONAL USES

The recreational use of property developed with program assistance may not be changed from that approved when assistance was obtained, unless prior approval is obtained.

OPERATION AND MAINTENANCE

Property acquired or developed with program assistance will be operated and maintained as follows:

1. The property will be maintained as attractive and inviting to the public.
2. Sanitation and sanitary facilities will be maintained in accordance with applicable health standards.
3. Properties will be kept reasonably safe for public use.
4. Buildings, roads, trails, and other improvements will be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use. It is not necessary that assisted improvements be maintained in perpetuity. Once assisted improvements have exceeded their estimated lifetime, or they are no longer economically feasible to operate or maintain, they may be demolished as long as the area remains in use for public recreation and prior Departmental approval is received.
5. The facility will be kept open for public use at reasonable hours and times of the year.
6. Property which includes natural area, wetland, or open space dedication should be maintained to preserve the original characteristics of the area which were suitable for these designations. This might include restrictions on development, mowing, drainage, landscaping, intensity of use, or other considerations which could affect the habitat or species within these designated areas.

AVAILABILITY TO USERS

- Non-Discrimination: Property acquired or developed with program assistance shall be open to persons regardless of age, race, color, religion, sex, national origin, or handicap. Discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited, except to the extent that reasonable differences may be charged on the basis of residence. The requirements for posting this information and text are available in this section.

- Reasonable Use Limitations: Participants may impose reasonable limits on the type and extent of use of the areas and facilities acquired or developed with program assistance when such a limitation is necessary for maintenance or preservation.

Additional on-going commitments include, but are not limited to:

1. All property acquired and/or developed with fund assistance must remain dedicated in perpetuity and be used only for public recreation, with the exception of leased lands which may revert to other uses upon lease expiration;
2. No overhead utility lines may be installed;
3. The project area(s) must be open to the public and utilized for public recreation, free from discrimination pursuant to Title VI of the Civil Rights Act of 1964;
4. The project area(s) must be maintained so that it is safe, attractive, and inviting to the public.
5. A permanent program acknowledgement sign or plaque must be installed and maintained at all project sites;
6. Periodic post completion inspections by Department staff will generally be unannounced, and are intended to ensure that program compliance continues after the project is completed. The sponsor may be asked periodically to participate in post completion self-inspection at the request of the Department. Sponsors who fail to comply with long-term program commitments may jeopardize future eligibility for funds for new projects and/or be subject to legal actions by the state and/or federal government to enforce program compliance.

~ ~ ~ ~ ~

Sample of non-discrimination posting information and text:

FOR ALL RECREATION GRANT FUND ASSISTED PROJECT SITES

Discrimination at park sites acquired and/or developed with state or federal grant funds is prohibited. If you believe you have been discriminated against on the basis of your *race, color, national origin, disability, sex, or age*, please contact the agencies listed below.

For Local Park Grant Program assisted sites:

Recreation Grants Branch
Texas Parks & Wildlife Department
4200 Smith School Road
Austin TX 78744
512-389-8224

For Land and Water Conservation Fund assisted sites:

EEO Program Manager
US Department of the Interior
National Park Service
1849 C Street, NW (Org Code 0008)
Washington DC 20240

Please post this notice, or similar non-discrimination notices. Posters should be displayed at park system administrative buildings, park sites with bulletin boards and visitor centers.

A printable poster related to federally funded sites is available at:
<http://www.dol.gov/oasam/programs/crc/diatl.pdf>

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APPENDIX F

Useful Links

ENVIRONMENTAL LAWS AND REGULATIONS

Cultural and Paleontological Features:

<http://www.achp.gov/nhpa.html>

<http://www.statutes.legis.state.tx.us/Docs/NR/htm/NR.191.htm>

Water Air and Solid Waste:

<http://www.epa.gov/wetlands/regs/sec404.html>

<http://www.statutes.legis.state.tx.us/Docs/PW/pdf/PW.86.pdf>

<http://www.epa.gov/wetlands/regs/sec401.html>

<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.11.htm>

http://163.234.20.106/nav/main/land_main.html

http://163.234.20.106/nav/main/air_main.html

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=111](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=111)

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=2&p_dir=&p_rloc=82997&p_tloc=&p_ploc=&pg=1&p_tac=82997&ti=30&pt=1&ch=334&rl=1&dt=&z_chk=&z_contains=](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=2&p_dir=&p_rloc=82997&p_tloc=&p_ploc=&pg=1&p_tac=82997&ti=30&pt=1&ch=334&rl=1&dt=&z_chk=&z_contains=)

Herbicide, Pesticide and Chemical Use:

<http://www.statutes.legis.state.tx.us/Docs/AG/htm/AG.76.htm>

<http://www.epa.gov/lawsregs/laws/esa.html>

<http://www.epa.gov/agriculture/lfra.html>

Endangered Species:

<http://www.statutes.legis.state.tx.us/Docs/PW/htm/PW.68.htm#68.002>

<http://www.nature.nps.gov/nnl/>

<http://www.rivers.gov/>

<http://wilderness.nps.gov/>

Non-Game Birds:

<http://www.statutes.legis.state.tx.us/Docs/PW/word/PW.64.doc>

TPWD GRANTS, TRAINING AND EDUCATION PROGRAMS

<http://www.tpwd.state.tx.us/business/grants/>

http://www.tpwd.state.tx.us/business/grants/wildlife/wl_diversity_conservation/

<http://www.tpwd.state.tx.us/business/grants/other/>

This list is for reference only and is not conclusive; other federal, state and local laws may apply to proposed project activities. It is the responsibility of the sponsor to identify and obtain all necessary permits and clearances.

