



**CITY OF  
WIMBERLEY**

# **REGULAR CITY COUNCIL MEETING PACKET**

**Thursday, November 19, 2020  
6:00 p.m.**



# City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

## **REGULAR CITY COUNCIL MEETING** **THURSDAY, NOVEMBER 19, 2020 – 6:00 P.M.**

### **AGENDA**

In accordance with order of the Office of the Governor issued March 16, 2020, the City Council of the City of Wimberley will conduct a teleconference/video conference meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19).

The meeting will be held on **Thursday, November 19, 2020, at 6:00 p.m.**

The public may participate in this meeting via the following toll-free numbers 888-475-4499 or 877-853-5257 and/or using the Zoom meeting ID 870 0574 6439 and using the password 732372.

The public will be permitted to offer public comments and participate in any public hearing via teleconference or video conference, as provided by the agenda and as permitted by the presiding officer during the meeting.

Anyone wishing to offer public comments, participate in any public hearing, or offer written questions or comments must notify City Secretary, Laura Calcote, at [lcalcote@cityofwimberley.com](mailto:lcalcote@cityofwimberley.com), at least two hours before the meeting.

A recording of the meeting will be made and will be available to the public in accordance with the Texas Public Information Act upon written request.

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1. **CALL TO ORDER** November 19, 2020 at 6:00 p.m.
  2. **CALL OF ROLL** City Secretary, Laura Calcote
  3. **INVOCATION** First Baptist Church Wimberley Pastor, Scott Tidwell
  4. **PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG**
  5. **CITIZENS COMMUNICATIONS**  
*Citizens must sign-in with City Secretary, Laura Calcote, via email at [lcalcote@cityofwimberley.com](mailto:lcalcote@cityofwimberley.com) at least two (2) hours before the meeting to address City Council. Limit your comments to three (3) minutes. City Council will listen to the comments but cannot discuss or respond to the comments during the meeting. Inquiries about matters not listed on the agenda will either be directed to staff or placed on a future agenda for Council consideration.*

*Comments from speakers should not be directed towards any specific member of City Council or City staff. Comments should not be accusatory, derogatory or threatening in nature.*

**6. PRESENTATION AND POSSIBLE ACTION**

Presentation and consider possible action regarding a City of Wimberley contribution to the Hays-Caldwell Women's Center for Fiscal Year 2020-2021. *(Hays-Caldwell Women's Center Executive Director, Marla Johnson)*

**7. CONSENT AGENDA**

7.1. Approval of minutes from the Special City Council Meeting held November 2, 2020.

7.2. Approval of minutes from the Regular City Council Meeting held November 5, 2020.

7.3. Approval of Place One Council Member Rebecca Minnick's appointment of Scott Way to the Board of Adjustment.

7.4. Approval of Place Three Council Member Christine Byrne's appointment of Pam Tise to the Board of Adjustment.

7.5. Approval of Place Four Council Member Jim Chiles's appointment of Brian Woodward to the Board of Adjustment.

7.6. Approval of consensus appointee, Linda Webb, to the Board of Adjustment.

**8. CITY ADMINISTRATOR REPORT**

Updates regarding sales tax, the CARES Act, Hoots Holler Drainage Improvements Project, Winter's Eve Event and traffic control efforts in the Wimberley Square *(Interim City Administrator, Paul Parker)*

**9. DISCUSSION AND POSSIBLE ACTION**

9.1. Discuss and consider possible action regarding the status of the Central Wimberley Wastewater Project. *(Project Manager, Craig Fore)*

9.2. Discuss and consider possible action authorizing the City Administrator to bid Phase II of the Central Wimberley Wastewater Project. *(Interim City Administrator, Paul Parker)*

9.3. Discuss and consider possible action regarding Resolution No. 12-2020, designating the Wimberley View as the Official Newspaper for the City of Wimberley, Texas for Fiscal Year 2021. *(City Secretary, Laura Calcote)*

9.4. Discuss and consider possible action regarding Resolution No. 13-2020, authorizing an amendment to the 2020/2021 Operating Budget (Budget Amendment No. 4), providing for the transfer of funds in the Wastewater Collection and Treatment Plant Fund to the General Fund; and providing an effective date. *(Interim City Administrator, Paul Parker)*

9.5. Discuss and consider possible action to accept Capital Excavation's Change Order No. 06 in the amount of \$95,962.86. *(Interim City Administrator, Paul Parker)*

9.6. Discuss and consider possible action regarding an amendment to Lease Agreement with Wimberley ACE Hardware for property at R.R. 12 and F.M. 2325 to add a reservation of rights clause in relation to the Central Wimberley Wastewater Project. (*Interim City Administrator, Paul Parker*)

## **10. EXECUTIVE SESSION**

In accordance with Texas Government Code, Chapter 551, Subchapter D, the City Council may convene in a closed session. After the Executive Session, discussion on any of the following items, any final action or vote taken will be in public.

Executive Session pursuant to Texas Government Code, Section 551.072 (Deliberation regarding the purchase, exchange, lease, or value of real property) and Section 551.071 (Consultation with Attorney) in relation to property for downtown restrooms

## **11. CITY COUNCIL REPORTS**

11.1. Announcements

11.2. Future agenda items

## **12. ADJOURNMENT**

The City Council may retire into Executive Session at any time between the meeting's opening and adjournment for the purpose of discussing any matters listed on the agenda as authorized by the Texas Government Code including, but not limited to, homeland security pursuant to Chapter 418.183 of the Texas Government Code; consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code; discussion about real estate acquisition pursuant to Chapter 551.072 of the Texas Government Code; discussion of personnel matters pursuant to Chapter 551.074 of the Texas Government Code; deliberations about gifts and donations pursuant to Chapter 551.076 of the Texas Government Code; discussion of economic development pursuant to Chapter 551.087 of the Texas Government Code; action, if any, will be taken in open session.

## **CERTIFICATION**

I hereby certify the above Notice of Meeting was posted on the bulletin board at Wimberley City Hall, a place convenient and readily accessible to the general public at all times, and to the City's website, [www.cityofwimberley.com](http://www.cityofwimberley.com), in compliance with Chapter 551, Texas Government Code, on Monday, November 16, 2020, by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.



Laura J. Calcote, MPA, TRMC  
City Secretary

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact City Secretary Laura Calcote at (512) 847-0025 two business days in advance of the meeting for appropriate arrangements.



## **FY 2020-2021 Request for Financial Support-City of Wimberley Hays-Caldwell Women's Center HCWC**

### **Mission**

The purpose of the Hays-Caldwell Women's Center is to create an environment where violence and abuse are not tolerated in the communities we serve. The Center will provide education, violence prevention services, and crisis intervention to victims of family violence, dating violence, sexual assault, and child abuse. We will seek the support and resources necessary to achieve this mission.

### **Benefit to the City of Wimberley of HCWC Services in FY 2020**

- ***A total of 59 Wimberley residents*** received shelter, counseling, legal advocacy and other face-to-face services to help them with issues of family violence, sexual assault, or child abuse.
  - ***26 Victims of Family Violence received services.***
  - ***5 Victims of Sexual Assault & Abuse received services.***
  - ***28 Wimberley residents were served at Roxanne's House (Children's Advocacy Center)***
  - ***15 Forensic Interviews were provided***

### **Services Provided by HCWC.**

During the year ending September 30, 2020, HCWC provided face-to-face services to 2,023 **(59 Wimberley residents)** unduplicated victims of family violence, sexual assault and child abuse.

HCWC provides the following services free-of-charge to victims of domestic violence, dating violence, sexual assault & abuse, and child abuse: (Please note – most services can be provided remotely to address COVID-19 safety concerns.)

- 24-hour HELpline answered by trained advocates
- Emergency shelter for women, men and their children who are victims of family violence and are facing homelessness as result of fleeing a life-threatening situation
- Legal advocacy
- Counseling and support groups
- Special programs and therapy for children who have witnessed violence in the home
- Assist victims in securing resources (e.g. Texas Crime Victims Compensation fund)
- Accompaniment to medical providers, law enforcement and legal proceedings
- Provide information and referral services
- 24-hour Hospital Emergency Advocate Response Team (HEARTeam)
- Liaison with appropriate agencies and coordination of Sexual Assault Task Force, and the Multi-Disciplinary Team.
- Case management, trial preparation, video recorded forensic interviews

**Fiscal Year 2020-2021****Request to the City of Wimberley..... \$5,900**

Funds will be utilized to help cover the cost of serving victims of abuse from Wimberley—specifically providing shelter to displaced victims of domestic/sexual violence in the McCoy Family Shelter and providing Forensic Interviews to victims of child abuse from Wimberley.

***HCWC received \$2,000 from the City of Wimberley in FY 2018 and did not receive funds in FY19 or FY20. Funds received from the City of Wimberley are used to support local victims of abuse.***

**Local Financial Support Received in FY 2020**

HCWC has benefited from civic and faith-based support from the residents of Wimberley. The following churches and civic groups contributed to HCWC in FY 2020. Local support is crucial for continuing our mission and providing life saving services to victims of abuse.

|                                     | <u>FY 2020</u> | <u>FY 2019</u> | <u>FY2018</u> |
|-------------------------------------|----------------|----------------|---------------|
| • Chapel in the Hills               | \$11,067.60    | \$8,273.78     | \$6,659.95    |
| • Cypress Creek Church              | \$1,600.00     | \$1,200.00     | \$1,600.00    |
| • First Baptist Church Wimberley    | \$126.00       | -----          | -----         |
| • Unity Church of Wimberley         | \$371.00       | \$500.00       | \$929.00      |
| • Wimberley Community Civic Club    | \$2,434.50     | \$800.00       | \$1,193.00    |
| • Wimberley United Methodist Church | -----          | -----          | \$200.00      |
| • Wimberley Valley Quilt Guild      | \$3,031.00     | \$1,756.25     | \$1,853.00    |

**Financial Support Received in from City & County Governments**

|                            | <u>FY 2020</u> | <u>FY2019</u> | <u>FY2018</u> |
|----------------------------|----------------|---------------|---------------|
| • Hays County              | \$80,000.00    | \$75,000.00   | \$70,000.00   |
| • City of San Marcos       | \$63,000.00    | \$60,000.00   | \$70,000.00   |
| • City of Dripping Springs | \$7,000.00     | \$6,500.00    | \$6,290.00    |
| • City of Buda             | \$5,275.00     | \$5,200.00    | \$5,200.00    |
| • City of Lockhart         | \$4,417.00     | \$4,288.00    | \$3,898.00    |
| • City of Wimberley        | -----          | -----         | \$2,000.00    |
| • Caldwell County          | \$800.00       | \$800.00      | \$800.00      |



|                        |                               |
|------------------------|-------------------------------|
| <b>AGENDA ITEM:</b>    | <b>Consent Agenda</b>         |
| <b>SUBMITTED BY:</b>   | Laura Calcote, City Secretary |
| <b>DATE SUBMITTED:</b> | November 13, 2020             |
| <b>MEETING DATE:</b>   | November 19, 2020             |

## AGENDA FORM

### ITEM DESCRIPTION/SUMMARY

- 7.1. Approval of minutes from the Special City Council Meeting held November 2, 2020.
- 7.2. Approval of minutes from the Regular City Council Meeting held November 5, 2020.
- 7.3. Approval of Place One Council Member Rebecca Minnick's appointment of Scott Way to the Board of Adjustment.
- 7.4. Approval of Place Three Council Member Christine Byrne's appointment of Pam Tise to the Board of Adjustment.
- 7.5. Approval of consensus appointee, Linda Webb, to the Board of Adjustment.

