



**CITY OF
WIMBERLEY**

REGULAR CITY COUNCIL MEETING PACKET

**Thursday, January 7, 2021
6:00 p.m.**



City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

REGULAR CITY COUNCIL MEETING **THURSDAY, JANUARY 7, 2021 – 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, January 7, 2021, 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 825 5118 0397 and using the password 493368.

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, 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** January 7, 2021 at 6:00 p.m.
 2. **CALL OF ROLL** City Secretary, Laura Calcote
 3. **INVOCATION** Saint Stephen’s Episcopal Church Reverend, Kevin Schubert
 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 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. PROCLAMATION

Proclamation of the City of Wimberley, Texas proclaiming January 18, 2021 as Martin Luther King Jr. Day in the City of Wimberley. *(Place Three Council Member, Christine Byrne)*

7. CONSENT AGENDA

7.1. Approval of minutes from the Regular City Council Meeting held December 17, 2020.

7.2. Approval of minutes from the Special City Council Meeting held December 22, 2020.

7.3. Approval of Place Two Council Member Teresa Shell's appointment of Thomas Gordon to the Board of Adjustment.

8. CITY ADMINISTRATOR REPORT

Updates regarding the traffic control efforts in the Wimberley Square and sales tax *(Interim City Administrator, Paul Parker)*

9. DISCUSSION AND POSSIBLE ACTION

9.1. Discuss and consider possible action regarding a request to operate a food service trailer at 411 FM 2325 in Wimberley, Texas. *(Applicant Brandon Kibby/Paradise Amusements)*

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

9.3. Discuss and consider possible action to amend the Professional Services Agreement between the City of Wimberley and Craig Fore until May 31, 2021 and appropriate an additional \$20,000 for construction management for the Central Wimberley Wastewater Project. *(Mayor, Gina Fulkerson)*

9.4. Discuss and consider possible action to ratify extension of Memorandum of Understanding (MOU) with Curative for COVID-19 testing site. *(Mayor, Gina Fulkerson)*

9.5. Discuss and consider possible action for City Council to authorize the disbursement of COVID-19 protective supplies to local non-profit organizations on an as needed basis. *(Mayor, Gina Fulkerson)*

9.6. Discuss and consider possible action regarding an Interlocal Agreement between Hays County, Texas and the City of Wimberley, Texas regarding floodplain administration services. *(Planning & Development Coordinator, Nathan Glaiser)*

9.7. Discuss and consider possible action regarding Ordinance No. 2021-01, ordering a General Election to be held on Saturday, May 1, 2021, for the purpose of electing at-large Council members for Place One, Place Three and Place Five for the City of Wimberley City Council and providing details relating to the holding of such election. *(City Secretary, Laura Calcote)*

- 9.8. Discuss and consider possible action regarding a Contract for Election Services with the Hays County Elections Administrator to conduct the May 1, 2021 General Election for the City of Wimberley. *(City Secretary, Laura Calcote)*
- 9.9. Discuss and consider possible action regarding a Joint Election Agreement between Hays County and the City of Wimberley. *(City Secretary, Laura Calcote)*
- 9.10. Discuss and consider possible action regarding Resolution No. 01-2021, authorizing an amendment to the 2020/2021 Operating Budget (Budget Amendment No. 5), 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 for an effective date. *(Interim City Administrator, Paul Parker)*
- 9.11. Discuss and consider possible action regarding Resolution No. 02-2021, authorizing an amendment to the 2020/2021 Operating Budget (Budget Amendment No. 6), which will appropriate initial funds for the design phase of downtown restrooms, sidewalks and parking facilities. *(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 551.074 (Personnel Matters) to review applications in relation to the hiring of a City Administrator.

11. OPEN SESSION

Discussion and possible action resulting from Executive Session.

12. CITY COUNCIL REPORTS

12.1. Announcements

12.2. Future agenda items

13. 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, in compliance with Chapter 551, Texas Government Code, on Monday, January 4, 2021, 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.



City of Wimberley



Proclamation

THE STATE OF TEXAS §
COUNTY OF HAYS §
CITY OF WIMBERLEY §

WHEREAS, Martin Luther King Jr. Day affords special opportunity to honor Dr. King and become more knowledgeable about his message of unity and community we recognize his significant contributions to the progress of our nation; and

WHEREAS, we commemorate the timeless values he taught us through his example -- the values of courage, truth, justice, compassion, dignity, humility and service that so radiantly defined Dr. King’s character and empowered his leadership; and

WHEREAS, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate the barriers of equality for minority groups, and the continuing struggle against racial discrimination and poverty;

NOW, THEREFORE I, Gina Fulkerson, by virtue of the authority vested in me as Mayor the City of Wimberley, do hereby proclaim January 18th, 2021

MARTIN LUTHER KING JR. DAY

AND urge our residents to join together in making this period of rededication to the principles of justice and equality for all people and commemorate the universal, unconditional love, forgiveness and nonviolence that empowered his revolutionary spirit.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the City of Wimberley, Texas to be affixed this 7th day of January 2021.



CITY OF WIMBERLEY

Gina V. Fulkerson, Mayor



AGENDA ITEM:	Consent Agenda
SUBMITTED BY:	Laura Calcote, City Secretary
DATE SUBMITTED:	December 31, 2020
MEETING DATE:	January 7, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

- 7.1. Approval of minutes from the Regular City Council Meeting held December 17, 2020.
- 7.2. Approval of minutes from the Special City Council Meeting held December 22, 2020.
- 7.3. Approval of Place Two Council Member Teresa Shell's appointment of Thomas Gordon 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

- December 17th Regular City Council Meeting Minutes
- December 22nd Special City Council Meeting Minutes
- Thomas Gordon's Application



City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

REGULAR CITY COUNCIL MEETING **THURSDAY, DECEMBER 17, 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, December 17, 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 867 6932 1568 and using the password 091001.

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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.

CALL TO ORDER

Mayor, Gina Fulkerson, called the meeting to order on December 17, 2020 at 6:00 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*)

Sarah Griffin	City Attorney (<i>via teleconference</i>)
John Provost	Public Works Superintendent (<i>via teleconference</i>)
Nathan Glaiser	Planning & Development Coordinator (<i>via teleconference</i>)

INVOCATION

Wimberley United Methodist Church Reverend, Wes Cain, gave the invocation.

PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

Mayor, Gina Fulkerson, led the pledges to the United States 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 Jim Chiles. Motion carried unanimously (5-0).

6.1. Approval of minutes from the Regular City Council Meeting held December 3, 2020.

6.2. Approval of the October 2020 Financial Statements for the City of Wimberley.

6.3. Approval of Mayor Gina Fulkerson's appointment of Gail Pigg to the Board of Adjustment.

6.4. Approval of Place Five Council Member Bo Bowman's appointment of Michael Rambo to the Board of Adjustment.

6.5. Approval of Craig Reitz's resignation from the Planning and Zoning Commission.

CITY ADMINISTRATOR REPORT

Interim City Administrator, Paul Parker, provided an update regarding weekend traffic control efforts in the Wimberley Square, which would continue through the end of December. Public Works Superintendent, John Provost, thanked Keep Wimberley Beautiful for their continued efforts in maintaining a clean community. Additionally, Mr. Provost updated Council on three Texas Department of Transportation projects in progress for the City, which included repainting the center line arrows in the Wimberley Square, pedestrian crosswalk lights at the main Ranch Road 12 crossing in the Wimberley Square and additional no thru truck signage on County Road 1492. There was discussion among City staff and Council regarding these projects.

PUBLIC HEARINGS AND POSSIBLE ACTION

8.1. Hold a public hearing and consider possible action regarding case CUP-20-007, an application for a Conditional Use Permit to allow for a short-term rental (STR2) on property zoned Residential Acreage (RA) located at 380 Hoots Holler, Wimberley, Hays County, Texas. (*Applicant: Tomas Palm, owner*)

Mayor, Gina Fulkerson, opened the public hearing at 6:17 p.m.

There were no public comments.

Mayor, Gina Fulkerson, closed the public hearing at 6:18 p.m.

Planning and Development Coordinator, Nathan Glaiser, presented the request to allow for a short-term rental. The Planning and Zoning Commission had unanimously voted to recommend approval of the CUP at their December 10th meeting.

Motion to approve case CUP-20-007, an application for a Conditional Use Permit to allow for a short-term rental (STR2) on property zoned Residential Acreage (RA) located at 380 Hoots Holler, Wimberley, Hays County, Texas, contingent upon the entrance being located on Flite Acres, was made by Council Member Christine Byrne. Motion was seconded by Council Member Rebecca Minnick. Motion carried unanimously (5-0).

- 8.2. Hold a public hearing and consider possible action regarding case CUP-20-008, an application for a Conditional Use Permit to allow to allow for the sale of alcohol (beer and wine retail) on property zoned Commercial – Low Impact (C-1) located at 13510 Ranch Road 12, Wimberley, Hays County, Texas. (*Applicant: Max & Kathryn Saballet, owners*) Mayor, Gina Fulkerson, opened the public hearing at 6:22 p.m. Applicants, Max and Kathryn Saballet, spoke in favor of the application, and presented their business model for operation of a tasting room with the on-premise sale and consumption of beer and wine to Council. Mayor, Gina Fulkerson, closed the public hearing at 6:32 p.m. The Planning and Zoning Commission had unanimously voted to recommend approval of the CUP at their December 10th meeting.

Motion to approve case CUP-20-008, an application for a Conditional Use Permit to allow to allow for the sale of alcohol (beer and wine retail) on property zoned Commercial – Low Impact (C-1) located at 13510 Ranch Road 12, Wimberley, Hays County, Texas, was made by Council Member Rebecca Minnick. Motion was seconded by Council Member Bo Bowman. Motion carried unanimously (5-0).

- 8.3. Hold a public hearing and consider possible action regarding case ZA-20-003, an application for a Zoning Amendment to change the zoning for the property located at 101 Twilight Trail; the requested change would change the zoning from Commercial – Moderate Impact (C-2) to Animal Sales / Service (AS/S), Wimberley, Hays County, Texas. (*Applicant: Jon Leslie, Medtech Construction for owner, Wimberley Walker RE Holdings, LLC*) Mayor, Gina Fulkerson, opened the public hearing at 6:34 p.m. Jon Leslie, the project's contractor, spoke in favor of the application to convert a former automotive garage into a veterinary clinic. Applicant, Mike Walker, also spoke in favor of the zoning amendment, and stated his dream was to open a veterinary clinic for small animals. Mayor, Gina Fulkerson, closed the public hearing at 6:38 p.m. The Planning and Zoning Commission had unanimously voted to recommend approval of the zoning amendment at their December 10th meeting.

Motion to approve case ZA-20-003, an application for a Zoning Amendment to change the zoning for the property located at 101 Twilight Trail; the requested change would change the zoning from Commercial – Moderate Impact (C-2) to Animal Sales / Service (AS/S), Wimberley, Hays County, Texas, was made by Council Member Teresa Shell. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).

8.4. Hold a public hearing and consider possible action regarding case SUB-20-005 “Rocky Acres”, an application for a three-lot subdivision located at 1130 Oakwood Loop; Wimberley, Hays County, Texas. (*Applicant: Christopher & Katie Chessher, et al. owner*)
The application had been withdrawn by the applicant prior to the City Council Meeting.
This item was not heard.

8.5. Hold a public hearing and consider possible action regarding case T-20-002, an application to place a temporary structure – a mobile food trailer located at 13601 Ranch Road 12, Wimberley, Hays County, Texas. (*Applicant: Melissa Nance Triforks Food Truck*)
Mayor, Gina Fulkerson, opened the public hearing at 6:40 p.m.

There were no public comments.

Mayor, Gina Fulkerson, closed the public hearing at 6:41 p.m.

Planning and Development Coordinator, Nathan Glaiser, presented the application for the mobile food trailer. The Planning and Zoning Commission had unanimously voted to recommend approval of the application at their December 10th meeting.

Motion to approve case T-20-002, an application to place a temporary structure – a mobile food trailer located at 13601 Ranch Road 12, Wimberley, Hays County, Texas, was made by Council Member Christine Byrne. Motion was seconded by Council Member Rebecca Minnick. Motion carried unanimously (5-0).

DISCUSSION AND POSSIBLE ACTION

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

Project Manager, Craig Fore, stated the electrical installation of the lift station had been completed. The generator was in place and the connecting wires had been installed. The City was still waiting on the Texas Water Development Board to approve Change Order No. 6. There was discussion pertaining to the Project.

