

INTERLOCAL COOPERATION CONTRACT

**by and between
City of Windcrest, Texas
and**

Bexar County Water Control and Improvement District Number 10

This Interlocal Cooperation Contract ("Agreement") is made and entered pursuant to the Interlocal Cooperation Act codified at Subchapter A, Chapter 791, of the Texas Government Code, by and between the City of Windcrest, Texas ("City") and the Bexar County Water Control and Improvement District Number 10 ("District"). The City and the District are jointly referred to hereinafter as the "Parties." The effective date of this agreement shall be the 16th day of July, 2012 ("Effective Date").

RECITALS

WHEREAS, the City is home rule municipality and municipal body politic incorporated in 1959; and

WHEREAS, the City's Home Rule Charter grants to the City various rights and responsibilities related to and for the purposes of government, interest, health, welfare and good order of the City and its inhabitants; and

WHEREAS, the District is a special district formed on November 28, 1955, in accordance with Article XVI, Section 59 of the Texas Constitution, and operating pursuant to Chapter 49 of the Texas Water Code; and

WHEREAS, the Order of the State of Texas creating the District establishes the purpose of the District as being responsible for and including, *inter alia*, the control, storing, preservation and distribution of its water and flood waters, for irrigation, power and all other useful purposes, to the end that the public health and welfare may be conserved and promoted, and the purity and sanitary conditions of the State's water protected, effected and restored; and

WHEREAS, the majority of the District's customers are also citizens of the City; and

WHEREAS, the City and District have coexisted and operated cooperatively since the incorporation of the City, and have engaged in the sharing resources on a mutually beneficial basis;

WHEREAS, City and District have previously entered into various formal agreements between them for the use and benefit of the City and the District; and

WHEREAS, the District and the City desire to enter into a formal, written agreement to become effective as of the Effective Date prescribed above; and

WHEREAS, the Texas Interlocal Cooperation Act authorizes the Parties, as local governments, to increase their respective efficiencies and effectiveness by contracting with one another; and

WHEREAS, each party finds that execution of this Agreement to be in its respective best interests, and the best interests of the citizens of the City and the ratepayers of the District; and

WHEREAS, the purpose of this agreement is to provide for the performance of governmental functions and services that each of the parties to this Agreement are entitled to perform individually.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, for a good and valuable consideration, it is agreed as follows:

I.

Use and Sharing of Facilities and Equipment

- a. City hereby agrees to grant and demise unto the District the right to utilize and enjoy use of necessary space on a non-interference basis on the antenna mast located at 8601 Midcrown Drive for the District to mount one monopole antenna for the District's Supervisory Control and Data Acquisition system.
- b. District hereby agrees to grant and demise unto the City the right to utilize and enjoy necessary space on the top of the 750,000 gallon elevated storage tank located at 8540 Eaglecrest Drive as the site for its radio repeater site. City employees shall be granted unescorted access to the facility for maintenance purposes with stipulation that City employees will provide on-site surveillance of agents doing work in their behalf. City employees/agents are *prohibited* from coming in contact with potable water during the course of their activity.
- c. City and District agree to permit the other limited use of their equipment on a non-interference basis. The using party agrees to return the equipment in equal or better condition than it was received, except for reasonable wear and tear. Repairs for damages will be made at the user's expense to the satisfaction of the owner.

II.

Provision of and Payment for Water Service to City Locations, Water Supply for Fire Fighting Purposes, Payment for Wastewater Service

- a. District hereby agrees to provide water and wastewater service, at its sole cost and expense, to 421 Dalecrest and 461 Golfcrest, provided that such connections are used exclusively in connection with firefighting dormitories or operations; and also agrees to provide water, wastewater, and irrigation service to the locations shown on **Appendix 1**.

- b. District agrees, at its sole cost and expense, to provide water to the City for fighting fires and/or for training in connection with firefighting operations; provided that the City notifies the District, in writing, at least twenty-four (24) hours in advance of training events that will result in the use of water. The City's written notice required under this section shall include an estimate of the volume of water that may be used in connection with non-emergency, planned firefighting training or operations.
- c. City agrees to pay the District, at the then-applicable retail rate, for all water, wastewater, and irrigation service provided at the City swimming pool, Takas Civic Center and the Little League baseball fields.
- d. District hereby agrees to pay to the San Antonio Water System ("SAWS") all fees incurred as the result of wastewater services provided for the locations identified in Section II(a, c) of this Agreement, that enjoy wastewater service.
- e. Services to City connections other than those expressly described in Section II (a,c) hereof will be made at City's expense and City will be billed at prevailing rate applicable to that class of service. Connection charges will be in accordance with District policy for normal service request.