### REQUESTED ACTION

- Motion ☒
- Discussion ☐
- Ordinance ☐
- Resolution ☐

### FINANCIAL

- Budgeted Item ☐ Original Estimate/Budget: \$
- Non-budgeted Item ☐ Current Estimate: \$
- Not Applicable ☒ Amount Under/Over Budget: \$

### STAFF RECOMMENDATION

Approval of Items 7.1. and 7.2.

## **ATTACHMENT/S**

- November 2<sup>nd</sup> Special City Council Meeting Minutes
- November 5<sup>th</sup> Regular City Council Meeting Minutes
- Scott Way's Application
- Pam Tises's Application
- Linda Webb's Application



# City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

## **SPECIAL CITY COUNCIL MEETING** **MONDAY, NOVEMBER 2, 2020 – 4:00 P.M.**

### **MINUTES**

In accordance with order of the Office of the Governor issued March 16, 2020, the City Council of the City of Wimberley will conduct a teleconference/video conference meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19).

The meeting will be held on **Monday, November 2, 2020, at 4:00 p.m.**

The public may participate in this meeting via the following toll-free numbers 888-475-4499 or 877-853-5257 and/or using the Zoom meeting ID 894 0642 9085 and using the password 988158.

The public will be permitted to offer public comments and participate in any public hearing via teleconference or video conference, as provided by the agenda and as permitted by the presiding officer during the meeting.

Anyone wishing to offer public comments, participate in any public hearing, or offer written questions or comments must notify City Secretary, Laura Calcote, at [lcalcote@cityofwimberley.com](mailto:lcalcote@cityofwimberley.com), at least two hours before the meeting.

A recording of the meeting will be made and will be available to the public in accordance with the Texas Public Information Act upon written request.

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### **CALL TO ORDER**

Mayor, Gina Fulkerson, called the meeting to order on November 2, 2020 at 4:00 p.m.

### **CALL OF ROLL**

Council Members Present:

Gina Fulkerson  
Rebecca Minnick  
Teresa Shell  
Christine Byrne  
Jim Chiles  
Bo Bowman

Mayor (*via teleconference*)  
Place One (*via teleconference*)  
Place Two (*via teleconference*)  
Place Three (*via teleconference*)  
Place Four (*via teleconference*)  
Place Five (*via teleconference*)

City Staff Present:

Paul Parker

Interim City Administrator (*via teleconference*)

Laura Calcote

City Secretary (*via teleconference*)

**DISCUSSION AND POSSIBLE ACTION**

Discuss and consider possible action regarding Ordinance No. 2020-28, establishing a Moratorium on Sign Permits to Evaluate and Develop Necessary Comprehensive Amendments to Article 4.08 "Signs" of Chapter 4 (BUILDING REGULATIONS) of the City of Wimberley Code of Ordinances. (*Interim City Administrator, Paul Parker*)

City Attorney, Charlie Zech, advised Council regarding the history of sign regulations in the state, along with the recent 5<sup>th</sup> circuit decision regarding commercial versus non-commercial use of signs. The City's current sign ordinance needed to be reviewed and appropriately amended to align with the new regulations, which was why the proposed ordinance would place a moratorium on issuing sign permits for 45 days. There was discussion among Mr. Zech and Council members concerning the ruling and how the ruling affected signage within the City.

**Motion to approve Ordinance No. 2020-28, establishing a Moratorium on Sign Permits to Evaluate and Develop Necessary Comprehensive Amendments to Article 4.08 "Signs" of Chapter 4 (BUILDING REGULATIONS) of the City of Wimberley Code of Ordinances, was made by Council Member Jim Chiles. Motion was seconded by Council Member Bo Bowman. Motion carried unanimously (5-0).**

**ADJOURNMENT**

**Motion to adjourn the meeting at 4:18 p.m. was made by Council Member Teresa Shell. Motion was seconded by Council Member Rebecca Minnick. Motion carried unanimously (5-0).**

**RECORDED BY:**

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Laura J. Calcote, City Secretary

**APPROVED BY:**

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Gina V. Fulkerson, Mayor





# City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

## **REGULAR CITY COUNCIL MEETING** **THURSDAY, NOVEMBER 5, 2020 – 6:00 P.M.**

### **MINUTES**

In accordance with order of the Office of the Governor issued March 16, 2020, the City Council of the City of Wimberley will conduct a teleconference/video conference meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19).

The meeting will be held on **Thursday, November 5, 2020, at 6:00 p.m.**

The public may participate in this meeting via the following toll-free numbers 888-475-4499 or 877-853-5257 and/or using the Zoom meeting ID 884 4290 2166 and using the password 464360.

The public will be permitted to offer public comments and participate in any public hearing via teleconference or video conference, as provided by the agenda and as permitted by the presiding officer during the meeting.

Anyone wishing to offer public comments, participate in any public hearing, or offer written questions or comments must notify City Secretary, Laura Calcote, at [lcalcote@cityofwimberley.com](mailto:lcalcote@cityofwimberley.com), at least two hours before the meeting.

A recording of the meeting will be made and will be available to the public in accordance with the Texas Public Information Act upon written request.

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### **CALL TO ORDER**

Mayor, Gina Fulkerson, called the meeting to order on November 5, 2020 at 6:01 p.m.

### **CALL OF ROLL**

Council Members Present:

Gina Fulkerson  
Rebecca Minnick  
Teresa Shell  
Christine Byrne  
Jim Chiles  
Bo Bowman

Mayor (*via teleconference*)  
Place One (*via teleconference*)  
Place Two (*via teleconference*)  
Place Three (*via teleconference*)  
Place Four (*via teleconference*)  
Place Five (*via teleconference*)

City Staff Present:

Paul Parker

Interim City Administrator (*via teleconference*)

Laura Calcote

City Secretary (*via teleconference*)

**INVOCATION**

First Baptist Church Wimberley Pastor, Scott Tidwell, gave the invocation.

**PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG**

Mayor, Gina Fulkerson, led the pledges to the United State and Texas flags.

**CITIZENS COMMUNICATIONS**

There were no citizen's comments.

**CONSENT AGENDA**

**Motion to approve the Consent Agenda, as presented, was made by Council Member Christine Byrne. Motion was seconded by Council Member Bo Bowman. Motion carried unanimously (5-0).**

6.1. Approval of minutes from the Regular City Council Meeting held October 15, 2020.

6.2. Approval of minutes from the Special City Council Meeting held October 22, 2020.

**CITY ADMINISTRATOR REPORT**

Interim City Administrator, Paul Parker, reported that the COVID-19 testing van was interested in moving to a new location with better visibility. There was discussion among Mr. Parker and Council regarding possible locations within Wimberley with more public visibility and restroom facilities. Furthermore, Mr. Parker noted traffic control efforts on the weekends in the Wimberley Square were going smoothly, and an officer on Sunday may not be needed in the future, unless a special event was occurring. There was discussion to possibly have an officer for traffic control on Friday afternoons instead.

**DISCUSSION AND POSSIBLE ACTION**

8.1. Discuss and consider possible action regarding the status of the Central Wimberley Wastewater Project. *(Project Manager, Craig Fore)*

Project Manager, Craig Fore, stated there had not been much change in the past week regarding the Project, aside from Pedernales Electric Company completing the installation of the electrical power to the control panel for the lift station.

No action was taken on this item.

8.2. Discuss and consider possible action regarding Resolution No. 11-2020, appropriating \$16,995 in the Hotel Occupancy Tax Fund for Wimberley Wayfinding Signage – Phase 1. *(Place One Council Member, Rebecca Minnick)*

Council Member, Rebecca Minnick, presented the Sign Crafter's estimate in the amount of \$16,995 to begin production and installation of five wayfinding signs in the center of town. There would be roughly 20 wayfinding signs installed in phases throughout the City of Wimberley. Hotel occupancy tax funds could be utilized for the purchase of the wayfinding signs. There was discussion among Council pertaining to wayfinding signage language and locations. Resolution No. 11-2020 would transfer funds from the Hotel Occupancy Tax Unobligated Fund to the Hotel Occupancy Tax Capital Outlay Fund to pay for Phase 1 of the wayfinding signage production and installation.

**Motion to approve Resolution No. 11-2020, authorizing an amendment to the 2020/2021 Operating Budget (Budget Amendment No. 3), providing for the transfer of funds within the Hotel Occupancy Tax Fund – Unobligated Fund Balance to the Hotel Occupancy Tax Fund – Operating Budget Account Number 205156792 (Capital Outlay) and providing an effective date, was made by Council Member Rebecca Minnick. Motion was seconded by Council Member Teresa Shell. Motion carried unanimously (5-0).**

- 8.3. Discuss and consider possible action to authorize advertisement of the City Administrator position. (*Interim City Administrator, Paul Parker*)  
Interim City Administrator, Paul Parker, advised Council regarding a timeline for posting and hiring a new City Administrator. He suggested the job advertisement be posted in the next couple of weeks, in order to potentially hire a new administrator in early 2021. Council agreed the position should be posted.  
No action was taken on this item.