No action was taken on this item.

9.2. Discuss and consider possible action to award a contract to Patriot Underground, LLC in the amount of \$442,460.50, subject to final approval from the Texas Water Development Board for Notice to Proceed. (*Interim City Administrator, Paul Parker*)

Interim City Administrator, Paul Parker, presented the bid from Patriot Underground, LLC, for the installation of approximately 2,100 linear feet of pressurized wastewater line along the western right-of-way of Ranch Road 12, for Phase II of the Central Wimberley Wastewater Project. The contract would be for 75 days, once executed by both parties. The City would still need the bid reviewed and approved by the Texas Water Development Board before moving forward with the contract award.

Motion to award a contract to Patriot Underground, LLC in the amount of \$442,460.50, subject to final approval from the Texas Water Development Board for Notice to Proceed, was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (5-0).

9.3. Discuss and consider possible action regarding an expenditure of \$6,500 for the Checkfront Reservation System, which will be utilized for the 2021 swim season at Blue Hole Regional Park. (*Parks Director, Richard Shaver*)

Motion to approve an expenditure of \$6,500 for the Checkfront Reservation System was made by Council Member Christine Byrne. Motion was seconded by Council Member Bo Bowman. Motion carried unanimously (5-0).

- 9.4. Discuss and consider possible action regarding a salary increase of three percent (3%) for City employees. *(Interim City Administrator, Paul Parker)*

There was discussion regarding City of Wimberley employee salaries being lower than surrounding cities and in general. Several City staff members had recently been promoted to new positions with salary adjustments, and therefore, those individuals would not be eligible for the proposed pay increase.

Motion to approve a salary increase of three percent (3%) for City employees was made by Council Member Christine Byrne. Motion was seconded by Council Member Bo Bowman. Motion carried unanimously (5-0).

- 9.5. Discuss and consider possible action regarding an ordinance extending 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 and providing for an effective date. *(Mayor, Gina Fulkerson)*

Motion to approve Ordinance No. 2020-31, extending the moratorium as adopted in Ordinance No. 2020-28 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 and providing for an effective date, was made by Council Member Christine Byrne. Motion was seconded by Council Member Rebecca Minnick. Motion carried unanimously (5-0).

- 9.6. Discuss and consider possible action regarding downtown parking, sidewalks and restroom facilities. *(Mayor, Gina Fulkerson)*

There was lengthy discussion among Council members concerning the potential project and related project funding for downtown visitor parking, ADA compliant sidewalks, public restrooms and a visitor's kiosk on Oak Drive.

No action was taken on this item.

EXECUTIVE SESSION

City Council adjourned into Executive Session at 7:42 p.m., in accordance with Texas Government Code, Chapter 551, Subchapter D, for the following purposes:

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.

OPEN SESSION

Regular Session reconvened at 8:08 p.m.

No action was taken.

CITY COUNCIL REPORTS

- 12.1. Announcements – Mayor, Gina Fulkerson, wished everyone a safe and happy holiday break.

12.2. Future agenda items – Review of City Council Fiscal Year 2021 goals and priorities and continued discussion regarding the downtown improvements project.

ADJOURNMENT

Motion to adjourn the meeting at 8:10 p.m. was made by Council Member Bo Bowman. Motion was seconded by Council Member Rebecca Minnick. Motion carried unanimously (5-0).

RECORDED BY:

Laura J. Calcote, City Secretary

APPROVED BY:

Gina V. Fulkerson, Mayor





City of Wimberley

221 Stillwater Drive, Wimberley, Texas 78676

SPECIAL CITY COUNCIL MEETING **TUESDAY, DECEMBER 22, 2020 – 10:00 A.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 **Tuesday, December 22, 2020, at 10:00 a.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 850 0925 8466 and using the password 828100.

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, 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.

CALL TO ORDER

Mayor, Gina Fulkerson, called the meeting to order on December 22, 2020 at 10:09 a.m.

CALL OF ROLL

Council Members Present:

Gina Fulkerson
Rebecca Minnick
Teresa Shell
Christine Byrne
Jim Chiles

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

Council Members Absent:

Bo Bowman

Place Five (*via teleconference*)

City Staff Present:

Paul Parker

Interim City Administrator (*via teleconference*)

Laura Calcote
Sarah Griffin
Terri Provost

City Secretary (*via teleconference*)
City Attorney (*via teleconference*)
Wimberley Community Center Director
(*via teleconference*)

DISCUSSION AND POSSIBLE ACTION

3.1. Discuss and consider possible action regarding a temporary construction easement to be located on property owned by Mr. Joe W. Fell and authorizing the City Administrator to execute said easement.

Motion to approve Resolution No 14-2020, authorizing the City Administrator to execute a temporary construction easement with minor adjustments for drainage improvement, located at 1600 Little Ranches, on a property owned by Joe W. Fell, as presented, was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (4-0).

3.2. Discuss and consider possible action regarding a temporary and permanent drainage easement to be located at 160 Hoots Holler, Wimberley, Hays County, Texas, on property owned by Mr. John Palumbo and authorizing the payment of \$2,524.79 for a permanent easement of .095 acres (1,439 sq. ft.).

Motion to approve Resolution No. 15-2020, authorizing the acceptance of a temporary construction easement and permanent drainage easement agreement for drainage improvements to be located at 160 Hoots Holler, Wimberley, Hays County, Texas, on a property owned by John Palumbo, with a language amendment to Section 1, and authorizing the payment of \$2,524.79, was made Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (4-0).

ADJOURNMENT

Motion to adjourn the meeting at 10:18 a.m. was made by Council Member Christine Byrne. Motion was seconded by Council Member Jim Chiles. Motion carried unanimously (4-0).

RECORDED BY:

Laura J. Calcote, City Secretary

APPROVED BY:

Gina V. Fulkerson, Mayor





CITY OF WIMBERLEY

Application for Appointment to City Board/Commission/Committee

Name of Board/Commission/Committee: Board of Adjustments

Nominated By: Tersea Shell

Name: Thomas Gordon Phone: [REDACTED] E-mail: [REDACTED]

Physical Address: [REDACTED]

Mailing Address
(If different than physical address): _____

Employer: Retired Position/Occupation: Journalist

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.

A little background: I am a Vietnam Veteran. Have a BA degree in journalism. For 45 years I worked at newspapers up and down the West Coast. so I am used to digging into issues. My wife and I retired about 6 years ago and moved to Wimberley -- which we have grown to love.

Signature: Thomas Gordon

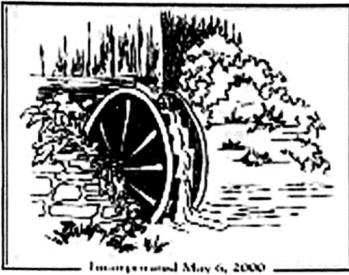
Date: 12/17/2020

From: [Brandon Kibby](#)
To: [Laura Calcote](#); [City Administrator](#)
Subject: January 7th city council meeting
Date: Sunday, January 3, 2021 8:59:58 PM

Hello everyone,

I have moved my funnel cake stand around a little bit and have even worked a few small county fairs. Unfortunately, my February and March fairs have already canceled this year. I am hoping that it is not too late to be added to the January 7th docket of the city council meeting. I do plan on setting up at Odie's Place again and have received permission from the property owner to do so. I do have a fair in East Texas that is scheduled to take place the first three weeks of April, but I do not know anything past that at this point. I would like to secure the permit for the whole year again so that I do not have to do two of them like I did last year. I will be getting my TS permit to you in the morning with the dates, but I just wanted to reach out to the two of you in hopes of making this meeting and not having to wait another three weeks to work.

Thank you ,
Brandon Kibby

City of Wimberley

221 Stillwater, Wimberley, Texas, 78676

Phone: (512) 847-0025 - Fax: (512) 847-0422

www.cityofwimberley.com

Temporary Structure

Planning & Development

Permit No. _____

Date: _____

Applicant: Paradise Amusements / Brandon Kibbey
Mailing Address: P.O.B. 3124 City: Wimberley State: TX Zip: 78676
Phone: [REDACTED] Email: [REDACTED]

(If different from above)

Property Owner: Kevin Fowler / The Faigles LLC
Mailing Address: 1521 Deer Lake Rd City: Wimberley State: TX Zip: 78676
Phone: [REDACTED] Email: [REDACTED]

Subject Property Address: 411 RR 2325

Purpose/Use of Structure: Concession stand

Requested Installation Date: 1/5/2021 Requested Removal Date: None

Will the temporary structure be served by electricity? YES ☐ NO ☒

Will the temporary structure be served by water service? YES ☒ NO ☐

If "YES" to either then an inspection is required for water and/or electrical service.

☐ If service is provided through another meter attach a letter of permission.

☒ Provide a site plan indicating location of temporary structure in relation to other structures, parking lots, property lines etc.

Permission from property owner is attached. YES ☒ NO ☐ N/A ☐

Has a Mobile Food Establishment application been submitted? YES ☒ NO ☐ N/A ☐

Temporary Structure Permit..... \$25.00 each structure

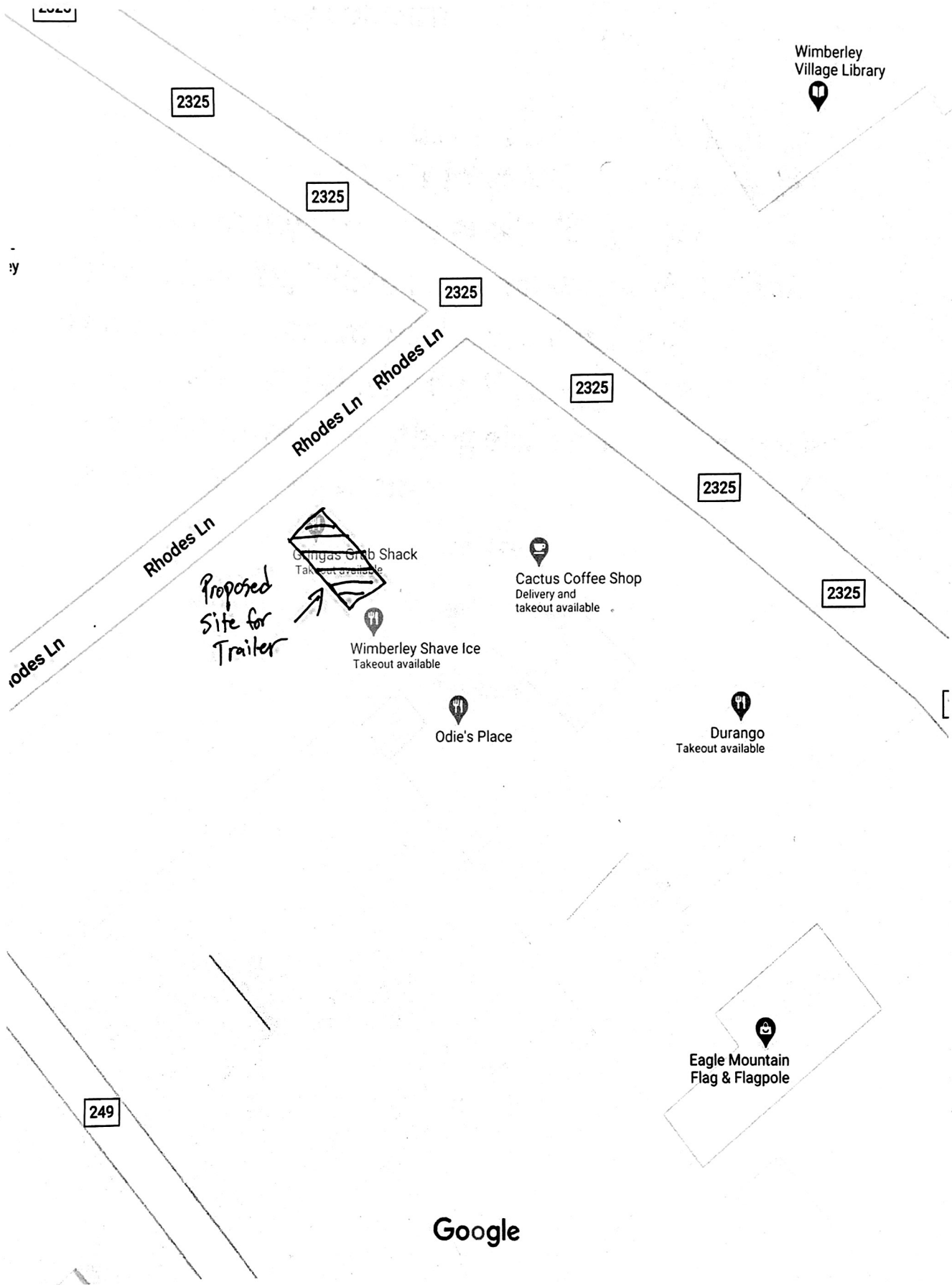
Inspections.....\$65.00 each

I certify that the information contained in this application is true and correct and that if any of the information provided is incomplete or incorrect the permit may not be issued or may be revoked by the City of Wimberley. I understand that all temporary structures or accessory uses shall be removed from the property at the expiration of the time period as defined in the permit unless another Temporary Structure Permit is obtained prior to expiration. I understand that a Certificate of Occupancy may be required and contractor information will be provided if applicable. Adequate parking, restroom, setback and additional requirements per City Ordinance No. 2012-007 & Ordinance No. 2016-007 will be verified by City staff.