III. Fire Hydrants

- a. District agrees to perform repairs on those fire hydrants located in the City of Windcrest and north of Walzem Road. The District will acquire and maintain such equipment tools and expertise as are necessary to accomplish this task, and will be responsible for determining the materials needed for the repair and procurement of same.
- b. City agrees to reimburse the District within thirty (30) days after receiving a written Invoice for all materials, including replacement hydrants, utilized or procured by the District in connection with repairing fire hydrants pursuant to this Section.

IV. Repairs and Improvements

- a. **General Right of Repair and Improvement.** The District will make repairs and improvements to its water and waste water infrastructure as necessary and will notify the City of repairs as soon as practical, unless circumstances dictate otherwise.
- b. **Streets, Alley Approaches, Alley Repairs.** The District shall make repairs to streets, alley approaches and alleys damaged during the course of District maintenance, repair, or rehabilitation activities. Repairs will be performed in compliance with City standards. Said repairs will be guaranteed against defects

in workmanship or materials for two (2) years after work is completed. The City standards are attached at **Appendix 2**.

- c. Materials left over from projects performed by the Parties shall be promptly and properly stored. Unusable materials shall be disposed of in a manner consistent with city, county, state and federal regulations.

V.

Facilities for District Board Meetings

- a. The District will hold Board meetings in City's Council Chambers, but may, in its sole discretion, hold Board meetings in any location authorized by law.
- b. City, at its sole cost and expense, will provide the audio and/or video recording services needed to record the public meetings of the District's Board, held in City Council Chambers. The District agrees to coordinate with the City to have the recordings of such meetings posted and/or archived on official internet website(s) hosted by the City and/or the District.
- c. Nothing contained in this Section is intended to, or shall be construed to change the manner, time, location, notice or other requirements of the District's meetings.

VI.

Ordinance Concerning Drought Management/Critical Period Conservation

The City and the District agree to work together to develop a comprehensive Drought Management/Critical Period Ordinance (the "Drought Ordinance") that includes watering restrictions and best management practices designed to achieve the groundwater withdrawal reductions mandated by the Texas Legislature and the Edwards Aquifer Authority. The City and the District agree that it is more efficient for the District to enforce the drought policy as outlined in the Drought Ordinance and, accordingly, the City agrees to present for City Council consideration an ordinance delegating the enforcement provisions in the Drought Ordinance to the District. The City and District agree that any and all enforcement actions will be adjudicated in municipal court and any fines and fees from such enforcement actions will be collected for and delivered to the District net of any state imposed fees and a reasonable City fee related to the administrative costs of municipal court. The City and District further agree to work together to educate and inform the public about water restrictions and provide information for a public media campaign about water conservation.

VII.

Water Conservation Plan

City agrees to consider developing and adopting a written Water Conservation Plan which includes an evaluation of the City's water and wastewater use characteristics to identify water conservation opportunities and sets defined goals to be accomplished by water conservation measures. Said Water Conservation Plan shall define a strategy or

combination of strategies for reducing the consumption of water at City facilities and/or connections, reducing the loss or waste of water and/or improving or maintaining the City's efficiency in the use of water, and shall contain best management practices measures to try to meet the targets and goals identified in the plan.

VIII.

District Employee Participation in City Health Plan, Reimbursement of Premiums

- a. City agrees to provide administrative support and permit District employees to participate in the City's health care plan. City will submit a monthly invoice itemizing the premiums incurred for District employees and the District agrees to reimburse the City for all such premiums within two weeks of the City's submission.
- b. The District may terminate this Section pertaining to the City's health care plan upon written notice to the City; provided that such written notice of termination must be delivered no later than thirty (30) days prior to the commencement of the "open enrollment period" designated by the City's health benefit plan.
- c. Termination of this Section VII of this Agreement shall not effect, or otherwise work as a termination of, the remainder of this Agreement.