- 8.4. Discuss and consider possible action regarding Ordinance No. 2020-29, amending Sec. 2.05.034 (c)(6) of Chapter 2 (Administration and Personnel), Article 2.05 “City Officers” changing the spending authority of the City Administrator from \$1,000 to \$5,000. (*Interim City Administrator, Paul Parker*)  
Interim City Administrator, Paul Parker, presented the ordinance, which would allow the City Administrator to increase his/her spending authority from \$1,000 to \$5,000. This increase in spending authority would grant administrative approval for the majority of maintenance and service expenditures for the City.  
**Motion to approve Ordinance No. 2020-29, amending Sec. 2.05.034 (c)(6) of Chapter 2 (Administration and Personnel), Article 2.05 “City Officers” changing the spending authority of the City Administrator from \$1,000 to \$5,000, was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).**

### **CITY COUNCIL REPORTS**

- 9.1. Announcements – Mayor, Gina Fulkerson, stated a special meeting may be called next week and reminded everyone of Market Days this coming Saturday.  
Interim City Administrator, Paul Parker, informed Council he would have a meeting regarding the Hoots Holler project next Thursday.
- 9.2. Future agenda items – City Secretary, Laura Calcote, reminded Council to submit their Board of Adjustment appointments or reappointments before the November 19<sup>th</sup> meeting.

### **ADJOURNMENT**

**Motion to adjourn the meeting at 7:00 p.m. was made by Council Member Christine Byrne. Motion was seconded by Council Member Rebecca Minnick. Motion carried unanimously (5-0).**

### **RECORDED BY:**

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**Laura J. Calcote, City Secretary**



**APPROVED BY:**

**Gina V. Fulkerson, Mayor**

DRAFT



# CITY OF WIMBERLEY

## Application for Appointment to City Board/Commission/Committee

Name of Board/Commission/Committee: Board of Adjustments

Nominated By: Rebecca Minnick, Place 1

Name: Scott Way Phone: [REDACTED] E-mail: [REDACTED]

Physical Address: [REDACTED]

Mailing Address  
(If different than physical address): same

Employer: self Position/Occupation: business owner

Business Number: \_\_\_\_\_ Fax: \_\_\_\_\_

I reside: ☒ Inside Wimberley's City Limits ☐ Wimberley's ETJ ☐ Outside ETJ

I am a registered voter in: ☒ City of Wimberley ☒ Hays County ☐ Not Registered

Do you or your employer have any business or other dealings with the City of Wimberley, which might present a conflict of interest? ☒ Yes ☐ No

If "Yes" please explain: Only like most: I own property in the City of Wimberley.

I will properly notify the City and the Board if there is a conflict on a specific case.

Are you committed to devote the necessary amount of time to serve on this Board/Commission/Committee and to attend all regularly scheduled meetings? ☒ Yes ☐ No

Would you consider serving on a different Board/Commission/Committee? ☒ Yes ☐ No

Please describe any qualifications, expertise, credentials or special interests that relate to your possible appointment. If you are not responding to a specific advertisement, please indicate the Board/Commission/Committee that you would prefer to serve on. Attach a separate sheet, if necessary.

Attorney, past alternate on the Board of Adjustments, prior work representing neighborhoods in the City of Austin on zoning, etc. matters, and personal real estate development.

Signature: [Signature]

Date: 11/1/2020

Note: Your application will be kept on file for 12 months and maintained under the Texas Open Records Act as public information. It is recommended that you submit a letter of interest and a brief resume with your application. Please submit any information to the City Secretary, City of Wimberley, 221 Stillwater Drive, Wimberley, Texas 78676.



# CITY OF WIMBERLEY

## Application for Appointment to City Board/Commission/Committee

Name of Board/Commission/Committee: B.O.A.

Nominated By: Christine Byrne

Name: Pam Tise Phone: [REDACTED] E-mail: [REDACTED]

Physical Address: [REDACTED]

Mailing Address  
(If different than physical address): same

Employer: 3099 NW, LLC Position/Occupation: Manager

Business Number: 512-842-3044 Fax:

I reside: ☒ Inside Wimberley's City Limits ☐ Wimberley's ETJ ☐ Outside ETJ

I am a registered voter in: ☒ City of Wimberley ☐ Hays County ☐ Not Registered

Do you or your employer have any business or other dealings with the City of Wimberley, which might present a conflict of interest? ☐ Yes ☒ No

If "Yes" please explain:

N/A

Are you committed to devote the necessary amount of time to serve on this Board/Commission/Committee and to attend all regularly scheduled meetings? ☒ Yes ☐ No

Would you consider serving on a different Board/Commission/Committee? ☒ Yes ☐ No

Please describe any qualifications, expertise, credentials or special interests that relate to your possible appointment. If you are not responding to a specific advertisement, please indicate the Board/Commission/Committee that you would prefer to serve on. Attach a separate sheet, if necessary.

Previous member of the BOA.

Signature: [Signature]

Date: 11/6/20



# CITY OF WIMBERLEY

## Application for Appointment to City Board/Commission/Committee

Name of Board/Commission/Committee: \_\_\_\_\_

Nominated By: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Mailing Address  
(If different than physical address): \_\_\_\_\_

Employer: \_\_\_\_\_ Position/Occupation: \_\_\_\_\_

Business Number: \_\_\_\_\_ Fax: \_\_\_\_\_

I reside: ( ) Inside Wimberley's City Limits ( ) Wimberley's ETJ ( ) Outside ETJ

I am a registered voter in: ( ) City of Wimberley ( ) Hays County ( ) Not Registered

Do you or your employer have any business or other dealings with the City of Wimberley, which might present a conflict of interest? ( ) Yes ( ) No

If "Yes" please explain: \_\_\_\_\_

Are you committed to devote the necessary amount of time to serve on this Board/Commission/Committee and to attend all regularly scheduled meetings? ( ) Yes ( ) No

Would you consider serving on a different Board/Commission/Committee? ( ) Yes ( ) No

Please describe any qualifications, expertise, credentials or special interests that relate to your possible appointment. If you are not responding to a specific advertisement, please indicate the Board/Commission/Committee that you would prefer to serve on. Attach a separate sheet, if necessary.

Signature: Linda Webb

Date: \_\_\_\_\_

## City of Wimberley Sales Tax Collections

|             | <u>Month Funds were Received</u> |                 |                 |                |                 |              |              |            |             |             |               |                  |                   |            |
|-------------|----------------------------------|-----------------|-----------------|----------------|-----------------|--------------|--------------|------------|-------------|-------------|---------------|------------------|-------------------|------------|
|             | <u>October</u>                   | <u>November</u> | <u>December</u> | <u>January</u> | <u>February</u> | <u>March</u> | <u>April</u> | <u>May</u> | <u>June</u> | <u>July</u> | <u>August</u> | <u>September</u> | <u>Total</u>      | <u>YTD</u> |
| <u>2021</u> | \$ 85,147                        | \$ 113,033      |                 |                |                 |              |              |            |             |             |               |                  | <u>\$ 198,180</u> |            |
| 2020        | 74,246                           | 93,467          | 82,062          | 77,741         | 118,034         | 85,689       | 69,707       | 94,850     | 77,086      | 85,034      | 114,583       | 87,102           | 1,059,600         | 972,498    |
| 2019        | 67,400                           | 84,831          | 92,074          | 60,176         | 101,961         | 65,713       | 75,584       | 83,246     | 76,354      | 76,106      | 100,616       | 71,108           | 955,170           | 884,062    |
| 2018        | 65,983                           | 87,406          | 65,503          | 68,560         | 101,620         | 55,437       | 57,714       | 96,492     | 70,516      | 69,166      | 94,852        | 70,559           | 903,807           | 833,249    |
| 2017        | 62,375                           | 94,270          | 69,309          | 68,250         | 100,714         | 58,867       | 59,326       | 87,958     | 70,300      | 70,397      | 95,797        | 76,704           | 914,267           | 837,563    |
| 2016        | 55,412                           | 96,278          | 63,646          | 65,007         | 99,885          | 56,455       | 58,422       | 89,963     | 68,621      | 64,545      | 96,507        | 68,202           | 882,943           | 814,741    |
| 2015        | 50,608                           | 80,938          | 53,134          | 47,972         | 93,438          | 43,338       | 42,645       | 91,521     | 66,747      | 54,999      | 93,558        | 63,456           | 782,354           | 718,898    |
| 2014        | 45,919                           | 73,969          | 42,932          | 42,391         | 83,078          | 37,110       | 45,001       | 76,400     | 50,898      | 49,873      | 82,065        | 55,491           | 685,127           | 629,636    |
| 2013        | 42,517                           | 71,926          | 42,176          | 42,454         | 78,159          | 36,299       | 39,751       | 70,625     | 43,347      | 45,073      | 76,517        | 44,817           | 633,661           | 588,844    |

|             | <u>Month Funds were Accrued</u> |                 |                 |                |                 |              |              |            |             |             |               |                  |              |            |
|-------------|---------------------------------|-----------------|-----------------|----------------|-----------------|--------------|--------------|------------|-------------|-------------|---------------|------------------|--------------|------------|
|             | <u>October</u>                  | <u>November</u> | <u>December</u> | <u>January</u> | <u>February</u> | <u>March</u> | <u>April</u> | <u>May</u> | <u>June</u> | <u>July</u> | <u>August</u> | <u>September</u> | <u>Total</u> | <u>YTD</u> |
| <u>2021</u> |                                 |                 |                 |                |                 |              |              |            |             |             |               |                  |              |            |
| 2020        | 82,062                          | 77,741          | 118,034         | 85,689         | 69,707          | 94,850       | 77,086       | 85,034     | 114,583     | 87,102      | \$ 85,147     | 113,033          | 1,090,067    | 891,887    |
| 2019        | 92,074                          | 60,176          | 101,961         | 65,713         | 75,584          | 83,246       | 76,354       | 76,106     | 100,616     | 71,108      | 74,246        | 93,467           | 970,651      | 731,830    |
| 2018        | 65,503                          | 68,560          | 101,620         | 55,437         | 57,714          | 96,492       | 70,516       | 69,166     | 94,852      | 70,559      | 67,400        | 84,831           | 902,650      | 679,860    |
| 2017        | 69,309                          | 68,250          | 100,714         | 58,867         | 59,326          | 87,958       | 70,300       | 70,397     | 95,797      | 76,704      | 65,983        | 87,406           | 911,011      | 680,918    |
| 2016        | 63,646                          | 65,007          | 99,885          | 56,455         | 58,422          | 89,963       | 68,621       | 64,545     | 96,507      | 68,202      | 62,375        | 94,270           | 887,898      | 663,051    |
| 2015        | 53,134                          | 47,972          | 93,438          | 43,338         | 42,645          | 91,521       | 66,747       | 54,999     | 93,558      | 63,456      | 55,412        | 96,278           | 802,498      | 587,352    |
| 2014        | 42,932                          | 42,391          | 83,078          | 37,110         | 45,001          | 76,400       | 50,898       | 49,873     | 82,065      | 55,491      | 50,608        | 80,938           | 696,785      | 509,748    |
| 2013        | 42,176                          | 42,454          | 78,159          | 36,299         | 39,751          | 70,625       | 43,347       | 45,073     | 76,517      | 44,817      | 45,919        | 73,969           | 639,106      | 474,401    |

**From:** [John Provost](#)  
**To:** [Jeanne Ann Cope](#)  
**Cc:** [City Administrator](#); [Mayor](#); [Laura Calcote](#)  
**Subject:** RE: Winter's Eve Event on Wimberley Square Saturday, December 12  
**Date:** Friday, November 13, 2020 1:19:46 PM

---

Good afternoon Jean Ann. I have reviewed your requests with the Mayor and Mr. Parker and the City of Wimberley will provide the following for your event on the Square.