Applicant: Brandon Kibbey Date: 1-4-2021

City Official: _____ Date: _____ ☐ Approved ☐ Denied

Google Maps Odies food court

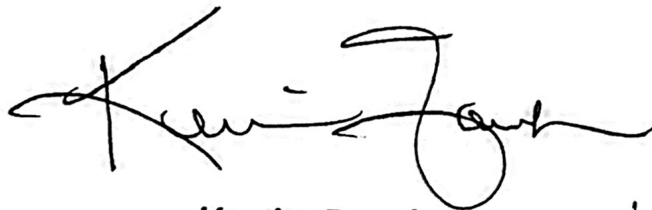


Google

Map data ©2020 20 ft

To whom it may concern:

I give Brandon Kibby / Paradise Amusements
permission to park their food trailer and conduct
business on my property at 411 RR 2325,
Wimberley, Tx, 78676 (commonly known as Odie's
Food Court). Tenant will be using our water,
wastewater and electricity. If you have any
questions or need anything else I can be contacted
at 512-466-2244. Thanks

A handwritten signature in black ink, appearing to read "Kevin Fowler". The signature is fluid and cursive, with a large loop at the end of the last name.

Kevin Fowler

4-8-20



City of Wimberley

221 Stillwater, Wimberley, TX 78676

(512) 847-0025 F/ (512) 847-0422

www.cityofwimberley.com

Mobile Food Unit

Environmental Health Department

Date: _____

Preliminary P&D Review: _____

Permit No.: _____

Mobile Food Unit: Operational Permit Application

(Application required for each additional units)

ANNUAL PERMIT FEE:

☐ \$75.00/ 1st Unit

☐ \$50.00/ Each Additional Unit

NOTE: This application must be filled out completely. **Incomplete applications will not be accepted.** Applications for a permit to operate do not guarantee that a permit will be granted. Permit approval is based upon the establishment or mobile food unit's compliance with state, local health and City regulations. Vendor is in full understanding that this does not authorize operation at any specific location **unless authorized by City Council under a Temporary Structure application.** If you intend to only operate during special events you will need to fill out a Special Food Vendor application. **PERMITS ARE NON-TRANSFERABLE**

BUSINESS INFORMATION

Business Name: Paradise Amusements

Check One: ☐ Individual ☒ Partnership ☐ Corporation (See additional information) ☐ Other _____

Email Address: _____

MOBILE UNIT INFORMATION

MF Unit Type: ☐ Motor Vehicle ☒ Trailer ☐ Other _____ VIN: 1H9BH26238141460

Make: Hitch-Hiker Model: DA26-102 Year: 2008 Color: white

License Plate: BH 2037 State: OK Number of Employees: 2

List of All Menu Items: corn Dogs, Funnel Cakes, Lemonade, (attach a separate piece of paper if need more space)

Business Days & Hours: Mon-Sun 11am-6pm

LOCATION: Odies Place 411 FM 2325 Wimberley, TX 78676

CONTACT INFORMATION

Business Owner: Brandon Kibby Phone Number: _____

Date of Birth: _____ Driver's License: _____ State: TX

Residence Address 8908 Ranch Road 12

City San Marcos State TX Zip Code 78666

Email: _____

MFU CENTRAL PREP FACILITY (require to operate MFU)

Name of CPF: Capital Kitchens CPF Phone: 512 789-7611 Permit #: _____

Address: 1606 W. Stassney Ln. Unit 1 City Austin State TX

Days and Times working at Central Preparation Facility Anytime needed

I verify that all information provided in this agreement is accurate and are responsible to comply within the Texas Department of State Health Services (TDSHS) and the Texas Food Establishment as well as the City of Wimberley Food Code Chapter (TFER's) 18 and will allow access for inspection during business hours for either business.

x Brandon Kibby
Owner/Applicant Signature

Brandon Kibby
Printed Name

1-4-2021
Date

MOBILE FOOD UNIT (MFU) RESPONSIBILITIES

1. Zoning:

Contact the City of Wimberley Planning & Development Department for an approval of your proposed MFU's parking location (a detailed site map of propose location will be required for all Mobile Food Unit applications) (512) 847-0025.

2. The Operation:

Must adhere to State and Local rules /ordinances governing mobile food unit operation at all times.

3. Central Preparation Facility:

Use your Permitted Central Preparation Facility (CPF) to service your unit. The mobile vendor's owner must also possess a separate, valid Food Establishment permit at the CPF location in order to prepare or handle food at the CPF. Maintain a CPF log sheet, documenting all visits to the CPF, and store the log in the mobile vending unit at all times.

4. Home Prepared Food:

DO NOT SERVE FOOD PREPARED AT A HOME TO THE PUBLIC.

5. Food Manager/Food Handler:

Must Post/Maintain at least (1) employee's original, valid Food Manager Certificate (FMC) at all times on Unrestricted Units. Maintain documentation showing all other employees have completed a state approved Food Handlers Training Course within at least (2) years.

6. External Equipment:

Do not use external equipment. All equipment MUST be located within or on the mobile unit at all times, including propane tanks. Have the equipment properly enclosed at all times.

7. Refrigeration & Heating:

Units must contain adequate hot & cold food storage facilities to maintain food at the required temperatures. Hold hot foods at 135°F or above, store cold foods at 41°F or below.

8. Thermometer:

Provide metal stem dial thermometers with a range of 0-220°F and accurate to +/- 2°F on all units that prepare food, in order to monitor food temperatures. Place additional thermometers in all refrigeration/cold-hold units.

9. Labeling:

Properly label all pre-packaged, self-service food items offered in adherence with the current Texas Food Establishment Rules requirements.

10. Mobility:

Maintain a state of mobile readiness at all times. The health authority may prohibit alteration, removal, attachments, placement or change in, under, or upon the mobile food establishment that would prevent or otherwise reduce ready mobility.

11. Utilities/Water:

Do not attach permanent utilities (i.e. plumbing, gas, electrical, water) to the unit. Do not attach a water hose or any other permanent water supply to the unit.

12. Holding Tanks:

Install permanent, properly sized holding tanks for fresh water and wastewater in each unit. Tanks must allow a valve access to the exterior of the unit for operators to empty/fill the tanks. Operator must ensure that emptying and/or filling the tank does not contaminate the surrounding ground surfaces or the mobile unit; and/or create breeding grounds for insects or unsanitary conditions at any time.

13. Hot & Cold Water:

Maintain a safe and secure water supply for Unrestricted Units. Hot and cold water must be available under pressure for immediate use to all sinks at all times of operation.

14. Handwashing:

Supply soap, single use towels and hot/cold water under pressure to hand sinks at all times.

15. Documents Required:

1) Complete Permit Application 2) Supporting Documents 3) Payment in full

x 
Owner/Applicant Signature

Brandon K. Bay
Printed Name

1-4-2021
Date

I have read/understand the items of responsibility listed above and agree to comply with all requirements as listed. I understand that any observed violation of or deviation from these requirements may result in suspension of my permit and/or legal actions, such as charges court charges filed.

✓ **CHECK LIST REQUIREMENTS** (attach copy of all un-expired documents):

- ☒ A detailed site map of propose location required for all Mobile Food Unit
- ☒ Central Preparation Facility Responsibility Letter (yearly renewal)
- ☐ For self-contained Mobile Food Unit – Submit letter or permission from approved potable water and Wastewater facility
- ☒ Copy of Menu Items to be sold at this facility
- ☒ A floor plan of the Mobile Food Establishment
- ☒ A copy of most recent inspection form of Central Preparation Facility
- ☐ Copy of a valid DL
- ☒ Copy of valid Food Handlers permit
- ☐ Applicable Fees

FOR OFFICE USE ONLY

Application Received on: _____ Payment Received: \$ _____ Cash / CC / Check #: _____

Date Inspected: _____

COW- _____

Equipment Temps: _____

Food Manager Certified: _____ Exp. Date: _____

Food Handler Certified: _____ Exp. Date: _____

Comments: _____

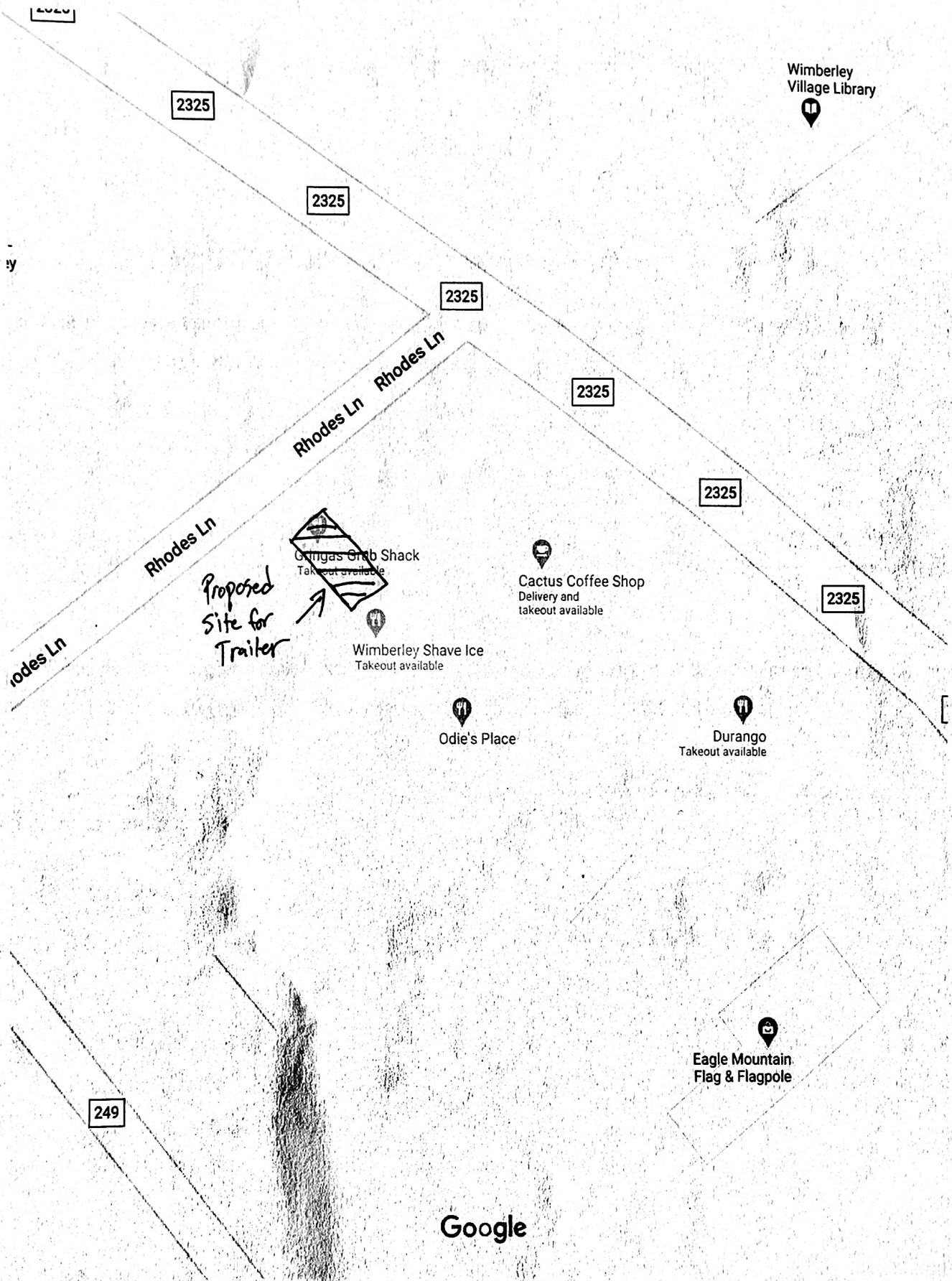
Re-inspection Required: [] Yes [] No

Permit: [] Approved [] Denied

Environmental Health Inspector Signature: _____ **Date:** _____

Google Maps

Odies food court



Map data ©2020 20 ft



Hays County Development Services

2171 Yarrington Rd, Suite 100, Kyle Texas 78640

512-393-2150 / 512-493-1915 fax

Certification on Jurisdiction of Commissary

If the central preparation facility (commissary) is located outside of the jurisdiction of Hays County, the Health Authority in that jurisdiction must complete the following certification:

Capital Kitchens

Name of Food Establishment

1606 W Stassney Ln, Unit 1, Austin, TX 78745
512-789-7611

Address & Phone Number

I certify that the above food establishment is currently approved to operate as a commissary. The commissary must meet the current Texas Food Establishment Rules, Chapter §228.221 (b) & (c).