IX.

Elections

Election of the Board of Directors of the District. The District agrees to consider adopting a Resolution that will amend the District's Policies and Procedures concerning Board Elections. Said amendment may provide that, in addition to all those measures required by the Texas Election Code and/or other applicable law, the District will make efforts to publicize its elections and disseminate general information about elections.

X.

Term, Assignment and Notice of Default

- a. **Term.** The primary term of this Agreement will commence on the Effective Date and continue for five (5) years thereafter. Unless terminated in writing no less than sixty (60) days prior to the fifth anniversary of the Effective Date, this Agreement will automatically be extended for an additional twelve (12) months, renewable, with sixty (60) days notice, for successive twelve (12) month term.
- b. **Assignment.** This Agreement will not be assignable, in whole or in part, by either Party. Any assignment of rights or delegation of duties under this Agreement is void.
- c. **Notice to Cure and Remedies.** In the event of default by any Party, a non-defaulting Party shall give the defaulting Party written notice specifying the default

(the "Notice"). If the defaulting Party fails to cure fully any default within twenty (20) days after receipt of the Notice and thereafter to pursue diligently such cure to completion, then, the other Party will be entitled: (i) to a proper writ issued by a court of competent jurisdiction (as defined below) compelling and requiring the defaulting Party to observe and perform the covenants, obligations and conditions described in this Agreement; and (ii) to pursue all other legal or equitable remedies. The prevailing Party will be entitled to recover all expenses incurred by the prevailing Party, including reasonable attorneys' fees.

XI. Notice

Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; (iii) by personally delivering it to the Party, or any agent of the Party listed in this Agreement, or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

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

District: Bexar County Water Control & Improvement
District #10
8601 Midcrown
Windcrest, Texas 78239
Attn: General Manager
Fax: (210) 654-3888

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days written notice to the other party. The District and the City may, by giving at least five (5) days' written notice to the Party, designate additional persons, including attorneys, to receive copies of notices under this Agreement.

XII. Miscellaneous

- a. **Payment Hereunder From Current Revenues.** The Parties agree that any and all payments to be made: (i) as the result of any obligation, right or responsibility created by this Agreement; or (ii) for the performance of any

governmental functions or services hereunder, shall be made from current revenues available to the paying party.

- b. **Authority.** City's acquisition of water and wastewater utility service under the terms of this Agreement is made pursuant to Section 8.01, Article VIII of the Windcrest Home Rule Charter, and Section 791.026(a), Texas Water Code, upon a finding that the most effective, efficient and economically feasible manner for the City to obtain a water supply is from the District by way of this Agreement.
- c. **Fulfillment of Past Rights and Obligations.** City and District agree that all rights and obligations heretofore existing between them have been fully and completely fulfilled and that neither Party has any further duties or obligations to the other concerning any prior agreements, whether written or verbal, which may exist between them.
- d. **Entire Agreement.** This Agreement contains the entire agreement of the Parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties, whether verbal or written, concerning the subject matter. This Agreement shall bind and benefit the Parties hereto and their respective heirs, legal representatives, successors and assigns.
- e. **Severability; Waiver.**
 - (i) If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.
 - (ii) Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.
- f. **Force Majeure.** If either Party hereto is rendered unable by Force Majeure to carry out one or more of its obligations under this Agreement, then such obligations shall be suspended during the continuance of the inability caused by Force Majeure, provided that the Party claiming such inability uses reasonable diligence to resume performance at the earliest practical time. The term "Force Majeure," as used herein, shall include, without limitation of the generality thereof, (i) acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State of Texas or of a

Groundwater Conservation District (including but not limited to the Edwards Aquifer Authority) or of any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests, restraint of government and people, civil disturbances, explosions, (ii) breakage or accidents to machinery, pipelines or facilities or contamination of water produced, and (iii) any other inability, whether similar to those enumerated or otherwise, which are not within the control of the Party claiming such inability and which such Party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