1. We will provide two port-a-potties, one handicap accessible. I will get with you next week to determine the exact locations. The City will pay the \$286.00 rental for these. In addition we have port-a-potties in our Oak Street parking lot and one of them is handicap accessible. Out two rest room trailers and the one in Martha Knies Park will be cleaned and stocked just prior to the event.
2. We have increased the number of trash cans in the square area to 10, six more than last year and do not see the need for any others. We will make sure there is no overflow.
3. We will provide the necessary barricades. Again, I will get with you and decide the best locations and how many.
4. We will provide deputies at the 3 cross walks like we are doing almost every weekend now. If you need additional deputies it will be up to you to reserve and pay for them.
5. We were not and are not involved in any fire pits . Just know the burn ban is on.

I will be your contact for this event and you can reach out to me at any time.

Regards,

John Provost  
Public Works/Permits/Codes Enforcement  
City of Wimberley  
Off (512) 847-0025, EXT. 6  
Cell (512) 201-7211

-----Original Message-----

From: Jeanne Ann Cope [REDACTED]  
Sent: Wednesday, November 4, 2020 5:57 PM  
To: City Administrator <cityadministrator@cityofwimberley.com>  
Cc: Mayor <mayor@cityofwimberley.com>  
Subject: Winter's Eve Event on Wimberley Square Saturday, December 12

City Administrator,

I spoke to Mayor Fulkerson about possible ways the City could help the Wimberley Merchant's Association with our Winter's Eve event this year.

This year we will begin the event at noon and music will end at 8pm. Due to COVID-19 we are hoping to spread the event out so there is not such a big crowd congregating in the evening. Mayor Fulkerson requested I put these items in writing and send them to you.

From the records I have found from last year these items are what the City helped us with or provided last year in 2019.

2 port-a-potties (one of them handicap accessible) The handicap accessible one was located just across Oak Drive from the Queen Bee shop and the other one was located in front of Ball Brothers next to Jeanne's Fashions. I believe Leinneweber may have donated those for the event last year but the City paid for them in previous years. I show no record of WMA paying for these.

Extra trash bins and someone to empty them occasionally throughout the event. We are not having food vendors this year so hopefully there will be less trash. Sometimes businesses hand out drink samples and such but WMA is not selling any drinks this year either. I believe John Provost graciously volunteered to take on this duty last year.

Setting up barricades for certain areas of the square to be blocked off for through traffic. I am not sure if the City is going to allow this for 2020 due to COVID concerns of people congregating but we will have some musicians set up in these areas so we are hoping to block them off around 4:00 just for safety reasons. In the past we blocked off the area in front of Wimberley Cafe/Old Mill Store. We also set up barricades just past the parking lots on Oak Drive so people do not drive into the back of the Square. We also set up barricades in front of the Candy Shop/River House so that cars do not go through the area that circles around by Kiss the Cook. We are not needing the area in front of Wall Street Western/Rancho Deluxe so that parking area does not need to be blocked off. If the City decides not to allow streets to be blocked then we will work around this but may have to rope off some parking spaces for safety reasons.

Constables-Usually there are constables at each crosswalk throughout the event and in the area of the barricades. I do not show that we paid for them last year so maybe the City did. This I do not know.

WMA has reserved 4 construction light bars to help provide better lighting during the evening part of the event. Two of these will be set up by the crosswalks, one will be around the Kiss the Cook area and the last one over by the port-a-potty next to Jeanne's Fashions. WMA plans to pay for these.

Fire Pits have been set up by some businesses in the past and in the blocked off areas. WMA does not provide or sponsor these. If this is something the City would not like businesses to do this year to prevent congregating, please let me know and I will send out an email letting the businesses know.

This is all I can think of right now that we might need help with. This is a great event to help our merchants and is an evening that many locals come out and shop downtown. The merchants are usually working their shops so WMA is very limited in volunteers for this event. Any way that the City can help us out is greatly appreciated.

Thank you,

Jeanne Ann Cope

WMA President

512/468/6936



## Central Wimberley Wastewater Project - Status Update

November 5, 2020

Prepared By: Craig Fore

### Construction

#### Lift Station (RR12 @ FM 3237)

**Electrical installation at the lift station is still in progress. The contractor continues to pull wire. The generator is in place and connecting wires are being installed. The concrete pad for the generator, control panel, and the lift station have all been installed. PEC completed installation of the electrical power to the control panel yesterday.**

#### Force Main Lines

**The force Main from the lift station that will cross the Cypress Creek bridge will be installed by Capital Excavation as soon as they are available for mobilization.**

### Texas Water Development Board (TWDB)

#### Coordination

**We received notification from the TWDB that our environmental review is complete, and no objections were received. The finalization of the statement of findings has been issued. All the final plans for the project north of the creek have been submitted to TWDB by our engineer and they are being reviewed by TWDB's engineer. We hope to have final approval for the bid package by November 15, 2020.**

### TxDOT

### Communication

#### Property/Business Owners

Any property or business owners who would like to meet with the City, please reach out to the City of Wimberley for an update on the status of the project.

As we did previously, the City and Capital Excavation will work with each property owner to determine the best location for their connection to the system. Historically, this involved going door to door to contact the resident or property owner. We will also utilize written notices to contact those we are unable to meet face to face. This will involve a notice at the property (typically on the front door) which will provide a time frame for construction and contact information for the contracts and City. If you think we may miss anyone, please have them contact the city. We will make sure they are included in the project's coordination.

### Schedule

An updated schedule chart has been put together by Gilpin Engineering. Included in the chart is the construction schedule provided by Capital Excavation and the design/review schedule from Plummer Associates.

| <b>Construction</b>                       |                          |                                |
|-------------------------------------------|--------------------------|--------------------------------|
| <u>Component</u>                          | <u>Start</u>             | <u>Completion</u>              |
| <b>Collection Lines (CO#4)</b>            | <b>February 2020</b>     | <b>Completed Aug2020</b>       |
| - Gravity Lines (RR12)                    | May 2020                 | Completed July 2020            |
| - Gravity Lines (FM 3237)                 | June 2020                | Completed August 2020          |
| - Force Main (Deer Creek/Blue Hole)       | Aug 2020                 | Completed Sept 2020            |
| - Lift Station                            | July 2020                | November 2020                  |
| <b>Collection Lines (Aqua Connection)</b> |                          |                                |
| - Design Force Main                       | February 21, 2020        | June 2020                      |
| - Connection to Cypress Creek Bridge      | <b>October 2020</b>      | <b>November2020</b>            |
| - Force Main (RR12-Directional Drill)     | Pending Review from TWDB | 2 Months from Awarded Contract |
| - Tie in to HEB Lift Station              | <b>Nov 2020</b>          | <b>February 2021</b>           |
| <b>Contract</b>                           |                          |                                |
| <b>Negotiate Aqua Contract</b>            | <b>August 2018</b>       | <b>Signed April 2020</b>       |
| <b>Other</b>                              |                          |                                |
| <b>Update Sewer Utility Rates</b>         | <b>August 2020</b>       | <b>November 2020</b>           |
|                                           |                          |                                |
| <b>Utility Billing</b>                    | <b>January 2021</b>      | <b>June 2021</b>               |







|                        |                                                         |
|------------------------|---------------------------------------------------------|
| <b>AGENDA ITEM:</b>    | <b>Phase II of Central Wimberley Wastewater Project</b> |
| <b>SUBMITTED BY:</b>   | Paul Parker, Interim City Administrator                 |
| <b>DATE SUBMITTED:</b> | November 13, 2020                                       |
| <b>MEETING DATE:</b>   | November 19, 2020                                       |

## AGENDA FORM

### ITEM DESCRIPTION/SUMMARY

On Friday, November 13<sup>th</sup>, the City of Wimberley received approval from the Texas Water Development Board to bid Phase II of the Central Wimberley Wastewater Project. Competitive sealed bids will be received on December 11, 2020 by 10:00 a.m. The anticipated approval and award of contract will be at the December 17<sup>th</sup> City Council Meeting.

### REQUESTED ACTION

- Motion ☒
- Discussion ☒
- Ordinance ☐
- Resolution ☐
- Other ☐

### FINANCIAL

- Budgeted Item ☐ Original Estimate/Budget: \$
- Non-budgeted Item ☐ Current Estimate: \$
- Not Applicable ☒ Amount Under/Over Budget: \$

### STAFF RECOMMENDATION

Staff recommends approval for the City Administrator to Phase II.

### ATTACHMENT/S

Advertisement for Competitive Sealed Proposals

## ADVERTISEMENT FOR COMPETITIVE SEALED PROPOSALS

City of Wimberley, Texas is requesting Competitive Sealed Proposals for the **CENTRAL WIMBERLEY WASTEWATER PROJECT (CWWP)**, including installation of approximately 2,100 linear feet of pressurized wastewater line (force main) along the western right-of-way (ROW) of RR 12 in Wimberley, Texas. Sealed proposal packages will be received at Wimberley City Hall located at 221 Stillwater, Wimberley, TX 78676 until **10:00 A.M.** Central Standard Time, on **December 11, 2020**. Proposals must be in compliance with all documents, plans and specifications attached to the Request for Competitive Sealed Proposals.