[Signature]

Signature of Health Officer/Authority

Matthew Perl

Print Name

Traut County

Jurisdiction

512-978-0300

Jurisdiction's Phone Number

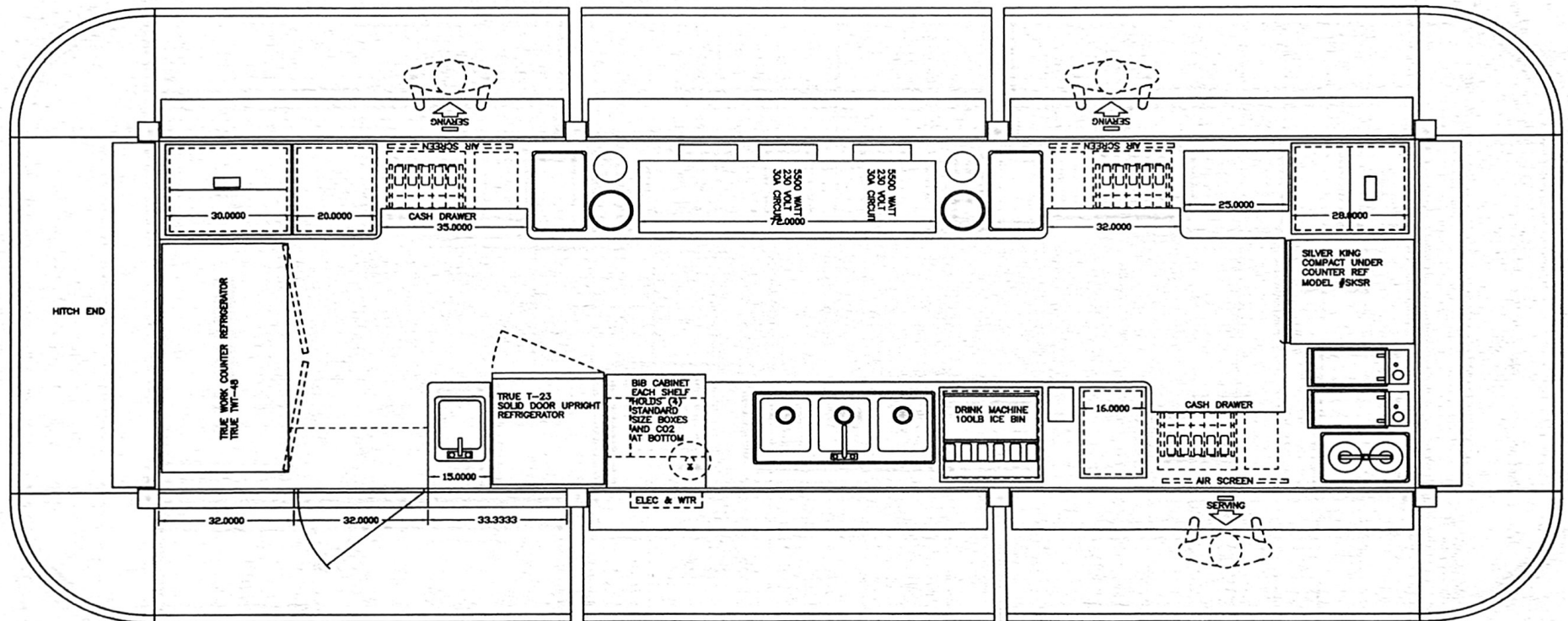
Please return this signed form to:

HAYS COUNTY DEVELOPMENT SERVICES

2171 YARRINGTON RD, SUITE 100

KYLE, TEXAS 78640

2008 HITCH-HIKER 26' FUNNEL CAKE UNIT - BRANDON AND MELISSA KIBBY - REV 2

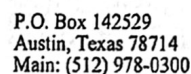


HITCH-HIKER MANUFACTURING

10065 RAPP ROAD - NEW MIDDLETOWN, OH. 44442
PHONE (330) 542-3052 FAX (330) 542-0304

WARNING: THIS PRINT IS THE PROPERTY OF HITCH-HIKER TRAILERS, AND IS LOANED SOLELY FOR THE PURPOSE OF THAT CORPORATION, AND IS SUBJECT TO RETURN UPON DEMAND. IT IS STRICTLY CONFIDENTIAL, AND IS LOANED WITH THE UNDERSTANDING THAT NEITHER IT NOR ANY INFORMATION CONTAINED THEREIN WILL BE COPIED, PUBLISHED OR TRANSMITTED TO OTHERS.

DATE	CUSTOMER
DRAWING NO.	DESIGN



The following inspection report will be sent to recipient's email address as stated on the above inspection report.

1. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
2. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
3. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
4. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
5. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
6. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
7. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
8. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
9. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.
10. Name of the person who has been appointed as the person in charge of the project.	Mr. A. B. C.

Please complete our Environmental Health Services survey at www.surveymonkey.com/s/EHSDSurvey



FOOD ESTABLISHMENT PRE-OPENING INSPECTION REPORT
Environmental Health Services Division
EHSD.Service@AustinTexas.gov

P.O. Box 142529
 Austin, Texas 78714
 Main: (512) 978-0300

Insp. Date: 12/05/2019	Time in: 01:50 PM	Time out: 02:00 PM	Plan #:	Request #:	Jurisdiction: Austin	District: D-03	Visit #
Purpose of Inspection: ☐ 1-Certificate of Occupancy ☐ 2-Change of Ownership ☒ 3- Change of Ownership (Additional Use) ☐ 4-Other							
Establishment Name: Capital Kitchens - North						Follow-up Required ☐ YES ☒ NO	
Physical Address: 2823 HANCOCK DR, AUSTIN, TX 78731							
Building Permit:		TCO Stocking _____ TCO Occupancy _____		TCO Conditions:			
Compliance Status: OUT = Not In Compliance IN = In Compliance NA = Not Applicable COS = Corrected On Site Mark a checkmark '✓' in appropriate box for IN, OUT, NA, COS							
PRIORITY ITEMS (3 Points) Violations Require Immediate Corrective Action not to exceed 3 days							
O U T	I N	N A	C O S				
✓				1. Submit a complete permit application to operate a food establishment			
✓				2. Provide copy of Certificate of Occupancy Call 512-974-1374 for assistance			
✓				3. Refrigeration maintaining at 41° F or below, doors close properly & have a good seal, thermometers provided.			
✓				4. Provide mop sink or curbed drain facility to dispose of wastewater. Plumbing in Good repair.			
✓				5. Provide indirect connection at ware wash, spray sinks and culinary sinks, ice maker, ice bins and jockey boxes.			
✓				6. Adequate ware washing facilities (ex:dish machine sanitizing, 3-compartment sink, 2-compartment sink with proper documentation).			
✓				7. Hot & cold water supplied to all sinks (100°F minimum for hand sinks and lavatories, 110 F minimum for ware washing sinks).			
✓				8. Adequate number of hand sinks w/splash guards, signage. Handwashing sink signage. Metered faucets must flow for 15 seconds.			
✓				9. No cross connections (backflow preventers at all threaded hose bibs, spray nozzle above rim).			
	✓			10. Exterior doors to be tight fitting and have a self-closure. No daylight under or around doors.			
	✓			11. Adequate number of restrooms provided, covered waste receptacles and "employees must wash hands" signage.			
	✓			12. Self-closures on restroom doors.			
	✓			13. Restrooms to be provided with forced air mechanical ventilation to the outside.			
	✓			14. Adequate light/shielded or coated lights in food prep areas, food storage areas, bar and ware washing areas.			
	✓			15. Walls, floors, ceilings and food prep surfaces to be constructed of smooth, durable, easily cleanable, non-absorbent materials.			
	✓			16. City of Austin Smoking Ordinance Signage and First Aid Kits.			
	✓			17. No exposed horizontal conduit or plumbing on walls or ceilings.			
	✓			18. Dumpster with plug on machine laid asphalt or concrete pad.			
Received by: (signature) _____				Print: MShannon Paprocki		Title: Operator	
Inspected by: (signature) <i>DuShun Phillips</i>				Print: DuShun Phillips		Email: _____	
						Business Phone # _____	

The following inspection report will be sent to recipient's email address as stated on the above inspection report.

CITY OF AUSTIN REQUIRES VALID, POSTED FOOD MANGER AND FOOD HANDLER CERTIFICATES AT START OF FOOD OPERATION.
 Inspection approval does not constitute Permit approval, a Certificate of Occupancy or the building may be occupied/the business may begin operation.

****To obtain Operating Permit, complete above and pay \$ _____ INSPECTION FEE. Main Office Mon – Fri 7:45am – 3:30pm****

Texas
USA

DRIVER LICENSE

Director *Gregory M. Davis*



**COMMERCIAL
DRIVER LICENSE**

4d. DL: **08764095**

3. DOB: **04/05/1978**

9. Class: **AM**
4b. Exp: **04/05/2028**
4a. Iss: **07/09/2020**

1. **KIRBY**

2. **BRANDON SHAE**

8. **8906 RANCH ROAD 12
SAN MARCOS, TX 78688**

12. Rest: **NONE**

16. Hgt: **6'-00"**

5. DOB: **20621000110010000000**

BRO



Menu

Funnel Cake (8").....\$6.00

Family Size Funnel Cake (12")\$10.00

Funnel Cake Topping\$1.00

Strawberry, Hershey Syrup, Caramel, Cream Cheese,
Bavarian Cream, Apple Cinnamon

Hand Dipped Jumbo Corndog (11")\$5.00

Churro(2-11"Churros).....\$3.00

Carmel Apple Slices (plain or with peanuts)..\$4.00

Cotton Candy\$4.00

Fresh Squeezed Lemonade (32oz).....\$4.00

Bottled Water (20oz).....\$2.00

Gatorade (20oz).....\$2.00



Learn2Serve Texas Food Manager Certification Program

This document hereby certifies that

Brandon Kibby

**Has successfully completed the Learn2Serve
Texas Food Safety Manager Certification Examination**

A handwritten signature in cursive script, appearing to read "Samantha Montalban", written over a horizontal line.

**Samantha Montalban, Learn2Serve
Authorized Signature**
www.learn2serve.com

Effective Date: 09/25/2019

Expiration Date: Expires 5 years from the effective date

Certification Number: TX-130107

This is an electronic certificate which must be presented to your local Health Regulatory Agency for approval. Course fees do not include any fees associated with receiving your food manager re-certification or certification license.



Central Wimberley Wastewater Project - Status Update

December 17, 2020

Prepared By: Craig Fore

Construction

Lift Station (RR12 @ FM 3237)

Electrical installation at the lift station is complete. The generator is in place and connecting wires have been installed. The transfer switch and connecting wires were installed last week and tested. We are waiting for direction from Plummer and Associates for testing of the lift station pumps.

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. We expect that to occur sometime in January.

Texas Water Development Board (TWDB)

Coordination

We held a mandatory pre bid conference on Monday November 23 at 3:00 for any interested bidders. Bids were open at 10:00 a.m. on Friday December 11,2020. The lone bidder was Patriot Underground. Action should be taken at tonight's council meeting.

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.