- g. **Records.** Each Party agrees to keep accurate records and documentation of all of its activities pursuant to this Agreement in accordance with its respective document retention policy. Each Party shall have the right to review and copy such records of the other Party in accordance with, and subject to, the Texas Public Information Act, after first providing the other Party with at least ten (10) days prior written notice.
- h. **Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement are governed by the laws of the State of Texas. Exclusive venue for all litigation concerning or arising from this agreement will be in the district courts of Bexar County, Texas, and this clause shall be deemed to be the Parties' forum and venue selection agreement.
- i. **Appendices, Headings, Construction and Counterparts.** All schedules and appendices referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.
- j. **Mutual Drafting and Negotiation.** The Parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto.
- k. **Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

- I. **Authority for Execution.** The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City's statutory authority, City Charter, and/or bylaws, and has been authorized by the governing body of the City. The District certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the District's statutory authority, Enabling/Creation Order, and/or bylaws, and has been authorized by the governing body of the District.

This agreement shall be deemed to have been executed by the Parties on the "Effective Date" first above written.

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SIGNATURE PAGE TO
INTERLOCAL COOPERATION CONTRACT
by and between
City of Windcrest, Texas
and
Bexar County Water Control and Improvement District Number 10

Agreed and Approved:

CITY OF WINDCREST

BY:

Mayor

CRB

ATTEST:

City Secretary

Kelly Rodriguez

BEXAR COUNTY WATER CONTROL AND
IMPROVEMENT DISTRICT #10

By:

President:

Shirley J. Brant

ATTEST:

Secretary

Mark J. Perry

LIST OF APPENDICES:

Appendix 1: Location of Utility Services Provided by District to City

Appendix 2: City Specifications for Street and Alley Repairs

APPENDIX 1

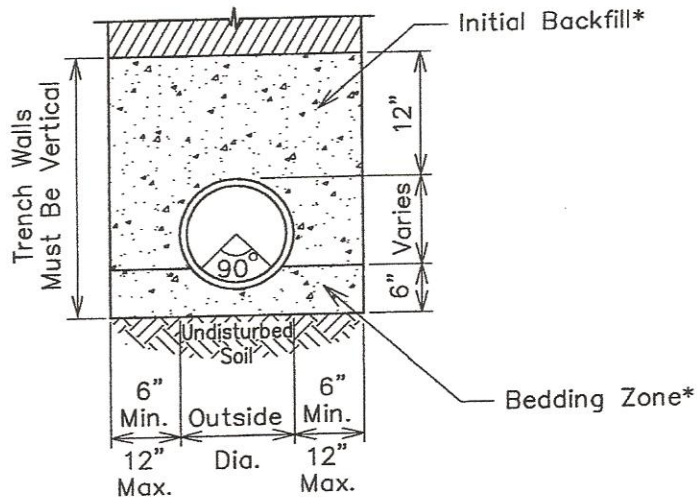
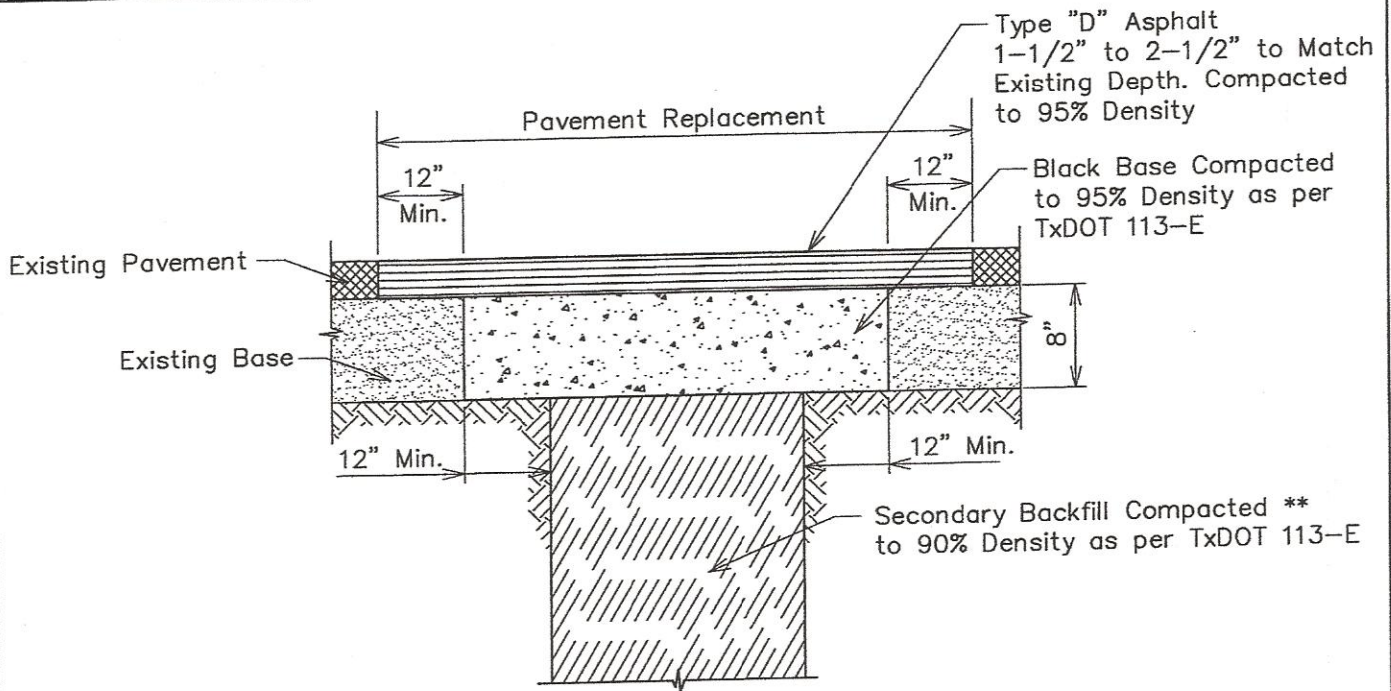
Location of Services Provided to City