Contract Documents may be examined or purchased during normal business hours beginning on November 19, 2020 at the offices of Alan Plummer Associates, Inc. 6300 La Calma, Suite 400, Austin, TX 78752 or Wimberley City Hall. Proposers can purchase hard copies for a non-refundable cost of \$45 per full-size set and \$25 per half-size set or an electronic copy on a compact disc for a non-fundable cost of \$25.

A mandatory Pre-proposal Conference for all interested parties will be held REMOTELY via videoconference at 3:00 p.m. on November 23, 2020. Log in information is available at the City of Wimberley's website.

Proposals will be received in the Wimberley City Hall and then publicly opened and read aloud.

Any envelopes or packages received after the specified date and time will be returned unopened. Proposals will be evaluated based on best value to the City of Wimberley. Determination of best value is based on the weighted selection criteria in the Request for Competitive Sealed Proposals and the ranking evaluation.

The City of Wimberley reserves the right to reject any and all proposals or waive any informality in the proposals.

Each Proposal must be accompanied by a certified check, cashier's check, or an approved Bid Bond in the amount of 5% of the Proposal cost, payable to the City of Wimberley without recourse, as a guarantee the Proposer will enter into a contract and execute 100% performance and payment bonds on the forms provided, within ten (10) days after the contract has been awarded. A maintenance bond is also required upon final completion and acceptance of the Project.

This contract is contingent upon release of funds from the Texas Water Development Board (TWDB). Any contract or contracts awarded under this RFP are expected to be funded in part by financial assistance from the TWDB. Neither the U.S. Environmental Protection Agency (EPA) or the State of Texas, nor any of its departments, agencies, or employees, are or will be a party to this RFP or any resulting contract. Any contract(s) awarded under this RFP are subject to the American Iron and Steel (AIS) requirements of federal law, including federal law, including federal appropriation acts.

This contract is subject to the Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) Program, which includes EPA-approved fair share goals toward procurement of Minority and Women-owned Business Enterprise (M/WBE) businesses. EPA rules require that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to M/WBEs through demonstration of the six affirmative steps. For more details of the DBE Program and the current, applicable fair share goals, please visit <http://www.twdb.texas.gov/dbe>.

Equal Opportunity in Employment – All qualified Applicants will receive consideration for employment without regard to race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability, or genetic information. Bidders on this work will be required to comply with the Department of Labor regulations at 41 CFR Part 60-4, relating to Construction Contractors—Affirmative Action Requirements, which include the President's Executive Order NO. 11246, as amended by Executive Order NO. 11375 and Executive Order NO. 13672, in the award and administration of contracts awarded under TWDB financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach, which may result in the termination of the awarded financial assistance.

Davis-Bacon prevailing wage requirements apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) or a construction project financed, in whole or in part, from the Drinking Water State Revolving Fund (DWSRF). The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting) of a treatment works project under the CWSRF or a construction project under the DWSRF. For prime contracts in excess of \$100,000, Contractors and Subcontractors must also, under the provisions of the Contract Work Hours and Safety Standard Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts. Any contracts or subcontracts in excess of \$2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements found in TWDB Guidance No. DB-0156.

Wage Determinations - U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at <http://www.wdol.gov/>. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the Applicant must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur. While the solicitation remains open, the Applicant must monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Applicant must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Applicant may request a finding from TWDB that there is not reasonable time to notify interested Contractors of the modification of the wage determination. For additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract, please consult TWDB Guidance No. DB-0156.



|                        |                               |
|------------------------|-------------------------------|
| <b>AGENDA ITEM:</b>    | <b>Resolution No. 12-2020</b> |
| <b>SUBMITTED BY:</b>   | Laura Calcote, City Secretary |
| <b>DATE SUBMITTED:</b> | November 12, 2020             |
| <b>MEETING DATE:</b>   | November 19, 2020             |

## AGENDA FORM

### ITEM DESCRIPTION/SUMMARY

According to Texas Local Government Code §52.004, a Type A General-Law Municipality should designate an official newspaper at the beginning of each fiscal year by ordinance or resolution. The City of Wimberley has sporadically designated an official newspaper over the years since incorporation by resolution. The last time a newspaper was designated was in 2015, for Fiscal Year 2016.

The Wimberley View is the local newspaper for the area, and the City utilizes the paper throughout the fiscal year to post legal notices, requests for proposals/qualifications, ordinance captions and so forth. The paper is circulated once a week, which meets statutory requirements for official newspapers.

City staff will begin designating an official newspaper at the beginning of each fiscal year, per the state statute. This year will be an exception to designating before the fiscal year began, since it is already November and October 1<sup>st</sup> marked the beginning of FY 2021.

### REQUESTED ACTION

|            |                                     |
|------------|-------------------------------------|
| Motion     | <input checked="" type="checkbox"/> |
| Discussion | <input checked="" type="checkbox"/> |
| Ordinance  | <input type="checkbox"/>            |
| Resolution | <input checked="" type="checkbox"/> |
| Other      | <input type="checkbox"/>            |

### FINANCIAL

|                   |                                     |                           |    |
|-------------------|-------------------------------------|---------------------------|----|
| Budgeted Item     | <input type="checkbox"/>            | Original Estimate/Budget: | \$ |
| Non-budgeted Item | <input type="checkbox"/>            | Current Estimate:         | \$ |
| Not Applicable    | <input checked="" type="checkbox"/> | Amount Under/Over Budget: | \$ |

### **STAFF RECOMMENDATION**

Staff recommends approval of Resolution No. 12-2020, designating the Wimberley View as the official newspaper for the City of Wimberley for Fiscal Year 2021.

### **ATTACHMENT/S**

Resolution No. 12-2020

**RESOLUTION NO. 12-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS DESIGNATING THE WIMBERLEY VIEW AS THE OFFICIAL NEWSPAPER FOR THE CITY OF WIMBERLEY, TEXAS FOR THE FISCAL YEAR 2021.**

**WHEREAS**, the City of Wimberley is required to adopt an official municipal newspaper at the beginning of each Fiscal Year, as per Chapter 52.004 of the Texas Local Government Code; and

**WHEREAS**, the Wimberley View (the “View”), a newspaper that serves the Wimberley Valley, has a large circulation, is printed once a week, and meets the statutory requirements for official newspapers.

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

1. The City Council designates the View as the City of Wimberley’s Official Newspaper for Fiscal Year 2021.
2. The City of Wimberley shall publish in the View each ordinance caption, public notice or other matter required by law or ordinance to be published.
3. The City of Wimberley shall require applicants to publish in the View each public notice or other matter required by law or ordinance to be published by an applicant.

PASSED AND APPROVED this 19<sup>th</sup> day of November, 2020.

The City of Wimberley, Texas

\_\_\_\_\_  
Gina V. Fulkerson, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Calcote, City Secretary





|                        |                                                        |
|------------------------|--------------------------------------------------------|
| <b>AGENDA ITEM:</b>    | <b>Resolution No. 13-2020 (Budget Amendment No. 4)</b> |
| <b>SUBMITTED BY:</b>   | Paul Parker                                            |
| <b>DATE SUBMITTED:</b> | November 13, 2020                                      |
| <b>MEETING DATE:</b>   | November 19, 2020                                      |

## AGENDA FORM

### ITEM DESCRIPTION/SUMMARY

In July 2020, the City Council approved a transfer of \$279,815 from the General Fund to the Wastewater Collection and Treatment Fund, which included \$83,815 associated with additional design work for the sewer project due to the change in scope from the original design with a City owned sewer plant to the current plans to tie into Aqua Texas. These design expenses are not currently reimbursable through the Texas Water Development Board (TWDB). The balance of this change order of \$196,000 was for the May invoice to pay Capital Excavation. The \$196,000 was to be reimbursed to the General Fund Unobligated Fund Balance.

In August the City Council approved a transfer of \$145,000 from the General Fund to the Wastewater Collection and Treatment Fund to pay a portion of the June Capital Excavation invoice (\$291,709.79). This transfer was approved with the stipulation that the \$145,000 would be reimbursed once funding was released from the TWDB.

The total to be reimbursed from the July and August budget transfers is \$341,000.

Also, on October 15, 2020, the City transferred an additional \$262,502 from the General Fund to the Wastewater Collection and Treatment Fund to pay the August invoice for Capital Excavation. These funds will be reimbursed once sufficient funds are released by the TWDB.

In addition, the Wastewater Collection and Treatment Fund has sufficient funding to pay Capital Excavation's September and October payments without borrowing from the General Fund.

### REQUESTED ACTION

- |            |                                     |
|------------|-------------------------------------|
| Motion     | <input checked="" type="checkbox"/> |
| Discussion | <input checked="" type="checkbox"/> |
| Ordinance  | <input type="checkbox"/>            |
| Resolution | <input checked="" type="checkbox"/> |
| Other      | <input type="checkbox"/>            |

### FINANCIAL

Budgeted Item ☐

Non-budgeted Item ☐

Not Applicable ☐

Original Estimate/Budget: \$

Current Estimate: \$

Amount Under/Over Budget: \$

### STAFF RECOMMENDATION

Staff recommends approval of Resolution No. 13-2020.

### ATTACHMENT/S

Resolution No. 13-2020

## **RESOLUTION NO. 13-2020**

**A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2020/2021 OPERATING BUDGET (BUDGET AMENDMENT NO. 4), PROVIDING FOR THE TRANSFER OF FUNDS IN THE WASTEWATER COLLECTION AND TREATMENT PLANT FUND TO THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council approved the 2020/2021 Operating Budget and appropriated the necessary funds out of the Wastewater Collection and Treatment Plant Fund; and

**WHEREAS**, the City Council has reviewed and approves the report establishing the need for increased appropriations in the Wastewater Collection and Treatment Plant Fund for Operating Transfer Out, and in the General Fund for reimbursement of funds previously transferred for costs related to the construction of the Central Wimberley Wastewater Project.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:**

### **Section 1**

The City Council of the City of Wimberley, Texas, hereby authorizes and approves an amendment to the 2020/2021 Operating Budget (Budget Amendment No. 4) for the purpose and in the amounts shown below.