Proposal No. PSR12-076-00
June 28, 2012

**Raba Kistner
Facilities, Inc.**
12821 W. Golden Lane
San Antonio, TX 78249
P.O. Box 690287
San Antonio, TX 78269
www.rkci.com

P 210 :: 699 :: 9090
F 210 :: 699 :: 6426
TBPE Firm F-3257

Rafael Castillo, Jr.
City Manager
City of Windcrest
8601 Midcrown Drive
Windcrest, TX 78239

**RE: Support Services for TPWD Outdoor Recreation Grant Application
City of Windcrest, Texas**

Dear Mr. Castillo:

In accordance with your request, **Raba Kistner Facilities, Inc. (RKFI)** is pleased to submit this proposal for Consulting Services to the City of Windcrest (Client) for the above referenced project.

PURPOSE

It is our understanding that the Client wishes to apply for the Texas Parks & Wildlife Outdoor Recreation Grant for the purpose of developing trails connecting Autumn Sunset Lake and Brook Falls Lake in the City of Windcrest, Texas. The purpose of the proposed work is to assist the Client with the completion of the grant application.

SCOPE OF WORK

In supporting the completion of the grant application, RKFI proposes the following scope of work:

- Project Narrative, including Accessibility Review – Recognizing that the Client will provide much of the *Project Narrative*, this effort supports the completion of this task. This effort will include reviewing current Bexar County codes, zoning restrictions, and land use statutes and ensuring the proposed project meets all these requirements as well as those in the Texas Architectural Barriers Act and Americans with Disabilities Act (ADA). This also includes a point-by-point response to the applicable items on the *Project Priority Scoring System* that is used as a metric for rating the grant applications as well as developing the *Project Action Plan*.
- Location Map of project site – This effort will include the preparation of a location map including street names and annotation of the proposed project site along with a vicinity map, as needed in accordance with the grant application guidelines.



- Environmental Site Assessment – This effort will include a Phase I Environmental Site Assessment (ESA-I) in order to complete the following items for the grant application:
 - Environmental Checklist
 - Natural Area Verification
 - Wetland Verification
 - Maps (topographic and aerial)
- Boundary Map (w/ legal description) – This effort will include the creation of an 11" x17" (minimum) boundary map of the site including legal annotations and survey information. This map will only be created if the project requires acquisition assistance or is using sponsor or publicly owned property as match.
- Budget Summary of Project Elements and Costs - This effort will include the creation of a budget summary of the project to potentially include professional services; pre-agreement costs; construction plans/specifications and inspections; land acquisition; appraisal and boundary survey; program acknowledgement signs; total project cost; and match request.
- Site Plan – This effort will include the preparation of a site plan not to exceed 11" x 17" designating the proposed trail and any accompanying amenities. The site plan is separate from a *Boundary Map* per the grant application guidelines.

PROJECT SCHEDULE

We are able to begin working on this project as soon as we receive written authorization to proceed.

PROJECT FEE

We propose to complete the scope of work for a lump sum of **\$8,155** (inclusive of reimbursable expenses).

Element of Work	Proposed Lump Sum Fee
Grant Application Assistance	\$5,455.00
Boundary Map (if required)	\$2,700.00
Total	\$8,155.00

If conditions or circumstances beyond our control are encountered during the grant application which warrants expanding the scope of services, we will contact you to obtain authorization for additional services before proceeding with such services.

Acceptance

We appreciate the opportunity of submitting this proposal and look forward to working with you in the development of this project, which will be carried out in accordance with this letter and the following attachments:

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions

Please return one signed copy of this letter proposal to provide written authorization for our firm to complete work on the services outlined herein. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

RKFI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part of any purpose other than to evaluate this proposal.

Very truly yours,

RABA KISTNER FACILITIES, INC.

Accepted By _____
(Signature)



Andrew C. Hunt, P.E.
Manager, Program Management Services

(Typed or Printed Name)

(Title)



