City of Wimberley

221 Stillwater, Wimberley, Texas 78676

SPECIAL CITY COUNCIL MEETING
WIMBERLEY COMMUNITY CENTER – BLANCO ROOM
14068 RANCH ROAD 12, WIMBERLEY, TEXAS 78676
MONDAY, FEBRUARY 7, 2022 - 2:00 PM

AGENDA

1. CALL TO ORDER February 7, 2022, at 2:00 PM

2. CALL OF ROLL

3. 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.

3.1. Executive Session pursuant to Texas Government Code, Section 551.071 (Consultation with Legal Counsel).

4. OPEN SESSION

4.1. Discussion and possible action resulting from Executive Session.

5. DISCUSSION AND POSSIBLE ACTION

5.1. Discuss and consider possible action regarding a quote from Big Ingen Media & Design to update the Johnson Hall audio sound system at the Wimberley Community Center. *(City Administrator, Mike Boese & Parks Director, Richard Shaver)*

5.2. Discuss and consider possible action authorizing the City Administrator to sign Right of Way Encroachment License Agreement No. 2022-001 granting permission to use the licensed property solely to install, repair, maintain, and remove grading, sidewalks, retaining wall(s), handicap accessible ramp, stairs, patio, and safety railing, with Kontiki LLC. *(City Administrator, Mike Boese)*

5.3. Discuss and consider possible action to purchase a new Blue Hole lift station control panel for the wastewater collection system. *(City Administrator, Mike Boese)*

5.4. Discuss and consider possible action regarding Resolution No. 02-2022, authorizing an amendment to the 2021/2022 Operating Budget (Budget Amendment No. 4), authorizing the expenditures from the American Rescue Plan Fund 6571 (Outlay - Projects) and providing an effective date. *(City Administrator, Mike Boese)*

5.5. Discuss and consider possible action to authorize a Request for Proposal (RFP) for Short-Term Rental Compliance Software. *(City Administrator, Mike Boese)*

6. WORKSHOP

6.1. City Council will participate in a mid-year review of their Fiscal Year 2022 Goals and Priorities.

7. 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.

Attendance by Other Elected or Appointed Officials: It is anticipated that members of other governmental bodies, and/or city boards, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the body, board, commission and/or committee. The members of the boards, commissions and/or committees may be permitted to participate in discussion on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless item and action is specifically provided for on an agenda for that body, board, commission or committee subject to the Texas Open Meetings Act.

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 Wednesday, February 2, 2022, by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Laura J. Calcote

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.

AGENDA ITEM:	1. Discuss and consider possible action regarding a quote from Big Ingen Media & Design to update the Johnson Hall audio sound system at the Wimberley Community Center. *(City Administrator, Mike Boese & Parks Director, Richard Shaver)*
SUBMITTED BY:	Richard Shaver
DATE SUBMITTED:	02/02/2022
MEETING DATE:	February 7, 2022

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

We are looking to complete some improvements to the sound system at the Community Center. This package provided by Big Ingen Media and Design includes new speakers, wireless microphones, and control systems that will accommodate Bluetooth and connect to wireless devices. This would be a significant upgrade from our current sound system and provide a higher quality experience for customers and staff.

REQUESTED ACTION

Motion
Discussion

FINANCIAL

Project Estimate provided by Big Ingen Media & Design: $9,500.00

STAFF RECOMMENDATION

Staff recommends approving this item.

ATTACHMENT/S

1. Wimberley Community Center Sound System estimate

John C. Brown
696 Hill Country Trail
Wimberley Texas 78676

City of Wimberley
Attn: Terri Provost
14068 RR 12
Wimberley, Texas 78676

Date: 1-24-2022
Project Estimate:
Audio Sound System - Wimberley Community Center

Scope:
Design and install a user friendly, minimal impact sound system that will accommodate a full range of needs within Johnson Hall and enhance audience experience.