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







AGENDA ITEM:	Extension of Contract for Project Manager, Craig Fore
SUBMITTED BY:	Gina Fulkerson
DATE SUBMITTED:	December 15, 2020
MEETING DATE:	January 7, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Craig Fore was hired as a contract Project Manager for oversight of the Wastewater Project Construction and for assistance and coordination of customer sewer tap connections. His contract expires on January 31, 2021 and the project and connections will not be complete

REQUESTED ACTION

Motion ☒
 Discussion ☒
 Ordinance ☐
 Resolution ☐
 Other ☐

FINANCIAL

Budgeted Item	☒	Original Estimate/Budget:	\$ 31,500
Non-budgeted Item	☐	Current Estimate:	\$ 20,000 (appx)
Not Applicable	☐	Amount Under/Over Budget:	\$

STAFF RECOMMENDATION

ATTACHMENT/S

PSA for Construction Management for the Central Wimberley Wastewater Project

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MANAGEMENT FOR THE
WIMBERLEY WASTEWATER PROJECT**

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Agreement is entered into by and between the City of Wimberley, a Texas Municipal Corporation (“City”), acting by and through its Mayor, and Craig Fore (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“Mayor” shall mean the Mayor and/or his/her designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 3, 2020 and terminate on January 31, 2021.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Exhibit A, which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the Mayor. The determination made by Mayor shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Mayor. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory

to Mayor; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Mayor, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$31,500 as total compensation, to be paid to Consultant as further detailed in Exhibit B.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of services require written approval by City. The approval official shall be the Mayor. Payment will be made to Consultant following written approval of the services by the Mayor on a monthly basis. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such

questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention. In the alternative, Consultant, at his option, may turn all documents produced as a result of services provided hereunder over to City at the termination of this Agreement.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.2 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.3 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.4 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the

addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Wimberley
Attn: Mayor Gina Fulkerson
221 Stillwater
Wimberley, Texas 78676

If intended for Consultant, to: Craig Fore
P.O. Box 1150
Wimberley, TX 78676

IX. INDEMNIFICATION

9.1 To the fullest extent permitted by law, the CONSULTANT shall INDEMNIFY and HOLD HARMLESS the CITY, its elected officials, employees, officers, directors and partners from and against damages arising from third party claims for bodily injury or property damage, including payment of reasonable attorneys' fees incurred by the CITY, but only to the extent solely caused by the intentional or negligent act, error or omission of the CONSULTANT, or the CONSULTANT's consultants or agents, in performance of services under this Agreement.

9.2 Force Majeure - City agrees that the Consultant is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by Consultant.

X. ASSIGNMENT AND SUBCONTRACTING

10.1 Consultant shall not assign or subcontract any services under this Agreement without written approval of City.

10.2 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XI. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XII. CONFLICT OF INTEREST

12.1 Consultant warrants and certifies, that he has no conflicts of interest in relation to this Agreement and that this Agreement is made in reliance thereon by City, and that neither he, nor any officers, employees and agents are officers nor employees of the City.

12.2 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIII. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

XIV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code, or ordinances of the City of Wimberley, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or

unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XV. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVI. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIII. LAW APPLICABLE

18.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HAYS COUNTY, TEXAS.

18.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Hays County, Texas.

XIX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XX. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXI. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Exhibit "A" - Scope of Services

Exhibit "B" - Fee Summary – time and materials basis w/not to exceed

XXIII. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIII. Amendments.

XXIV. MISCELLANEOUS CITY CODE PROVISIONS

24.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

24.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

24.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

24.4 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

24.5 Texas Government Code Mandatory Provision. The City of Wimberley may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF WIMBERLEY

CONSULTANT


(Signature)

Printed Name: Gina Fulkerson

Title: Mayor

Date: July 3, 2020


(Signature)

Printed Name: CRAIG M. FORE

Title: PROJECT MANAGER

Date: JULY 3, 2020

APPROVED AS TO FORM:



City Attorney

DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

EXHIBIT A

Scope of Services Required:

Project Management Services shall consist of providing Project Management support to work under the direct supervision of City of Wimberley staff to provide construction support for the Project. The CONSULTANT will be responsible for providing all necessary equipment including but not limited to computer, software, digital camera and cell phone as part of their overhead and without separate reimbursement. Activities for which CONSULTANT will be required include any or all of the following:

Construction Phase

- Observe and document construction progress.
- Serve as the City's liaison to Engineer and Contractor(s).
- Coordinate tests and special inspections with Contractor/s and Construction Materials Testing firm, Engineer and the City.
- Review and monitor project schedule and submittals and verify progress of the work to the Contractor's established schedule/s.
- Facilitate Requests for Information from Contractor(s) and responses from Engineer and the City.
- Facilitate and document submittal review by receiving submittals from Contractor(s), reviewing for completeness and distributing to Engineer and the City for technical review.
- Review work and make recommendations to City to reject work that does not comply with Contract Documents.
- Schedule with Contractor(s), Engineer, and the City tests, inspections, training and other activities needing coordination between the parties.
- Preparation of periodic reports of construction progress and status of all RFI's, submittals, change proposals, change orders, field orders, etc.
- Conduct wage rate interviews with contractor's personnel.
- Maintain a set of as-built drawings.
- Receive and review invoices and payment requests, communicate this information to City Engineer for recommendation, review City Engineer's recommendations and provide to City for payment.
- Participate in the close-out inspections.
- Coordinate with the project engineer and contractors to verify that final punch list items have been addressed.
- Monitor construction logistics between the General Contractor, the Project Engineer, the City Engineer, the Inspector and the City.
- Provide written and oral progress reports to City Council at each regular City Council meeting and upon request of the Mayor or City Council.
- Attend, arrange and conduct a variety of meetings, as required.
- Generate weekly site visit reports describing general events, noting problems and unusual events.
- Monitor preparation of the punch-list and manage punch-list process.
- Monitor close-out procedures.
- Evaluate change order request/s and provide recommendation for approval or rejection, in coordination with the City Engineer and Project Engineer, when appropriate.
- Coordinate future customer/user communication regarding tie-in location and logistics

EXHIBIT B

Time & Material Basis w/ not to exceed

Project Manager	\$60 per hour
Time	Approximate 75 hour/month average*
Mileage	There shall be no mileage reimbursement for travel within a ten (10) mile radius of the City limits of the City of Wimberley Reimbursement for travel ten (10) miles or more outside the City limits of the City of Wimberley shall be at a rate of 57.5 cents per mile.
Total Not to Exceed	\$31,500

*Contractor shall not exceed 75 hours per month without prior written consent of the Mayor

City of Wimberley - Kiosk Agreement

WHEREAS, the **City of Wimberley** (the "City") wishes to facilitate additional COVID testing programs within the City that are generally available to the public; and

WHEREAS, Curative, Inc. ("Vendor") has entered into a testing agreement with the State of Texas, through the Texas Division of Emergency Management, for the purpose of providing testing in Texas communities; and

WHEREAS, Curative Inc. ("Vendor"), is in the process of completing a self-serve (pilot phase, subject to modifications) to the public Kiosk for COVID testing; and

WHEREAS, the **City of Wimberley** previously agreed to allow testing to take place at a specified area of its parking lot at the Wimberley Senior Center at 14068 Ranch Road 12, Wimberley, Texas, and give access to a specific designated part of the Community Center beginning in October 2020; and

WHEREAS, the **City of Wimberley** has agreed to extend such testing as described herein.

Subject to the terms and conditions below, City, at no charge to Vendor, shall provide a public area for placement of Vendor supplied kiosk with no cost to Vendor, and Vendor shall supply such kiosk, at no charge to City on the following days: January 4, 2021 – December 31, 2021. The site will be in operation from 9:00am till 5:30pm, seven (7) days a week. This is subject to change at the discretion of the Vendor.

1. Vendor shall comply with all **City of Wimberley** property and facility rules and regulations.
2. Vendor shall be considered an independent contractor and neither the Vendor nor its workers or consultants shall, under any circumstances, be considered employees of the City.
3. The City shall not be liable for any damage caused in any way, including, but not limited to acts of nature, i.e. power failure, earthquake, flood, fire, explosion, theft, and vandalism to persons or properties in the space used by the vendor.
4. The Vendor agrees that all personal property upon the premises shall be at the risk of the Vendor, and that the City shall not be liable for any damages, losses or theft thereof.
5. Vendor shall furnish all labor, services, materials, supplies, and equipment necessary to maintain the operation of the kiosk during hours defined by the Vendor.
6. Vendor shall secure and keep a general commercial insurance policy covering personal injury and property damage in the amount of not less than \$1 million per occurrence, \$2 million aggregate with the **City of Wimberley** listed as an additional named insured. Vendor shall also secure and maintain workers' compensation insurance if Vendor has employees as required by State law.

7. Vendor shall only operate in the approved kiosk location within the area specified by the **City of Wimberley**. The specified location is the Wimberley Senior Center parking lot located at 14068 Ranch Road 12, Wimberley, Texas.
8. The **City of Wimberley** will furnish electricity in such locations where these utilities now exist. All requests for additional use of these facilities and/or additional installations or any special needs must be made in writing to the **City of Wimberley** listing specific needs and approved by the City Administrator.
9. Kiosk and all intellectual property associated with such shall remain the sole and exclusive property of Vendor.
10. Upon the expiration or termination of this Agreement, Vendor shall remove all goods, belongings, and fixtures belonging to the Vendor, and shall leave the City provided area, in the condition in which it was received, reasonable wear and tear expected. Either Party may terminate this Agreement by providing thirty (30) days written notice to the other Party.

COMPLIANCE WITH LAWS

The Vendor shall comply with all applicable Federal, State, and local laws, rules, and regulations.

City of Wimberley:

Signature:

Date: January 4, 2021

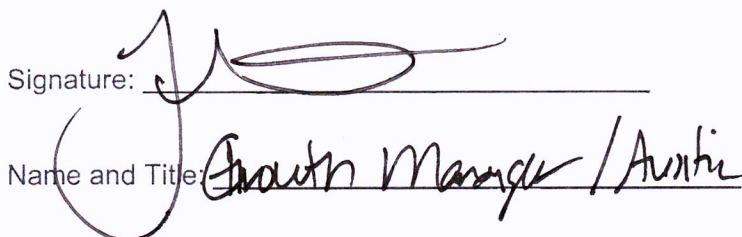

Gina Fulkerson, Mayor

Curative Inc:

Signature:

Date: 1/5/2021

Name and Title:





AGENDA ITEM:	Interlocal Agreement for Floodplain Administration
SUBMITTED BY:	City Planning and Development Coordinator, Nathan Glaiser
DATE SUBMITTED:	1/4/2021
MEETING DATE:	1/7/2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Discuss and consider possible action to approve an Interlocal Agreement with Hays County for floodplain administration services. The City will direct all floodplain related questions, permits, and permitting fees to the County for the next six months while new City staff work toward Certified Floodplain Manager(CFM) certification.

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 Council approve this item.

ATTACHMENT/S

Interlocal Agreement Regarding Floodplain Administration Services

**INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY, TEXAS AND THE CITY
OF WIMBERLEY, TEXAS REGARDING FLOODPLAIN ADMINISTRATION
SERVICES**

This Interlocal Agreement Regarding Floodplain Administration ("ILA") is made on the last date entered below between the City of Wimberley, a Texas general law municipality ("City") and the County of Hays, a political subdivision of the State of Texas ("County"), collectively referred to hereinafter as "the Parties." This ILA is for floodplain administration services for the area within the boundaries of the City.

WHEREAS, the City desires to comply with the National Flood Insurance Program within the boundaries of City; and

WHEREAS, the City desires that Hays County administer the Flood Damage Prevention Regulations for the area within the boundaries of the City; and

WHEREAS, City has adopted Flood Damage Prevention Regulations, which are necessary to comply with the National Flood Insurance Program; and

WHEREAS, this agreement is made pursuant to and under the provisions of Chapter 791, Texas Government Code.

NOW THEREFORE, the County and City mutually agree as follows:

1. The City shall review its Regulations from time to time and may update such Regulations consistent with any updates to the Regulations of the County, and the City shall take any and all actions necessary to remain in compliance with the National Flood Insurance Program during the entire term of this Agreement.
2. The Floodplain Administrator of City, under those certain Regulations adopted by the City (a copy of which is attached hereto as Exhibit "A") hereby designates as his agent under said Regulations, the Director of the Development Services Department of Hays County, Texas, his successor(s), or assigns (hereinafter referred to as the "Director") as Interim City Floodplain Administrator.
3. The Director will perform all duties of floodplain administrator as provided in said Regulations, but shall not be considered during the term of this agreement as an employee of City.
4. As consideration for performance of this Agreement by the County, any and all fees for inspections and /or licenses shall be paid directly to Hays County for the receipt thereof, and no funds received by the County in payment for fees for inspections and/or licenses shall be paid to the City. All such funds shall be retained to pay for services rendered by the County.
5. The City shall timely forward all correspondences relating to the subject matter of the Regulations and shall promptly refer all inquiries to the County with attention to the Director. The City, by and through its governing body, shall perform all duties required of City and/or the

governing body under the Regulations; including preparation of all permit documents. The Director shall respond to all correspondence within four (4) business days.