Homer L. Guy, A.I.A., P.E., DBIA, LEED AP, PMP, CFM
Director, Federal Services

Date: _____

Attachments

Copies Submitted: Via Email Only



STANDARD TERMS AND CONDITIONS

1. **SERVICES.** Raba Kistner, Inc., by and through one of its subsidiaries (Raba Kistner Consultants, Inc., Raba Kistner Environmental, Inc., Raba Kistner Facilities, Inc. or Raba Kistner Infrastructure, Inc.) (the relevant subsidiary, being engaged to provide the services to CLIENT in connection with the delivery of this instrument, is referred to as "RK" herein) is being engaged by the CLIENT to render professional services involving only RK's tests and observation reports, advice, judgment and opinion. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services.
2. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information in the performance of RK's services. RK will not conduct an independent evaluation of the accuracy or completeness of such information and shall not be responsible for any errors or omissions in such information. The CLIENT shall be responsible for providing the location of all underground utilities and other structures in the vicinity of our borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.
3. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants and shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT'S contractors, subcontractors, or other parties present at the site.
4. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.
5. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may call for renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If changes cannot be agreed to with respect to changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.
6. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive, and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if delegated to contractor) for notifying and scheduling RK so RK can perform these services. RK shall not be responsible for the quality and completeness of contractor's work or their adherence to the project documents, and RK's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. RK will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.
7. **ESTIMATE OF FEES FOR CONSTRUCTION AND MATERIALS TESTING SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services related to Construction and Materials Testing Services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the requirements of the project as listed in the specification and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because the contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment of all services provided, including retests of contractor's failed areas.
8. **RIGHT TO RETAIN SUB-CONSULTANTS.** CLIENT acknowledges that while performing the services and work products, situations or circumstances may occur where RK determines that in its judgment the services of sub-consultants may be necessary.
9. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT'S possession or knowledge as to the potential or presence of toxic or hazardous materials or pollutants at the site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take title to any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while performing RK's services, RK reserves the right to stop field operations and notify the CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
10. **NO THIRD-PARTY BENEFICIARIES.** The services and any report prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with or a cause of action in the favor of any third party against either RK or CLIENT.

Approved: scb

June 28, 2012

Attachment I

11. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
12. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work products.
13. **LIMITATION OF LIABILITY.** To the greatest extent permitted by law, CLIENT'S sole remedy against RK for claims and liabilities in any way arising out of or directly or indirectly related to the error, omission, or other professional negligence of RK's work for CLIENT will not exceed an aggregate limit of \$100,000 or the amount of RK's fee, whichever is greater for that portion of RK's work found to be defective, regardless of the legal theory which remedy is sought, whether based on negligence (whether sole or concurrent, active or passive), breach of contract, breach of warranty, strict liability or otherwise.
14. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.
15. **SUSPENSION OF SERVICES.** If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to the CLIENT. RK shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. Upon payment in full by the CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.
16. **INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, RK AGREES TO INDEMNIFY AND HOLD THE CLIENT HARMLESS FROM AND AGAINST LIABILITIES, DAMAGES AND COSTS TO THE EXTENT CAUSED BY RK'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT AND TO THE EXTENT THAT RK IS RESPONSIBLE FOR THE LIABILITIES, DAMAGES AND COSTS ON A COMPARATIVE BASIS OF FAULT AND RESPONSIBILITY BETWEEN RK AND THE CLIENT. NEITHER CLIENT NOR RK IS RESPONSIBLE FOR DAMAGES OR LIABILITIES CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY. IN NO EVENT SHALL THE INDEMNIFICATION OBLIGATION EXTEND BEYOND THE DATE WHEN THE INSTITUTION OF LEGAL OR EQUITABLE PROCEEDINGS FOR PROFESSIONAL NEGLIGENCE WOULD BE BARRED BY AN APPLICABLE STATUTE OF REPOSE OR STATUTE OF LIMITATIONS. THIS INDEMNIFICATION EXPRESSLY EXCLUDES THE DUTY OF RK TO DEFEND THE CLIENT. HOWEVER, THE ABSENCE OF THE DUTY TO DEFEND SHALL NOT PRECLUDE THE CLIENT FROM SEEKING RECOVERY OF ITS REASONABLE ATTORNEYS' FEES AS PART OF ITS DAMAGES. THE CLIENT AGREES TO LOOK SOLELY TO THE CORPORATE ASSETS, INCLUDING BUT NOT LIMITED TO INSURANCE POLICIES, OF RK, WITH RESPECT TO SATISFACTION OF ANY LIABILITIES THAT MAY

ARISE OUT OF THE PERFORMANCE OF THIS AGREEMENT. ACCORDINGLY, NO EMPLOYEE, PRINCIPAL, DIRECTOR, OFFICER, PARTNER, OR SHAREHOLDER OF RK SHALL BE SUBJECT TO ANY PERSONAL LIABILITY ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THIS AGREEMENT.

17. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversy between RK and CLIENT arising out of or in any way related to the services provided by RK shall be submitted to mediation, before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to these services and that dispute requires litigation as provided above, the claim will be brought and tried in Bexar County, Texas, and CLIENT waives the right to remove action to any other county or jurisdiction; and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' and expert witness fees, and other claim-related expenses. As a condition precedent to mediation of any claim arising out of the services provided under this Agreement, CLIENT shall obtain the written opinion from a registered, independent, and reputable professional engineer that RK has violated the standard of care applicable to RK's performance of services, in a form that meets the requirements of Texas Civil Practice & Remedies Code Chapter 150.
18. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate services without waiving any claims or incurring any liability.
19. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date on which RK issues its report under this Agreement; or (2) if RK is retained to perform construction observation, the date of substantial completion of the project.
20. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.
21. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign, sublet, or transfer its interest in this Agreement without the express written consent of the other.
22. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provision the maximum permissible effect and application intended.
23. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.

Approved: 