Account Number	Location
1. W00010	Autumn Sunset - Open Area (Inactive Since 2001)
2. W00156	6100 Brook Falls – Open Area (Inactive Since 2001)
3. W00307	Corto Circle Island – Open Area (Inactive Since 2001)
4. W00332	6000 Crescent Falls – Open Area (Inactive Since 2001)
5. W00969	Hidden Hollow/ Windrock Island (Inactive Since 2001)
6. W01811	Windgarden Circle Island (Active)
7. W02018	8300 Windway - Open Area (Active)
8. W02086	Windy Hollow – Open Area (Inactive Since 2001)
9. W05220	Fourwinds – Open Area (Active)
10. W07182	Walzem/ Midcrown – Open Area (East) (Infrequent)
11. W07183	Walzem/ Midcrown – Open Area (West) (Active)
12. W07190	8601 Midcrown (Fire Station Irrigation) (Active)
13. W07195	8601 Midcrown (City Hall) (Active)
14. W07196	8601 Midcrown (City Hall Irrigation) (Active)
15. 0C0615	Dormitory, 421 Dalecrest (Active)
16. 0C0616	Dormitory, 461 Golfcrest (Active)
17. W07220	9315 Jim Seal Drive (Maintenance Facility) (Active)

APPENDIX 2

City Specifications for Street and Alley Repairs

See Attached Two Pages



WATER AND/OR SANITARY SEWER PIPE NEW, REPAIRED OR REPLACED UNDER STREET NOT TO SCALE

- * Bedding and Backfill Shall be in Accordance with S.A.W.S. Specifications 804.
- ** Secondary Backfill Shall be in Accordance with S.A.W.S. Specifications 804.

NOTE:

Areas with Extensive Erosion Due to Leaks will be Field Investigated by the City Engineer and the Limits of Repair will be Determined at that Time.