6. To the extent permitted by law, the County shall indemnify and hold harmless the City from any and all liability for damages, costs, or expenses, including attorney' s fees, arising out of the performance of the duties by the County under said Regulations. County shall not be liable for any inspections, permitting or licensing performed by City prior to the execution of this Agreement.

7. It is expressly understood and agreed that this Agreement may be terminated for any reason at any time by either party upon thirty (30) days written notice.

8. It is expressly understood and agreed by the parties hereto that this Agreement will have no force or effect until duly executed by all parties. This Agreement shall terminate after six (6) months from the effective date.

IN WITNESS THEREOF, the Parties have each executed this Agreement, this the ____ day of _____, 2020 ("Effective Date").

HAYS COUNTY

BY: _____
Ruben Becerra
Hays County Judge

DATE: _____

ATTEST: _____
Elaine H. Cardenas, County Clerk

CITY OF WIMBERLEY

BY: _____
Gina Fulkerson
Mayor

DATE: _____

ATTEST: _____
Laura J. Calcote, City Secretary



AGENDA ITEM:	2021 General Election – May 1, 2021
SUBMITTED BY:	Laura Calcote, City Secretary
DATE SUBMITTED:	December 31, 2020
MEETING DATE:	January 7, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Ordinance No. 2021-01 orders the General Election for Saturday, May 1, 2021, for the purpose of electing at-large three Council members for Place One, Place Three and Place Five. The period for filing an application for a place on the ballot begins Wednesday, January 13, 2021, and ends Friday, February 12, 2021, by 5:00 p.m. Candidate packets and forms, along with other election information, can be found on the City's website at www.cityofwimberley.com/2021election.

Additionally, the City has previously contracted with Hays County for election services. The Fiscal Year 2021 Budget allocated funds in the amount of \$6,000 for election services. Attached to Ordinance No. 2021-01 is the Election Services Contract between the City of Wimberley and the Elections Administrator of Hays County. This Contract will serve as Exhibit "A" to Ordinance No. 2021-01 and will need to be executed accordingly.

REQUESTED ACTION

Motion	☒
Discussion	☒
Ordinance	☒
Resolution	☐
Other	☐

FINANCIAL

Budgeted Item	☒	Original Estimate/Budget:	\$ 6,000
Non-budgeted Item	☐	Current Estimate:	\$ 6,000
Not Applicable	☐	Amount Under/Over Budget:	\$

STAFF RECOMMENDATION

Approval of Ordinance No. 2021-01 and the Contract for Election Services between the City of

Wimberley and Hays County.

ATTACHMENT/S

- Ordinance No. 2021-01
- Contract for Election Services

ORDINANCE NO. 2021-01

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON SATURDAY, MAY 1, 2021, FOR THE PURPOSE OF ELECTING AT-LARGE THREE CITY COUNCIL MEMBERS FOR PLACE ONE, PLACE THREE AND PLACE FIVE AND PROVIDING DETAILS RELATING TO THE HOLDING OF SUCH ELECTION.

WHEREAS, the City of Wimberley desires to hold a General Election on Saturday, May 1, 2021, for the purpose of electing City Council Members for Places One, Three and Five; and

WHEREAS, this Ordinance is in furtherance of the public interest, for the good of government, peace and order of the City, and necessary and proper for carrying out the power granted by law to the City.

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

Section 1. In accordance with the general laws and Constitution of the State of Texas, a General Municipal Election is hereby called and ordered to be held on Saturday, May 1, 2021, at which general election all qualified voters of the City may vote for the purpose of electing at-large three (3) City Council Members for Place One, Place Three and Place Five to serve the City of Wimberley, Texas.

Section 2. No person's name shall be placed upon the official ballot as a candidate for the place of City Council Member of the Wimberley City Council unless such person has filed a sworn application, as provided by Section 141.031 of the Texas Election Code, with the City Secretary at City Hall, 221 Stillwater Drive, Wimberley, Texas 78676 no sooner than Wednesday, January 13, 2021, and no later than five o'clock (5:00) p.m. Friday, February 12, 2021. Such application shall include the office the candidate is seeking and the place number of such position, where applicable. The City Secretary shall note on the face of each such application the date and time of its filing.

Section 3. Each voter shall vote for his or her choice for a candidate for each City Council Member place and shall vote for only one candidate for each City Council Member place.

Section 4. The present boundaries of the City, constituting Hays County Election Precincts 333, 335, 338 and 339 shall comprise one City election precinct. The polling place shall be open for voting from seven o'clock (7:00) a.m. until seven o'clock (7:00) p.m. at the following polling place, and the following are hereby appointed officers to conduct the above-described election, as outlined by the Contract for Election Services (Exhibit "A") between the City of Wimberley, Texas, and the County Contracting Officer of Hays County, Texas, as follows:

Polling Place
Wimberley Community Center
14068 Ranch Road 12
Wimberley, Texas 78676

Election Officer
Jennifer Anderson, Contracting Officer
Hays County, Texas

The City Secretary is hereby authorized and directed to provide a copy of this Ordinance to the County Contracting Officer as written notice of the appointment as required by Section 32.009 of the Texas Election Code.

Section 5. Voting shall be conducted by the County Contracting Officer utilizing voting machines and equipment supplied by the County Contracting Officer. All expenditures necessary to conduct the election, for the purchase of materials, and the employment of all election officials is hereby authorized in accordance with the Texas Election Code and in accordance with the provisions of the Contract for Election Services.

Section 6. The County Contracting Officer is hereby appointed Early Voting Clerk; the appointment of a deputy clerk or clerks for early voting by the County Contracting Officer shall be in accordance with Section 83.031 *et seq.* of the Texas Election Code. Early voting by personal appearance for the election shall commence on Monday, April 19, 2021, and end on Tuesday, April 27, 2021, at the Wimberley Community Center, 14068 Ranch Road 12, Wimberley, Texas 78676. Early voting by personal appearance shall be conducted on Monday, April 19, 2021, from seven o'clock (7:00) a.m. until seven o'clock (7:00) p.m., Tuesday, April 20, 2021, through Friday, April 23, 2021, from eight o'clock (8:00) a.m. until five o'clock (5:00) p.m., Saturday, April 24, 2021, from ten o'clock (10:00) a.m. until two o'clock (2:00) p.m., Monday, April 26, 2021, from seven o'clock (7:00) a.m. until seven o'clock (7:00) p.m. and Tuesday, April 27, 2021, from eight o'clock (8:00) a.m. until five o'clock (5:00) p.m. Under no circumstances shall the County Contracting Officer permit anyone to vote early by personal appearance at any time when such office is not open to the public. The Early Voting Clerk, in accordance with the provisions of the Texas Election Code, shall maintain a roster listing each person who votes early by personal appearance and each person to whom a ballot to be voted by mail is sent. The roster shall be maintained in a form approved by the Secretary of State.

Section 7. An Early Voting Ballot Board is hereby designated to canvass the early votes cast by mail and by personal appearance. The County Contracting Officer is hereby appointed as Presiding Judge of the Early Voting Ballot Board. In accordance with Section 87.001, *et seq.*, Texas Election Code, said Early Voting Ballot Board Presiding Judge shall appoint such other members as provided in the Texas Election Code, Section 87.002(b).

Section 8. The candidate receiving the highest number of votes for Mayor and City Council Member in each of the places to be filled at such election shall be declared elected to such place.

Section 9. The order in which the names of the candidates are to be printed on the ballot for the early voting period, and the order in which the names of the candidates are to be printed on the ballot for the General Election, shall be determined by a drawing by the City Secretary, as provided by Section 52.094 of the Texas Election Code. The City Secretary shall post a notice of the date, hour and place of drawing. Such notice shall remain posted continuously for seventy-two (72) hours immediately preceding the scheduled time of the drawing; and personal notice shall also be given to any candidate who makes written request for such notice and furnishes to the City Secretary a self-addressed, stamped envelope. Each candidate involved in the drawing, or a representative designated by him or her, shall have a right to be present and observe the drawing.

Section 10. Notice of this election shall be given in accordance with the provisions of the Texas Election Code and returns of such notice shall be made as provided for in that Code. The Mayor shall issue all necessary orders and writs for such election and returns of such election shall be made to the City Secretary immediately after the closing of the polls.

Section 11. The election shall be held in accordance with the Texas Election Code and the Federal Voting Rights Act of 1965, as amended.

PASSED and APPROVED by the City of Wimberley City Council on the 7th day of January, 2021 by a vote of __ (Ayes) and __ (Nays) and __ (Abstain).

Gina V. Fulkerson, Mayor

ATTEST:

Laura J. Calcote, City Secretary



APPROVED AS TO FORM:

City Attorney

CONTRACT FOR ELECTION SERVICES

This **Contract for Election Services** (“Contract”) is made and entered into by and between the **Elections Administrator of Hays County, Texas (“Contracting Officer”)** and the City of Wimberley (“City”) pursuant to the authority under Section 31.092(a) of the Texas Election Code.

RECITALS

GENERAL PROVISIONS.

- A. The purpose of this Contract is to maintain consistency and accessibility in voting practices, polling places, and election procedures to best assist the voters of the City. For purposes of this Contract the term “Election” will include any resulting recount or election contest. It will also apply to any election to resolve a tie.
- B. The Contracting Officer is hereby appointed to serve as the City’s Election Day Officer and Early Voting Clerk to conduct the Election for those areas of the City located within the contracting jurisdiction. As Election Officer and Early Voting Clerk, the Contracting Officer will coordinate, supervise and conduct all aspects of administering voting in connection with the Election in compliance with all applicable laws.
- C. The City agrees to commit the funds necessary to pay for Election-related expenses for the City’s Election.
- D. The Contracting Officer has the right to enter into agreements with other entities at any time and may require that authorities of City’s holding elections on the same day in all or part of the same territory to enter into a joint election agreement as authorized in Chapter 271 of the Teas Election Code. The City agrees to enter into a joint election agreement required by Hays County.
- I. **RESPONSIBILITIES OF CONTRACTING OFFICER.** The Contracting Officer shall be responsible for performing the following services and furnishing the following material and equipment in connection with the Election:
 - A. **Nomination of Presiding Judges and Alternate Judges.** The Contracting Officer shall recommend appointment of Election Day presiding and alternate judges, central accumulation station judges, and the Early Voting Ballot Board (EVBB)

presiding judge, all of whom shall meet the eligibility requirements in Subchapter C of Chapter 32 of the Texas Election Code.

B. Notification to City. The Contracting Officer shall provide the City with the most up-to-date list of presiding and alternate judges at least three weeks before the statutory deadline to order the Election.

C. Notification to Presiding and Alternate Judges; Appointment of Clerks.

1. The Contracting Officer shall notify each presiding and alternate judge of his or her appointment. The notification will also include the assigned polling station, the date of the election training(s), the date and time of the Election, the rate of compensation, the number of clerks the judge may appoint, the eligibility requirements for Election workers, and the name of the presiding or alternate judge as appropriate.
2. The election judge will make the clerk appointments in consultation with the Contracting Officer. If a presiding judge or the alternate judge does not speak both English and Spanish, and the election precinct is one subject to Section 272.002 and 272.009 of the Texas Election Code, the Contracting Officer shall ensure that a bilingual election clerk is appointed. The Contracting Officer shall notify the clerks of the same information that the judges receive under this section.

D. Election Training. The Contracting Officer shall be responsible for conducting Election training for the presiding judges, alternate judges, clerks, and early voting deputies in the operation and troubleshooting of the Verity Duo Hybrid voting system and the conduct of elections, including qualifying voters, issuing ballot style codes, maintaining order at the polling location, and conducting provisional voting.

E. Logic and Accuracy Testing. In advance of Early Voting (including the sending of any mail ballots), the Contracting Officer, the tabulation supervisor, and the other members the Contracting Officer designates for the testing board shall conduct all logic and accuracy testing in accordance with the procedures set forth by the Texas Election Code and under guidelines provided by the Secretary of State's office. The Contracting Officer shall also be responsible for the publication of the required notice of such testing.