**The effect of these transactions will reduce fund balance in the Wastewater Collection and Treatment Plant Fund (Account 6970) by \$341,000 and provide for a transfer of \$341,000 to the General Fund Unobligated Fund Balance (Account 7412).**

### **Section 2**

**The City Council of the City of Wimberley, Texas, hereby amends the 2020/2021 Operating Budget, increasing appropriations in the funds stated in Section 1 above.**

### **Section 3**

This resolution shall be and become effective immediately upon and after its adoption and approval.

**PASSED AND APPROVED** this 19<sup>th</sup> day of November, 2020.

The City of Wimberley, Texas

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Gina V. Fulkerson, Mayor

ATTEST:

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Laura J. Calcote, City Secretary





|                        |                                              |
|------------------------|----------------------------------------------|
| <b>AGENDA ITEM:</b>    | <b>Capital Excavation Change Order No. 6</b> |
| <b>SUBMITTED BY:</b>   | Paul Parker, Interim City Administrator      |
| <b>DATE SUBMITTED:</b> | November 13, 2020                            |
| <b>MEETING DATE:</b>   | November 19, 2020                            |

## AGENDA FORM

### ITEM DESCRIPTION/SUMMARY

The existing contract with Capital Excavation anticipated boring under the Cypress Creek. The City was having difficulty obtaining the necessary easements and an alternate plan of attaching the sewer line to Cypress Creek was formulated. This change order reflects numerous minor changes to the contract, as well as a major rerouting on the Cypress Creek bridge.

Staff has placed this item on the agenda anticipating that we will get final approval from the Texas Water Development Board prior to the City Council Meeting. If approval is not obtained before the meeting, the item will need to be withdrawn.

### REQUESTED ACTION

- Motion ☒
- Discussion ☒
- Ordinance ☐
- Resolution ☐
- Other ☐

### FINANCIAL

- Budgeted Item ☒ Original Estimate/Budget: \$ 3,251,450.00
- Non-budgeted Item ☐ Current Estimate: \$ 4,038,284.08
- Not Applicable ☐ Amount Under/Over Budget: \$

Original Contract: \$3,251,450.00

Change Orders to date:

- C.O. #1 \$364,780.00
- C.O. #2 \$ 21,884.00
- C.O. #3 \$ 89,423.22

C.O. #4        -\$ 19,251.50

C.O. #5        \$222,777.24

**C.O. #6        \$95,962.86**

Approved Revised Budget Total: **\$4,027,025.82**

Total Contract Increase for C.O. #1-6: **\$775,575.82**

Total Contract Increase Percentage: **23.85%**

C.O. #7        \$11,258.26

Total Contract Increase for C.O. #1-7: **\$786,834.08**

Total Contract Increase Percentage: **24.20%**

#### **STAFF RECOMMENDATION**

Recommend approval Change Order No. 6 (\$95,962.86)

#### **ATTACHMENT/S**

Change Order No. 6



# CONTRACTOR'S MODIFICATION REQUEST

PROJECT NOS.

|             |                               |              |                                    |
|-------------|-------------------------------|--------------|------------------------------------|
| OWNER:      | City of Wimberley             |              |                                    |
| PROJECT     | Wastewater Collection System  |              |                                    |
| CONTRACTOR: | Capital Excavation            |              |                                    |
| ENGINEER:   | Alan Plummer Associates, Inc. |              |                                    |
| CMR NO.:    | CMR-06                        | DESCRIPTION: | Qty Changes & Force Main to Bridge |

## NOTIFICATION BY CONTRACTOR:

We are requesting making the change to the Contract described in the attached materials and request that you take the following action:

- ☐ Notify us that you concur that this change does not require a change in contract time or amount. A Field Order will be issued.
- ☒ Issue a Change Order for performing the described change. Change in Contract amount is indicated in the attached detailed cost breakdown. Revised Schedule TBD.
- ☒ The proposed change in cost is \$95,962.86. Breakdown attached.  
The proposed change in time is TBD once plans are approved by TxDOT.
- ☐ Issue a change order for the described change with payment at the unit price bid. (See pg. 2 for details)
- ☐ Authorize the Contractor to proceed with the change under the time and materials provision of the Contract.

|               |               |           |
|---------------|---------------|-----------|
| REQUESTED BY: | Reed Hoysradt | 8/21/2020 |
|               | TYPED NAME    | DATE      |

## RESPONSE FROM ENGINEER:

We respond to your request as follows:

- ☐ We concur that this is a no cost or time change. See attached Field Order.
- ☐ Your proposal is recommended to the Owner for incorporation into a Change Order.
- ☐ Proceed with the unit price bid for incorporation into a Change Order.
- ☐ Proceed with the change under the time and materials provision of the Contract.

|              |            |      |
|--------------|------------|------|
| RESPONSE BY: |            |      |
|              | TYPED NAME | DATE |

## ACTION TAKEN:

- ☐ Proposed contract modification rejected. Contractor notified not to proceed.
- |                                              |     |
|----------------------------------------------|-----|
| <input type="checkbox"/> Field Order Issued  | FO- |
| <input type="checkbox"/> Change Order Issued | CO- |

|              |            |      |
|--------------|------------|------|
| RESPONSE BY: |            |      |
|              | TYPED NAME | DATE |

# CONTRACTOR'S MODIFICATION REQUEST

See Next Page for CO #6 breakdown.

## Wimberley Collection System - Change Order #6

|    | ITEM DESCRIPTION                                                                   | UNITS OVER/UNDER | UNIT | \$ UNIT PRICE     | ADD/(DEDUCT)   |  |
|----|------------------------------------------------------------------------------------|------------------|------|-------------------|----------------|--|
|    | <b>CHANGE ORDER #6</b>                                                             |                  |      |                   |                |  |
|    | <b>GRAVITY ITEMS</b>                                                               |                  |      |                   |                |  |
| 1  | PIPE 6" DIA. PVC TY ALL DEPTHS INC EXC & BKF                                       | 160              | LF   | \$162.14          | \$25,942.40    |  |
| 2  | PIPE 8" DIA. PVC TY ALL DEPTHS INC EXC & BKF                                       | -15              | LF   | \$235.12          | (\$3,526.80)   |  |
| 3  | PIPE 8" DIA. PVC TY ALL DEPTHS INC EXC & BKF                                       | 175              | LF   | \$190.00          | \$33,250.00    |  |
| 4  | TRENCH EXCAVATION SAFETY PROTECTIVE SYSTEMS                                        | -72              | LF   | \$2.35            | (\$169.20)     |  |
| 5  | TRENCH EXCAVATION SAFETY PROTECTIVE SYSTEMS                                        | 175              | LF   | \$2.20            | \$385.00       |  |
| 6  | EXTRA DEPTH OF MAHOLE 4' DIA.                                                      | -4.29            | VF   | \$498.00          | (\$2,136.42)   |  |
| 7  | DROP MANHOLE W/PRECAST BASE 4' DIA.                                                | 4                | EA   | \$7,425.00        | \$29,700.00    |  |
| 8  | EXTRA DEPTH OF DROP MANHOLE 4' DIA.                                                | 2.55             | EA   | \$319.00          | \$813.45       |  |
| 9  | CEMENT STABILIZED BACKFILL 4' DIA. MANHOLE                                         | 1                | EA   | \$8,600.00        | \$8,600.00     |  |
| 10 | 150 PSI PRESSURE CL PIPE 6" DIA. 4" DIA. SHORT SANITARY SEWER CONNECTION (1'-100') | 148              | LF   | \$91.25           | \$13,505.00    |  |
| 11 | 4" DIA. MEDIUM SANITARY SEWER CONNECTION (101'-200')                               | 15               | EA   | \$2,204.00        | \$33,060.00    |  |
| 12 | 4" DIA. LONG SANITARY SEWER CONNECTION (201'-300')                                 | -10              | EA   | \$2,510.00        | (\$25,100.00)  |  |
| 13 | 4" DIA. LONG SANITARY SEWER CONNECTION (201'-300')                                 | -2               | EA   | \$3,206.00        | (\$6,412.00)   |  |
|    | <b>FORCE MAIN</b>                                                                  |                  |      |                   |                |  |
| 15 | VALVES, GATE VALVE 6" DIA.                                                         | -3               | EA   | \$2,815.00        | (\$8,445.00)   |  |
| 16 | 1.25' DIA. SANITARY SEWER LATERAL                                                  | 3                | EA   | \$1,300.00        | \$3,900.00     |  |
| 17 | CEMENT STABILIZED BACKFILL                                                         | -1033.21         | CY   | \$91.36           | (\$94,394.07)  |  |
| 18 | 18" STEEL CASING                                                                   | -945             | LF   | \$129.10          | (\$121,999.50) |  |
| 19 | FORCE MAIN ON BRIDGE                                                               | 235              | LF   | \$694.00          | \$163,090.00   |  |
| 20 | FORCE MAIN SQUARE TO BRIDGE                                                        | 225              | LF   | \$204.00          | \$45,900.00    |  |
|    |                                                                                    |                  |      |                   | \$95,962.86    |  |
|    | ITEM 3 AND 5 AT CONTRACT UNIT PRICE PRIOR TO CO 4                                  |                  |      |                   |                |  |
|    |                                                                                    |                  |      | ORIGINAL CONT AMT | \$3,251,450.00 |  |
|    |                                                                                    |                  |      | CO#1              | \$364,780.00   |  |
|    |                                                                                    |                  |      | CO#2              | \$21,884.00    |  |
|    |                                                                                    |                  |      | CO#3              | \$89,423.22    |  |
|    |                                                                                    |                  |      | CO#4              | -\$19,251.50   |  |
|    |                                                                                    |                  |      | CO#5              | \$222,777.24   |  |
|    |                                                                                    |                  |      | CO#6              | \$95,962.86    |  |
|    |                                                                                    |                  |      | REVISED CONT AMT  | \$4,027,025.82 |  |
|    | TOTAL CONTRACT INCREASE                                                            |                  |      |                   | \$775,575.82   |  |
|    | TOTAL CONTRACT INCREASE                                                            |                  |      |                   | 23.85%         |  |
|    | REMAINING IN CONTRACT WITH 25% CHANGE ORDER CAP                                    |                  |      |                   | \$37,286.68    |  |



|                        |                                                         |
|------------------------|---------------------------------------------------------|
| <b>AGENDA ITEM:</b>    | <b>Wimberley Ace Hardware Lease Agreement Amendment</b> |
| <b>SUBMITTED BY:</b>   | Paul Parker, Interim City Administrator                 |
| <b>DATE SUBMITTED:</b> | November 13, 2020                                       |
| <b>MEETING DATE:</b>   | November 19, 2020                                       |

## AGENDA FORM

### ITEM DESCRIPTION/SUMMARY

The City of Wimberley owns a triangular piece of property in front of Ace Hardware. This property is commonly recognized for the annual Christmas tree in front of Ace. On November 9, 2016, the City entered into a lease with Wimberley Ace Hardware to display a Christmas tree, flagpole and landscaping and control additional displays on the property. The City's proposed sewer line will cross this property and therefore, an amended lease was necessary to allow for the sewer line.