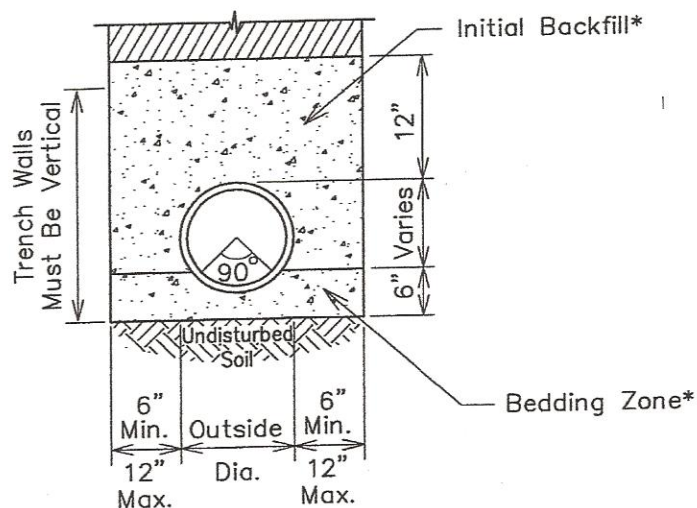
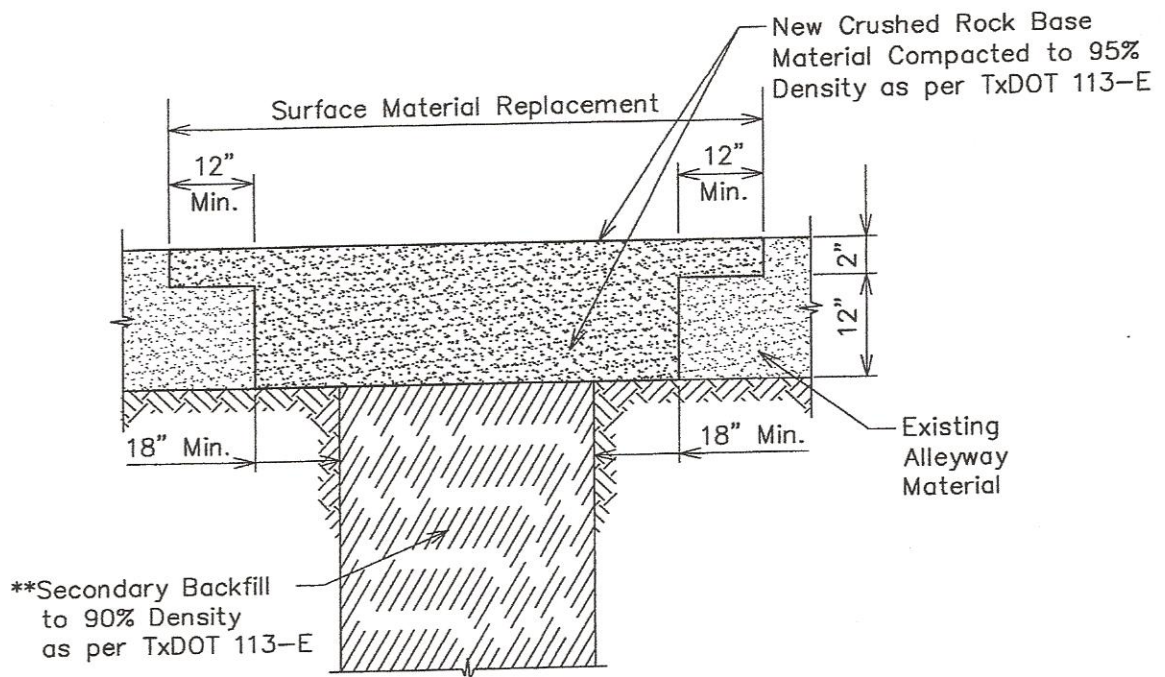
CITY OF WINDCREST
EXHIBIT

NOVEMBER 2011

SHEET 1 OF 2



DON MCCRARY & ASSOCIATES, INC.
ENGINEERS & SURVEYORS
323 BREESEPORT
SAN ANTONIO, TEXAS 78216-2602
(210) 349-2651



WATER AND/OR SANITARY SEWER PIPE NEW, REPAIRED OR REPLACED UNDER ALLEYWAY NOT TO SCALE

- * Bedding and Backfill Shall be in Accordance with S.A.W.S. Specifications 804.
- ** Secondary Backfill Shall be in Accordance with S.A.W.S. Specifications 804.

NOTE:

Areas with Extensive Erosion Due to Leaks will be Field Investigated by the City Engineer and the Limits of Repair will be Determined at that Time.

CITY OF WINDCREST
EXHIBIT

NOVEMBER 2011

SHEET 2 OF 2



DON MCCRARY & ASSOCIATES, INC.
 ENGINEERS & SURVEYORS
 323 BREESEPORT
 SAN ANTONIO, TEXAS 78216-2602
 (210) 349-2651