F. Election Supplies. The Contracting Officer shall procure, prepare, and distribute to the presiding judges for use at the polling locations on Election Day (and to the

Early Voting clerks during Early Voting) the following Election supplies: election and early voting kits (including the appropriate envelopes, lists, forms, name tags, posters, and signage described in Chapters 51, 61, and 62, and subchapter B of chapter 66 of the Texas Election Code) seals, sample ballots, thermal paper rolls for use in the Verity Controllers, batteries for use in the voting system equipment, supplies for the electronic poll books, and all consumable type office supplies necessary to hold an Election.

- G. **Registered Voters List.** The Contracting Officer shall provide lists of registered voters required by law for use on Election Day and for the Early Voting period.
- H. **Notice of Previous Polling Place.** The Contracting Officer shall post notices of a change in a polling place at the entrance to the previous polling location. Section 43.062 of the Texas Election Code provides that the notice shall state the location has changed and give the location of the new polling place. The Interim City Clerk will ensure that Public Notice is also provided via published notice, on the City's website and on all City social media outlets.
- I. **Election Equipment.** The Contracting Officer shall prepare and distribute the Verity Duo Hybrid Voting System components from Hart Intercivic, Inc. ("Hart") for the Election. This voting System includes the equipment referred to as "Duo" and Verity Controllers". Each polling location will have at least one voting machine that is accessible to disabled voters to provide a practical and effective means for voters with disabilities to cast a secret ballot.
- J. **Ballots.** The Contracting Officer or designee shall be responsible for the preparation, printing, programming and distribution of English and Spanish ballots and sample ballots, including the mail ballots, based on the information provided by the City, including the names of the candidates, names of the offices sought, order of names on the ballot, propositions on the ballot, and the Spanish translation of the offices and any propositions. The ballot will be prepared in these formats: Verity Duo Hybrid Voting System, paper, and auditory.
- K. **Applications for Mail Ballots.** The City and Contracting Officer agree that early voting by mail ballots shall be processed in accordance with the applicable provisions of the Texas Election Code and that 712 South Stagecoach Trail Ste 1012 San Marcos, Texas 78666 is the early voting clerk's mailing address to which ballot applications and ballots voted by mail shall be sent for the City.

L. **Early Voting.** In accordance with Sections 31.096 and 32.097(b) of the Texas Election Code, the Contracting Officer shall serve as the Early Voting Clerk for the Election.

1. The Contracting Officer shall supervise and conduct the early voting by mail and by personal appearance and shall secure personnel to serve as Early Voting Deputies.
2. The Contracting Officer shall receive mail ballot applications on behalf of the City. All applications for mail ballots shall be processed in accordance with Title 7 of the Texas Election Code by the Contracting Officer or deputies at the Records Building located at the Hays County Government Center at 712 S. Stagecoach Trail, San Marcos, Texas 78666. Applications for mail ballots sent to the City shall be promptly faxed to the Contracting Officer at (512) 878-6699 or emailed to elections@co.hays.tx.us for timely processing and then the original sent application forwarded to the Contracting Officer for proper retention.
3. Early voting ballots shall be secured and maintained at the Records Office at 712 S. Stagecoach Trail, San Marcos, Texas 78666. In accordance with Chapter 87 of the Texas Election Code. The Early Voting Ballot Board shall meet at the same location unless posted differently.
4. Early Voting by personal appearance for the Election shall be conducted during the hours and time period and at the locations as determined by the Contracting Officer in consultation with the City and in accordance with the Texas Election Code.

M. **Election Day Activities.**

1. The Contracting Officer and staff shall be available from 6:00 am until the completion of the vote counting on Election Day to render technical support and assistance to voters and Election workers.
2. The Contracting Officer and staff shall prepare and conduct Election Night intake of election equipment, supplies, and records.

3. The Contracting Officer and designee shall serve as central counting station manager and tabulation supervisor, counting the votes in conjunction with the Early Voting Ballot Board and the Central Counting Station judges.
 4. Election Day polling locations are determined by the Contracting Officer in consultation with the City and in accordance with the Texas Election Code. The Contracting Officer shall arrange for the use of all polling places and shall arrange for the setting up of the polling location including tables, chairs and voting booths.
- N. **Election Night Reports.** The Contracting Officer shall prepare the unofficial and official tabulation of precinct results under Section 66.056(a) of the Texas Election Code. The unofficial tabulation of Early Voting precinct results and Election Day precinct results shall be made available to the City via email as soon as they are prepared and may be released under law, but no earlier than 7:00 pm on Election Day. The tabulation reports may also be provided to other counties as necessary for the Election. As soon as reasonably possible, the Contracting Officer will post all reports for public review on the Hays County Elections website at www.co.hays.tx.us/elections.
- O. **Provisional Votes/ Determination of Mail Ballots Timely Received under Section 86.007(d) of the Texas Election Code.** The Contracting Officer, serving as the Voter Registrar, shall retain the provisional voting affidavits and shall provide the factual information on each of the voters' status. The Contracting Officer shall reconvene the EVBB after the Election within the time set forth in Section 65.051 of the Texas Election Code for the purpose of determining the disposition of the provisional votes. At the same time, the EVBB will review mail ballots timely received under Section 86.007(d) of the Texas Election Code to determine whether such will be counted and to resolve any issues with such ballots.
- P. **Canvass Material Preparation.** Promptly after determination of the provisional votes and resolution of any mail ballots, the Contracting Officer shall work with the EVBB and tabulation supervisor to tally the accepted provisional votes and resolved mail ballots, amend the unofficial tabulations, and submit new official tabulations to the City. These reports will serve as the canvass materials for the City.
- Q. **Custodian of Election Records.** The Election records will be submitted to the City except for those records that must be maintained by the Contracting Officer as Voter Registrar in accordance with Section 66.051 of the Texas Election Code. The

Contracting Officer is hereby appointed the custodian of voted ballots (which in the case of the ballots cast on the Verity Duo Hybrid voting system consist of the paper backup) and shall preserve them in accordance with Chapter 66 of the Texas Election Code and other applicable law. The Contracting Officer shall also maintain custody of the records pertaining to the operation of the Verity Controllers and Duo.

R. Recount.

1. The City shall advise the Contracting Officer if a recount is required by law or requested and the Contracting Officer and the City shall discuss how such recount is to be conducted. The City shall reimburse the Contracting Officer for the cost of such recount which is not included in the original cost estimate.

S. Schedule for Performance of Services. The Contracting Officer shall perform all Election services in accordance with and in compliance with the time requirements set out in the Texas Election Code.

T. Contracting with Third Parties. In accordance with Section 31.098 of the Texas Election Code, the Contracting Officer is authorized to contract with third parties for Election services and supplies. The cost of such third-party services and supplies will be paid by the Contracting Officer and reimbursed by the City.

U. Department of Justice Preclearance for General Elections. If required by law, any changes to the general conduct of voting in Hays County will be precleared through the United States Department of Justice by the Contracting Officer with copies of the submission and response e-mailed to the City.

II. RESPONSIBILITIES OF THE CITY. The City shall perform the following responsibilities:

- A. Election Orders, Election Notices, and Canvass.** The City shall be responsible for the preparing, adopting, publishing, and posting of all required election orders, resolutions, notices and other documents, including bilingual materials, evidencing action by the City of all actions necessary to call the Election. The City shall be responsible for conducting the official canvass of the Election.
- B. Map/Annexations.** The City shall provide the Contracting Officer with an updated map and street index (including address numbers) of its jurisdiction in and

electronic or printed format and shall advise the Contracting Officer in writing of any new developments, annexations or de-annexations and any other changes to the master voter registration list within the jurisdiction.

- C. **Department of Justice Preclearance for Special Elections.** If required by law, the City shall be individually responsible for obtaining appropriate preclearance from the United States Department of Justice for any special elections.
- D. **Ballot Information.** The City shall prepare the text for the City's official ballot in English and Spanish and provide to the Contracting Officer as soon as possible at the end of the period for ordering the Election or filing for candidacy. The ballot information shall include a list of propositions showing the order and the exact manner in which the candidates' name shall appear on the ballot. The City shall promptly review for correctness the ballot when requested by the Contracting Officer to do so prior to the finalization and shall approve by e-mail or by signature in person.
- E. **Precinct Reports to the Texas Secretary of State.** Based on information provided by the Contracting Officer, the City shall prepare, and file all required precinct reports with the Texas Secretary of State.
- F. **Annual Voting Report.** The City shall be responsible for filing its annual voting system report to the Texas Secretary of State as required under Chapter 123 et seq. of the Texas Election Code.

III. **SPECIAL PROVISIONS RELATED TO ELECTION WORKERS**

- A. **Number of Election Workers at Election Day Polling Locations.** It is agreed by the Contracting Officer and the City that there will be at least three Election workers at each Election Day polling location: the presiding judge, the alternate judge, and at least one election clerk appointed by the presiding judge. The number of necessary clerks is derived from the number of Elections at the poll and the number of registered voters at the poll.
- B. **Compensation for Election Workers.** The Contracting Officer shall compensate all Election workers in accordance with the Contracting Officer's established compensation policies, in accordance with the Texas Election Code and using the rates set by the Hays County Commissioners Court for county elections. The Contracting Officer shall pay the workers and be reimbursed by the entities sharing the polling locations.

IV. PAYMENT

- A. **Charges and Distribution of Costs.** In consideration of the joint election services provided by the Contracting Officer, the City will be charged a share of the Election costs and an administrative fee. The costs distribution is set forth in the Joint Election Agreement. The costs to be paid by the City are set forth in the Cost Estimate.
- B. **Administrative Fee.** The Contracting Officer shall charge a fee equal to 10% of the City's share of the cost of the Election or a minimum of \$75.00.
- C. **Equipment Rental Fee.** Per Section 123.032(d) of the Texas Election Code, the Hays County Commissioners Court has set the equipment rental fee at \$175 each per controller and per Verity Duo component. If the County acquires additional equipment during the term of the Contract, the charge for the use of the equipment may be reset by the Hays County Commissioners Court.
- D. **Payment.** The Contracting Officer's invoice shall be due and payable to the address set forth in the invoice within 30 days from the date of receipt by the City.

V. TERM AND TERMINATION

- A. **Initial Term.** The initial term of the contract shall commence upon the last party's execution hereof and shall continue thereafter in full force and effect for one year, subject to the termination rights set forth herein.
- B. **Renewal.** Subject to the termination rights set forth herein, this Contract shall be renewed annually.
- C. **Termination.** If either party wishes to terminate this Contract for convenience or for cause, the party must provide not less than ninety (90) days' written notice to the other party and allow for discussion of the desired outcome and options to reach the desired outcome. In the event of termination, it is understood and agreed that only the amounts due to the Contracting Officer for services provided and expenses incurred will be due and payable.

VI. MISCELLANEOUS PROVISIONS

A. Nontransferable Functions. In accordance with Section 31.096 of the Texas Election Code, nothing in this Contract shall authorize or permit a change in:

1. The authority with whom or the place at which any document or record relating to the Election is to be filed;
2. The officers who conduct the official canvass of the Election returns;
3. The authority to serve as custodian of voted ballots or other Election records; or
4. Any other nontransferable function specified under Section 31.096 or other provisions of law.

B. Cancellation of Election. If the City cancels its Election pursuant to Section 2.053 of the Texas Election Code, the Contracting Officer shall be entitled to receive an administrative fee of \$75. The Contracting Officer shall submit an invoice for the administrative fee as soon as reasonably possible after the cancellation, and the City shall pay the fee.

C. Contract Copies to Treasure and Auditor. In accordance with Section 31.099 of the Texas Election Code, the Contracting Officer agrees to file copies of the Contract with the County Treasurer and the County Auditor of Hays County, Texas.

D. Election to Resolve a Tie. In the event that an Election is necessary to resolve a tie vote, the terms of the Contract shall extend to the second Election, except:

1. The City and the Contracting Officer will agree upon the date of the Election and the early voting schedule subject to provisions of the Election Code and with regard to other elections being conducted by the Contracting Officer.
2. The City will be responsible for any Department of Justice preclearance submission under Section 5 of the Federal Voting Rights Act.
3. An attempt will be made to use the Election workers that worked in the first Election; those poll workers will not have additional training provided by the Contracting Officer.

4. The cost of the Election will be borne by the City; the Contracting Officer will work with the City on cost management.