### REQUESTED ACTION

- Motion ☒
- Discussion ☒
- Ordinance ☐
- Resolution ☐
- Other ☐

### FINANCIAL

- Budgeted Item ☐ Original Estimate/Budget: \$
- Non-budgeted Item ☐ Current Estimate: \$
- Not Applicable ☒ Amount Under/Over Budget: \$

### STAFF RECOMMENDATION

Staff recommends approval of amendment with Wimberley Ace Hardware.

### ATTACHMENT/S

Amendment to Lease Agreement

## AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into as of the \_\_\_\_\_ day of November, 2020, by and between **City of Wimberley**, a Texas municipal corporation ("Landlord" or "the City"), and **Wimberley ACE Hardware** ("Tenant").

### RECITALS:

- A. Landlord and Tenant have previously executed that certain Lease Agreement entered into on November 9, 2016 for the purpose of setting forth the terms and conditions under which Tenant agreed to lease from the City the Premises located at the intersection of R.R. 12 and F.M 2325, as more fully described in the Lease Agreement, attached as Exhibit "A".
- B. Landlord and Tenant have agreed to amend the Lease as hereinafter set forth and execute this Amendment to modify the terms of the Lease Agreement.

### AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the undertakings of the parties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Recitals. The foregoing Recitals are true and correct and hereby incorporated by reference and made a part hereof for all purposes.
2. Amendment. The following Section is hereby added to the Lease Agreement.

#### *Section 16. Reservation of Rights.*

- a. Landlord hereby expressly reserves unto itself, its successors, assigns, agents, employees and contractors, the right to enter the Property for the purposes of access, staging, storage, and maintenance in relation to the Central Wimberley Wastewater Project, specifically, but not limited to, unobstructed access to the entire parcel for the duration of the construction period, which shall be defined as January 1, 2021 through June 31, 2021.
  - b. Landlord hereby expressly reserves unto itself, its successors, assigns, agents, employees and contractors, the right to install and maintain a 6-inch pressurized wastewater line, to be installed during the construction period, and unrestricted access for maintenance, improvements or repairs to such appurtenance through the duration or any extension of the Lease Agreement.
  - c. Tenant shall not be liable for any actions under this section, nor shall Tenant be required to carry insurance in relation to any such activities. Landlord agrees to provide proof of insurance and/or proof of liability for any party conducting activities on Property pursuant to this section, upon request of Tenant.
3. Consideration. Landlord agrees to waive the annual rent amount for 2021.

4. Continuing Effect. Except as expressly modified by the terms and provisions of this Amendment to Lease Agreement, the terms and provisions of the Lease are unchanged and continue in full force and effect.

5. Parties Bound. This Amendment shall be binding upon the parties hereto and their respective successors and assigns.

6. Counterparts. This Amendment may be executed in several counterparts by one or more of the undersigned and all such counterparts so executed shall together be deemed and constitute one final Amendment, as if one document had been signed by all parties hereto; and each such counterpart shall be deemed an original, binding the parties subscribed hereto and multiple signature pages affixed to a single copy of this Amendment shall be deemed to be a fully executed original Amendment.

7. Authority. Each party hereto has the full legal authority to execute and deliver this Amendment. In addition, the individual who executes this Amendment on behalf of each party hereto is authorized to act for and on behalf of such party and to bind such party to the terms and provisions hereof.

8. Attorney Fees. In the event any legal action or proceeding for the enforcement of any right or obligation in the Lease or this Amendment is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

9. Amendment. The Lease and this Amendment may be modified or amended only by the written agreement of Landlord and Tenant, and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Amendment effective as of the date specified above.

*[signature page to follow]*

LESSOR:

CITY OF WIMBERLEY

By: \_\_\_\_\_  
Gina Fulkerson, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Laura Calcote, City Secretary

TENANT:

WIMBERLEY ACE HARDWARE

By: T.A. Degenhart

Name: T.A. Degenhart

Title: owner

Date: 11-12-2020

# EXHIBIT "A"

## Lease Agreement

**Effective Date:** As of the later date of execution set forth below.

**Landlord:** City of Wimberley, Texas

**Landlord's Address:** P.O. Box 2027  
Wimberley TX 78676  
Attn.: City Administrator

Phone: 512-847-0025

**Tenant:** Wimberley ACE Hardware

**Tenant's Address:** 14307 Ranch Road 12  
Wimberley, TX 78676  
Attn: JAD Degenhart  
Phone: 512-757-1693

### Property:

**Legal Description:** A 0.158 acre tract of land located in the City of Wimberley, Texas, and being out of the Amasa Turner Survey in Hays County, Texas, being a portion of Lot 7 of the Carl F. & Adelia Scudder Addition No. 1 of record in Volume 135, Page 547 of the Deed Records of Hays County, Texas, and being the same tract of land, called 0.158 acres, conveyed to Pedernales Electric Cooperative, Inc. by Deed recorded in Volume 1140, Page 540 of the Deed Records of Hays County, Texas, said tract being more particularly described in the attached Exhibit A.

**Street Address:** Intersection of R.R. 12 and F.M. 2325  
Wimberley, Texas 78676

**Term:** Beginning on the 11/3, 2016, and ending 10/31, 2017. <sup>2042</sup> 2.5 yrs

**Rent:** An annual amount of \$ 1<sup>00</sup>. Landlord shall bill Tenant for the annual amount on an annual basis. Tenant shall pay the amount within thirty (30) days. If Tenant fails to timely pay Rent, then to the extent authorized under applicable state law and the Constitution of Texas, such delinquent amount shall accrue interest until paid at the maximum rate of interest allowed by applicable Texas law.

**Security Deposit:** None

**Permitted Uses:** Solely for the following uses:

1. Installation and maintenance of a Christmas tree, at the sole cost of Tenant;
2. Installation and maintenance of a flag pole, at the sole cost of Tenant;
3. Installation and maintenance of additional landscaping, at the sole cost of Tenant; and
4. Installation and maintenance of a community monument sign, the cost of which shall be shared between Landlord and Tenant, provided that Landlord and Tenant shall cooperate on the design, and Landlord shall have final approval over the design and cost.

Landlord and Tenant agree that each of the above uses constitutes a public purpose of the City of Wimberley, Texas.

**Early Termination:** Either party may terminate this Lease Agreement for any reason, including for its own convenience, upon ~~thirty (30)~~ <sup>thirty (30)</sup> days' written notice of termination furnished to the non-terminating party.

**Insurance:** Tenant must also maintain at its expense a policy or policies of commercial general liability insurance insuring against loss of life, bodily injury and/or property damage in commercially reasonable amounts, and in no event less than one million dollars (\$1,000,000.00) per occurrence with a two million dollars (\$2,000,000.00) aggregate. All insurance policies shall name Landlord as an additional insured. All insurance policies required of Landlord shall be issued by an AM Best A-VII or better carrier duly licensed in the State of Texas.

### **Lease Provisions**

Landlord agrees to rent to Tenant, and Tenant agrees to rent from Landlord, the Property, in accordance with the terms of this Lease for the consideration stated herein, the receipt and sufficiency of which are expressly acknowledged.

1. *Use and Operation.* Tenant will use and operate the Property in accordance with all applicable laws. Tenant will keep the Property and any improvements thereon in good repair and in a neat and orderly condition at Tenant's expense.
2. *Utilities.* Utility service to the Property will be at the sole cost of Tenant.
3. *Permitting.* Tenant shall be solely responsible for the acquisition of any regulatory permitting requirements, including requirements imposed by the City of Wimberly
4. *Liability.* Tenant agrees to indemnify and hold harmless Landlord, including its officers, elected officials, employees, agents, and representatives, from and against any and all claims, actions, or damages including attorney's fees caused by or arising out of Tenant's performance, failure to perform, or breach of any of the Tenant's obligations under this Lease

5. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to timely fulfill its Rent obligations, and (b) failing to comply with any provision of this Lease, after notice and an opportunity to cure as provided in this Lease.
6. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to terminate this Lease by written notice given within a reasonable time after the default and/or sue for damages. Landlord will have the right to eviction or forcible detainer as provided by law.
7. *Default/Waiver/Mitigation.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by applicable law.
8. *Notice of Default.* In the event of a default by Tenant, Landlord will provide the Tenant with notice of default and a 30 day opportunity to cure the default, provided, however, that in the event the default is one that cannot reasonably be cured within 30 days, Tenant will not be deemed in default if Tenant commences the cure within the 30 day period after notice is received, and diligently pursues the cure to completion. Tenant will provide Landlord with the same notice and cure periods, as required of Landlord in the foregoing provisions, in the event of a default by Landlord.
9. *Remedies.* In the event of an uncured default by either party, the non-defaulting party shall have all of the rights and remedies available at law or equity, or as provided in this Lease. In addition, in the event of a material default, not cured within the time period required by this Lease, the non-defaulting party will have the right to terminate this Lease.
10. *Venue.* Exclusive venue is in Hays County, Texas.
11. *Entire Agreement.* This Lease, including the attached exhibits and addenda, constitute the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or to any expressly mentioned exhibits and riders not incorporated in writing in this Lease.
12. *Amendment of Lease.* This Lease may be amended only by an instrument in writing signed by Landlord and Tenant.
13. *Notices.* Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) three days after it is deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission with receipt confirmation, or other commercially reasonable means and will be effective when actually received. If notice is delivered by personal delivery or courier delivery, a written and dated acknowledgment of receipt must be signed by a staff member on behalf of the recipient. Any address for notice may be changed by written notice delivered as provided

herein.

14. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Property at the end of the Term, which is not removed by Tenant in accordance with the provisions of this Lease, and Tenant will reimburse Landlord for the reasonable costs of removal and disposal.

15. *Condition of Premises and Due Diligence.* The Premises are tendered and accepted in an "As-Is", "Where-Is" condition, with "All Faults" and without any representation or warranties by the Landlord, including any implied warranty of suitability for its intended purpose.