- E. **Amendment/Modification.** Except as otherwise provided, this Contract may not be amended, modified, or changed in any respect except in writing, duly executed by the parties hereto. Both the Contracting Officer and the City may propose necessary amendments or modifications to this Contract in writing in order to conduct the Election smoothly and efficiently, except that any such proposals must be approved by the Contracting Officer and the governing body of the City or its authorized agent, respectively.
- F. **Severability.** If any provision of the Contract is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this Contract and parties to this Contract shall perform their obligations under this Contract in accordance with the intent of the parties to this Contract as expressed in the terms and provisions.
- G. **Force Majeure.** Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this Contract, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization, civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience, act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine, social distancing, isolation or other behavioral restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, earthquake, landslide, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment and of any kind of installation, prolonged breakdown of transport, telecommunication or electric current; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party ("force majeure event ") whether foreseeable or unforeseeable by the parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy, or, when applicable, on the next available dates under the Texas Election Code.

H. **Representatives.** For the purposes of implementing this Contract and coordinating activities, the Contracting Officer and the City designate the following individuals for submission of information, documents and notice:

For the Contracting Officer:

Jennifer Anderson
Elections Administrator, Hays County
712 S. Stagecoach Trail, Suite 1045
San Marcos, Texas 78666
Tel: (512) 393-7310
Fax: (512) 878-6699
Email: janderson@co.hays.tx.us

For the City:

Laura Calcote
City Secretary
City of Wimberley
Wimberley, Texas 78676
Tel: (512) 847-0025
Fax: (512) 847-0422
Email: lcalcote@cityofwimberley.com

Witness by my hand this the _____ day of _____, 2021.

Contracting Officer:

Jennifer Anderson, Elections Administrator
Hays County, Texas

Witness by my hand this the _____ day of _____, 2021.

Local Political Subdivision:

Name of Entity: City of Wimberley

Printed Name: Gina V. Fulkerson

Official Capacity: Mayor



AGENDA ITEM:	Joint Elections Agreement
SUBMITTED BY:	Laura Calcote, City Secretary
DATE SUBMITTED:	December 31, 2020
MEETING DATE:	January 7, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The Joint Election Agreement between the City of Wimberley and Hays County is required in addition to the Contract for Election Services, since Hays County is now a part of the Texas Countywide Polling Place Program. Vote centers allow Hays County voters to choose from any polling place to vote during early voting and on Election Day. All elections held in Hays County will now be joint.

There is a cost sharing formula included in the Agreement (Section 9, pg. 2). Wimberley will only be charged based on the number of registered voters in the upcoming May 1, 2021 General Election.

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

Approval of the Joint Election Agreement with Hays County.

ATTACHMENT/S

Joint Election Agreement between Hays County and the City of Wimberley

JOINT ELECTION AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF WIMBERLEY

This Joint Election Agreement ("Agreement") is entered into on January 7, 2021, between the City of Wimberley, (the "City") 221 Stillwater Drive, Wimberley, Texas 78676 and Hays County (the "County"), 712 S. Stagecoach Trail, Suite 1012, San Marcos, Texas 78666, collectively referred to as the Parties.

This Agreement is authorized by Chapter 31 of the Texas Election Code, Chapter 791 of the Texas Government Code and Section 271.002 and 271.003 of the Texas Election Code. The Parties to the Agreement agree as follows:

Section 1. *Scope of Agreement.* The City enters into this Agreement for the conduct of the elections to be held from August 2020 through July 2021.

Section 2. *Appointment of Election Officer.* The City appoints the Hays County Elections Administrator to serve as the Election Officer (the "Officer") in order to perform and supervise the duties and responsibilities of the Election Officer for any election from August 2020 through July 2021.

Section 3. *Early Voting Polling Locations.* To facilitate the administration of elections, and as a convenience to the voters, during the early voting period established by statute, the City agrees to designate the Hays County Election Administrator's Office, 712 South Stagecoach Trail, Suite 1012, San Marcos, Texas 78666 as the main early voting polling place for the City. Furthermore, the City agrees to designate temporary branch early polling places in accordance with Section 85.062, Election Code, V.T.C.A. as called out in the latest Election Orders.

Section 4. *Voting by Mail Ballot.* The City and County agree that early voting by mail ballot shall be conducted in accordance with the applicable provisions of the Texas Election Code and that 712 South Stagecoach Trail, Suite 1012 San Marcos, Texas 78666 is the early voting clerk's mailing address to which ballot applications and ballots voted by mail shall be sent for the City.

Section 5. *Election Day Polling Locations.* Election Day voting shall be held in approved vote centers where appropriate at the dates, times, and locations recommended by the Election Officer and authorized and ordered by the governing body of the City.

Section 6. *Election Day.* On Election Day, all forms used in the conduct of the election, including but not limited to the poll list, signature roster, ballot registers, expense accounts, and all oaths and certificates will be used jointly by the two agencies. All forms will be returned to the Hays County Election Administrator who shall keep them in her custody for the period of time prescribed by the Texas Election Code. The County agrees to furnish the City with copies of any election documents upon the City's request at no charge.

Section 7. *Use of Common Ballot.* It is agreed by the parties to this Agreement that a common ballot will be used for joint elections. The USB ("USB") containing the voted ballots for an election will be delivered by the Election Judges to the Hays County Election

Administrator's office at 712 South Stagecoach Trail, Suite 1012, San Marcos, Texas and the USB'S will remain in the Hays County Election Administrator's custody, except that the County agrees to provide the City with the necessary documentation, if requested, for canvass of an election or in the event the voted ballots are required for a recount or any court proceedings in which the City may be a party. The County agrees to maintain custody of the USB'S containing the voted ballots for the period of time prescribed by the Texas Election Code. All USB'S that are not placed in active voting equipment will remain locked in the Officers' office. USBs will not be replaced without being logged out and checked out by the Officer at any time during an election. An audit shall be conducted to ensure that all USBs are present and accounted for. A spreadsheet shall be completed at the end of Early Voting and Election Day returns that will identify the number of signatures on the Combination Log and the Number of Cancelled booths, for a representation of voter totals. All replaced equipment will remain secured until after tabulation to ensure that all checks and balances have been satisfied.

Section 8. *Reporting of Returns.* The Officer shall prepare the unofficial and official tabulation of precinct results under Section 66.056(a) of the Texas Election Code. The unofficial tabulation of Early Voting precinct results and Election Day precinct results shall be made available to the City via email as soon as they are prepared and may be released under law, but no earlier than 7:00 p.m. on Election Day. The Officer or their designee will use their best efforts to post all reports for public review on the Hays County Elections website at www.co.hays.tx.us/elections as soon as reasonably possible.

Section 9. *Cost Sharing.* The City agrees to the cost sharing provisions below. This includes Hays County, the school districts of the county, the cities of the county, and the water districts and all other entities contracting for election services. The costs incurred with Early Voting locations and Early Voting Clerks will be shared only by entities utilizing the polling location for their individual election contest.

The formula is as follows:

Example:

Registered Voters in County -	135,000	$135,000/255,000=$	52.94% of total cost
Registered Voters in Joint Entity A -	100,000	$100,000/255,000=$	39.23% of total cost
Registered Voters in Joint Entity B -	20,000	$20,000/255,000=$	7.84% of total cost
Aggregate Registered Voters -	255,000		

\$1,000 dollar minimum cost for elections that don't exceed that total. Since programming and supplies would exceed the cost of elections with very small voter registration populations. Equipment Rental Fees allocated separately.

Section 10. *Amendments.* This Agreement may not be amended or modified except in writing and executed by both the City and the County. Neither party may assign this Agreement without the written consent of the other party. However, the Officer may assign deputies to perform any of the contracted services and may contract with third persons for election services and supplies.

Section 11. *Effective Date.* This Agreement contains the entire agreement between the parties and supersedes all prior understandings and agreements between the parties regarding such matters. The term of this Agreement will commence on August 1, 2020 and end on July 31, 2021.

Section 12. *Force Majeure.* Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this Contract, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization, civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience, act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine, social distancing, isolation or other behavioral restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, earthquake, landslide, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment and of any kind of installation, prolonged breakdown of transport, telecommunication or electric current; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party ("force majeure event ") whether foreseeable or unforeseeable by the parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy, or, when applicable, on the next available dates under the Texas Election Code.

Section 13. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable. In case any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 14. Any notice provided for under this Agreement will be forwarded to the following addresses:

Hays County Elections Administrator
Government Center
712 South Stagecoach Trail Suite 1012
San Marcos, Texas 78666

City of Wimberley
Office of the City Secretary
221 Stillwater Drive
Wimberley, Texas 78676

Section 15. Nothing contained in this Agreement will authorize or permit a change in the office with whom or the place at which any document or record relating to the Election(s) is to be filed, or place at which any function of the canvass of the election returns is to be performed, or the officer to serve as custodian of voted ballots or other election records.

Section 16. This Agreement shall take effect immediately upon execution by both parties hereof and shall inure to the benefit and be binding upon the administrators, successors and assigns of the Parties hereto.

WITNESS OUR HANDS this 7th day of January, 2021

Hays County Elections Administrator

City of Wimberley

Jennifer Anderson
Elections Administrator

Gina V. Fulkerson
Mayor

Attest:

Attest:



AGENDA ITEM:	Resolution No. 01-2021
SUBMITTED BY:	Paul Parker, Interim City Administrator
DATE SUBMITTED:	December 31, 2020
MEETING DATE:	January 7, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Sign Crafters Inc. submitted the City's wayfinding signage project to TxDOT for their approval. During their approval process, several additional modifications to the proposed signage were required by TxDOT. These modifications resulted in the need of an additional \$4,549.00 to complete this project. The total cost of this project is proposed at \$21,544.00. The requested amount of \$6,000 is to cover these costs and any additional minor changes.

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 Council approval.

ATTACHMENT/S

Resolution No. 01-2021

RESOLUTION NO. 01-2021

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2020/2021 OPERATING BUDGET (BUDGET AMENDMENT NO. 5), 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.

WHEREAS, the City Council approved the 2020/2021 Operating Budget.

WHEREAS, the City Council has reviewed and approves the report establishing the need to appropriate funds in the Hotel Occupancy Tax Fund – Capital Outlay line item for the erection and installation of wayfinding signs.

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. 5) for the purpose and in the amounts shown below.

Hotel Occupancy Tax Fund - Expenditures

The effect of these transactions will reduce fund balance (\$125,356.62) in the Hotel Occupancy Tax Fund - Unobligated Fund Balance by \$6,000 and increase expenditures in the Hotel Occupancy Tax Fund – Capital Outlay by \$6,000.

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 7th day of January, 2021.

The City of Wimberley, Texas

Gina V. Fulkerson, Mayor

ATTEST:

Laura J. Calcote, City Secretary





AGENDA ITEM:	Resolution No. 02-2021
SUBMITTED BY:	Paul Parker, Interim City Administrator
DATE SUBMITTED:	December 31, 2020
MEETING DATE:	January 7, 2021

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The City Council has expressed its desire to consider the feasibility of constructing a restroom facility on property presently owned and utilized by the City for parking. Furthermore, the City is considering sidewalks from the restrooms to the square as well as paving the existing parking lot. To determine the feasibility of these projects, initial design, surveying, drainage plan and other design features are necessary. Staff is proposing the allocation of \$15,000 to initiate plans for these improvements.

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 Council approval.

ATTACHMENT/S

Resolution No. 02-2021

RESOLUTION NO. 02-2021

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2020/2021 OPERATING BUDGET (BUDGET AMENDMENT NO. 6), PROVIDING FOR THE TRANSFER OF FUNDS WITHIN THE GENERAL TAX FUND – UNOBLIGATED FUND BALANCE TO THE GENERAL FUND OPERATING ADMINISTRATION ACCOUNT NUMBER 6370 (CONTRACT SERVICES) AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved the 2020/2021 Operating Budget.

WHEREAS, the City Council has reviewed and approves the report establishing the need to appropriate funds in the General Fund Operating Administration Account – Contract Services line item for preliminary design phase of downtown restrooms, sidewalks and parking facilities.

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. 6) for the purpose and in the amounts shown below.

General Tax Fund - Expenditures

The effect of these transactions will reduce fund balance (\$15,000) in the General Tax Fund - Unobligated Fund Balance by \$15,000 and increase expenditures in the General Fund Operating Administration Account Number 6370 (Contract Services) by \$15,000.

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 7th day of January, 2021.

The City of Wimberley, Texas

Gina V. Fulkerson, Mayor

ATTEST:

Laura J. Calcote, City Secretary