Executed on the date set forth below, to be effective as of the date of the last party to sign ("Effective Date").

LANDLORD:

CITY OF WIMBERLEY, TEXAS

By: 

Name: Mac McQuibb

Title: Mayor

Date: 11-8-16, 2016

TENANT:

WIMBERLEY ACE HARDWARE

By: 

Name: T.A. Degenhart

Title: President

Date: 10-25, 2016



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/21/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                            |  |                                                                                                                                                                                      |  |
|------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>PRODUCER</b><br>Watkins Insurance Group-Austin<br>3834 Spicewood Springs Rd, Ste 100<br>Austin TX 78759 |  | <b>CONTACT NAME:</b> Tyler Bramlett<br><b>PHONE (A/C, No, Ext):</b> 512-452-8877<br><b>FAX (A/C, No):</b> 512-452-0999<br><b>E-MAIL ADDRESS:</b> TBramlett@watkinsinsurancegroup.com |  |
|                                                                                                            |  | <b>INSURER(S) AFFORDING COVERAGE</b>                                                                                                                                                 |  |
|                                                                                                            |  | <b>INSURER A:</b> Cincinnati Insurance Company                                                                                                                                       |  |
|                                                                                                            |  | <b>INSURER B:</b> Texas Mutual Insurance Company                                                                                                                                     |  |
|                                                                                                            |  | <b>INSURER C:</b>                                                                                                                                                                    |  |
|                                                                                                            |  | <b>INSURER D:</b>                                                                                                                                                                    |  |
|                                                                                                            |  | <b>INSURER E:</b>                                                                                                                                                                    |  |
|                                                                                                            |  | <b>INSURER F:</b>                                                                                                                                                                    |  |

**INSURED** WIMBE-1  
Wimberley Ace Hardware  
14307 Ranch Road 12  
Wimberley TX 78676

**COVERAGES** **CERTIFICATE NUMBER:** 1442018431 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                               | ADDL SUBR INSD WVD                  | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                    |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------|-------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: |                                     | EBA 0137622   | 5/1/2016                | 5/1/2017                | EACH OCCURRENCE \$1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000<br>MED EXP (Any one person) \$10,000<br>PERSONAL & ADV INJURY \$1,000,000<br>GENERAL AGGREGATE \$2,000,000<br>PRODUCTS - COMP/OP AGG \$2,000,000<br>\$ |
| A        | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY                       |                                     | EBA 0137622   | 5/1/2016                | 5/1/2017                | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                                                            |
| A        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$                                                                                                                    |                                     | EBA 0137622   | 5/1/2016                | 5/1/2017                | EACH OCCURRENCE \$3,000,000<br>AGGREGATE \$3,000,000<br>\$                                                                                                                                                                                |
| B        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                          | Y/N<br><input type="checkbox"/> N/A | TSF0001088331 | 5/1/2016                | 5/1/2017                | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$500,000<br>E.L. DISEASE - EA EMPLOYEE \$500,000<br>E.L. DISEASE - POLICY LIMIT \$500,000                                          |
| A        | Property RC<br>Special Form                                                                                                                                                                                                                                                                                     |                                     | EBA 0137622   | 5/1/2016                | 5/1/2017                | Building: 5,200,000<br>BPP: 2,000,000<br>Deductible: 5,000                                                                                                                                                                                |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Intersection of R.R. 12 and F.M. 2325, Wimberley, TX 78676.  
City of Wimberley, Texas is included as an additional insured as respects the general liability, per GA210 02 07, where required by written contract.

**CERTIFICATE HOLDER** **CANCELLATION**

|                                                                 |                                                                                                                                                                |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| City of Wimberley, Texas<br>P.O. Box 2027<br>Wimberley TX 78676 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|                                                                 | AUTHORIZED REPRESENTATIVE<br>                                                                                                                                  |



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

| <u>Coverage:</u>                                                     | <u>Begins on Page:</u> |
|----------------------------------------------------------------------|------------------------|
| 1. Employee Benefit Liability Coverage.....                          | 2                      |
| 2. Unintentional Failure to Disclose Hazards .....                   | 7                      |
| 3. Damage to Premises Rented to You .....                            | 7                      |
| 4. Supplementary Payments .....                                      | 9                      |
| 5. Medical Payments.....                                             | 9                      |
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#### B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000  
Aggregate Limit: \$ 3,000,000  
Deductible: \$ 1,000

##### 3. Damage to Premises Rented to You

The lesser of:

- a. The Each Occurrence Limit shown in the Declarations; or
- b. \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- a. Bail bonds: \$ 1,000
- b. Loss of earnings: \$ 350

##### 5. Medical Payments

Medical Expense Limit: \$ 10,000

##### 9. Property Damage to Borrowed Equipment

Each Occurrence Limit: \$ 10,000  
Deductible: \$ 250

## C. Coverages

### 1. Employee Benefit Liability Coverage

- a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage**.

#### (1) Insuring Agreement

- (a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- (b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and
- 1) Occurs during the policy period; or
  - 2) Occurred prior to the effective date of this endorsement provided:

- a) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

- b) There is no other applicable insurance.

#### (2) Exclusions

This insurance does not apply to:

- (a) **Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

- (b) **Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- (c) **Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

- (d) **Insufficiency of Funds**

Damages arising out of an insufficiency of funds to

meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** also apply to this Coverage.

**b. Who is an Insured**

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- (1) If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
  - (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds.

eds, but only with respect to their duties as your managers.

- (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:
- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
- (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits";
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
- (a) An act, error or omission; or
  - (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

#### (4) Deductible Amount

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- (b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- (c) The terms of this insurance, including those with respect to:
  - 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
  - 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,apply irrespective of the application of the deductible amount.
- (d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

#### d. Additional Conditions

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- (1) Item 2. Duties in the Event of Occurrence, Offense, Claim or Suit is deleted in its entirety and replaced by the following:
  - 2. Duties in the Event of an Act, Error or Omission, or Claim or Suit

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of

an act, error or omission to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

- (2) Item 5. **Other Insurance** is deleted in its entirety and replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, SECTION V - DEFINITIONS** is amended as follows:

- (1) The following definitions are added:

**1. "Administration" means:**

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
- b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.

- 2. "Cafeteria plans" means** plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.

3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
  - a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
  - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.
- (2) The following definitions are deleted in their entirety and replaced by the following:
  21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
    - a. An arbitration proceeding in which such dam-

ages are claimed and to which the insured must submit or does submit with our consent;

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

- c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

## 2. Unintentional Failure to Disclose Hazards

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

## 3. Damage to Premises Rented to You

- a. The last Subparagraph of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is hereby deleted and replaced by the following:

Exclusions c. through q. do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

- b. The insurance provided under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

- (1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, other than **i. War** and the **Nuclear Energy Liability Exclusion**, are deleted and the following are added:

This insurance does not apply to:

(a) "Property damage":

- 1) Assumed in any contract; or
- 2) Loss caused by or resulting from any of the following:
  - a) Wear and tear;
  - b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
  - c) Smog;
  - d) Mechanical breakdown including rupture or bursting caused by centrifugal force;
  - e) Settling, cracking, shrinking or expansion; or
  - f) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(b) Loss caused directly or indirectly by any of the following:

- 1) Earthquake, volcanic eruption, landslide or any other earth movement;
- 2) Water that backs up or overflows from a sewer, drain or sump;
- 3) Water under the ground surface pressing on, or flowing or seeping through:

- a) Foundations, walls, floors or paved surfaces;
- b) Basements, whether paved or not; or
- c) Doors, windows or other openings.

(c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:

- 1) You did your best to maintain heat in the building or structure; or
- 2) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) Loss to or damage to:

- 1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
- 2) The interior of any building or structure, or to personal property in the building or structure caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit of Insurance**

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph 6. of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "oc-

currence" to which this insurance applies.

- (3) The amount we will pay is limited as described in Section **B. Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

#### 4. Supplementary Payments

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

- a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section **B. Limits of Insurance, 4.a. Bail Bonds** of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section **B. Limits of Insurance, 4.b. Loss of Earnings** of this endorsement per day because of time off from work.

#### 5. Medical Payments

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section **B. Limits of Insurance, 5. Medical Payment** of this endorsement.

#### 6. 180 Day Coverage for Newly Formed or Acquired Organizations

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

#### 7. Waiver of Subrogation

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to**

**Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

#### 8. Automatic Additional Insured - Specified Relationships

- a. The following is hereby added to **SECTION II - WHO IS AN INSURED**:

- (1) Any person or organization described in Paragraph **8.a.(2)** below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- (a) A written contract or agreement; or  
(b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:

- 1) Currently in effect or becomes effective during the policy period; and

- 2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

- (2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to

such additional insureds is limited as provided herein:

- (a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 8.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- 1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
  - 2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 8.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- (c) Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph 8.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
- 1) The insurance afforded the vendor does not apply to:

- a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b) Any express warranty unauthorized by you;
- c) Any physical or chemical change in the product made intentionally by the vendor;
- d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g) Products which, after distribution or sale by you, have

been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- 2) This insurance does not apply to any insured person or organization:

a) From whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or

b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

- (d) Any state or political subdivision with which you have agreed per Paragraph 8.a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- 2) The construction, erection, or removal of elevators; or
- 3) The ownership, maintenance, or use of any

elevators covered by this insurance.

- (3) Any insurance provided to an additional insured designated under Paragraph 8.a.(2) Subparagraphs (a), (b) and (d) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured.

**b. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

Condition 5. Other Insurance is amended to include:

- (1) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

- (2) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

(a) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or

(b) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

**9. Property Damage to Borrowed Equipment**

- a. The following is hereby added to Exclusion j. Damage to Property of Paragraph 2., Exclusions of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 9. Property Damage to Borrowed Equipment** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 9. Property Damage to Borrowed Equipment** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bring "suits".

(2) **Deductible Clause**

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section **B. Limits of Insurance, 9. Property Damage to Borrowed Equipment** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (b) **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offense, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.
- (c) We may pay any part or all of the deductible amount to

effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**10. Employees as Insureds - Specified Health Care Services**

It is hereby agreed that Paragraph 2.a.(1)(d) of **SECTION II - WHO IS AN INSURED**, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses;
- b. Emergency Medical Technicians; or
- c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

**11. Broadened Notice of Occurrence**

Paragraph a. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offense, Claim or Suit** is hereby deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".