Proposal:
Because of the nature of Johnson Hall and the specific sound characteristics our challenge is to cover a large area with an equity of sound while limiting the impact to interior infrastructure during installation. Another consideration is the low hanging HVAC system that is prohibitive to sound quality if speakers are mounted on side walls.
With this in mind, we propose to “rig and suspend” a “Line Array” system from the metal framework of the ceiling. By doing so we can advance speakers closer to the audience and provide the most effective coverage. This is common practice in many sanctuaries and venues similar to Johnson Hall. The other advantage is being able to utilize existing cable pathways along the back wall where the existing speakers are mounted, meaning minimal impact to surface walls.
Equally important is the ease of use with minimal effort from CC personnel for any event. This proposal would update this system into a digital mixer with software that is controlled on a iPad or Android tablet and incorporates an Automix function that will seamlessly control up to twelve microphones independently. Staff would only need to control overall volume. In addition, we are suggesting the use of wireless microphones into this system that would eliminate the need for XLR mic cables currently needed. Reducing set up and tear down time.

Project Estimate: 9500.00
Cost can be adjusted based on optional equipment

TOA HX-5B - 600 Watt Line Array Loudspeakers 600.00 per x 2 -	1200.00
TOA's FB-120B subwoofer 400.00 per x 2 -	800.00
2 x QSC GX5 700W 2-channel Power Amplifier 600.00 per x 2	1200.00
VocoPro UHF-5805-9 Professional Rechargeable 4-Channel UHF Wireless Handheld Mic System - 8 mics -	1200.00
Behringer X Air XR12 12-channel Tablet controlled Digital Mixer.	400.00
SAMSUNG Galaxy Tab A7 32GB 10.4" Wi-Fi	220.00
NavePoint 12U Cabinet Enclosure with Locks -	200.00
TOA Electronics Mount Bracket for HX-5 Series Speakers 130.00 per x 2	260.00
Speaker cable 500 ft spool	280.00
Cable - Brackets - lock points & Hardware	500.00
Equipment Total	6000.00
Lift Rental - 1 Day	500.00
Labor - 3 Days.	3000.00

TOA HX-5B - 600 Watt Line Array Loudspeaker

TOA's FB-120B subwoofer

Optional

QSC GX5 700W 2-channel Power Amplifier

VocoPro UHF-5805-9 Professional Rechargeable 4-Channel

UHF Wireless Handheld Mic System

Proposal allows for 8 Wireless Mics but 4 May be

sufficient.

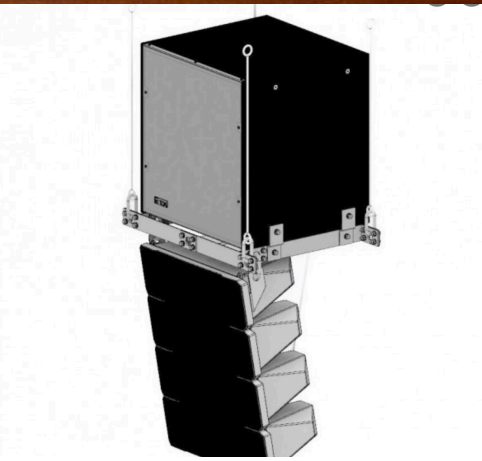
Behringer X Air XR12 12-channel Tablet

controlled Digital Mixer

SAMSUNG Galaxy Tab A7 32GB 10.4" Wi-Fi

NavePoint 12U Cabinet Enclosure Locks, Fan

Example of Rigged and suspended speakers.



AGENDA ITEM:	2. Discuss and consider possible action authorizing the City Administrator to sign Right of Way Encroachment License Agreement No. 2022-001 granting permission to use the licensed property solely to install, repair, maintain, and remove grading, sidewalks, retaining wall(s), handicap accessible ramp, stairs, patio, and safety railing, with Kontiki LLC. *(City Administrator, Mike Boese)*
SUBMITTED BY:	Mike Boese
DATE SUBMITTED:	02/02/2022
MEETING DATE:	February 7, 2022

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

REQUESTED ACTION

Motion
Discussion

FINANCIAL

STAFF RECOMMENDATION

ATTACHMENT/S

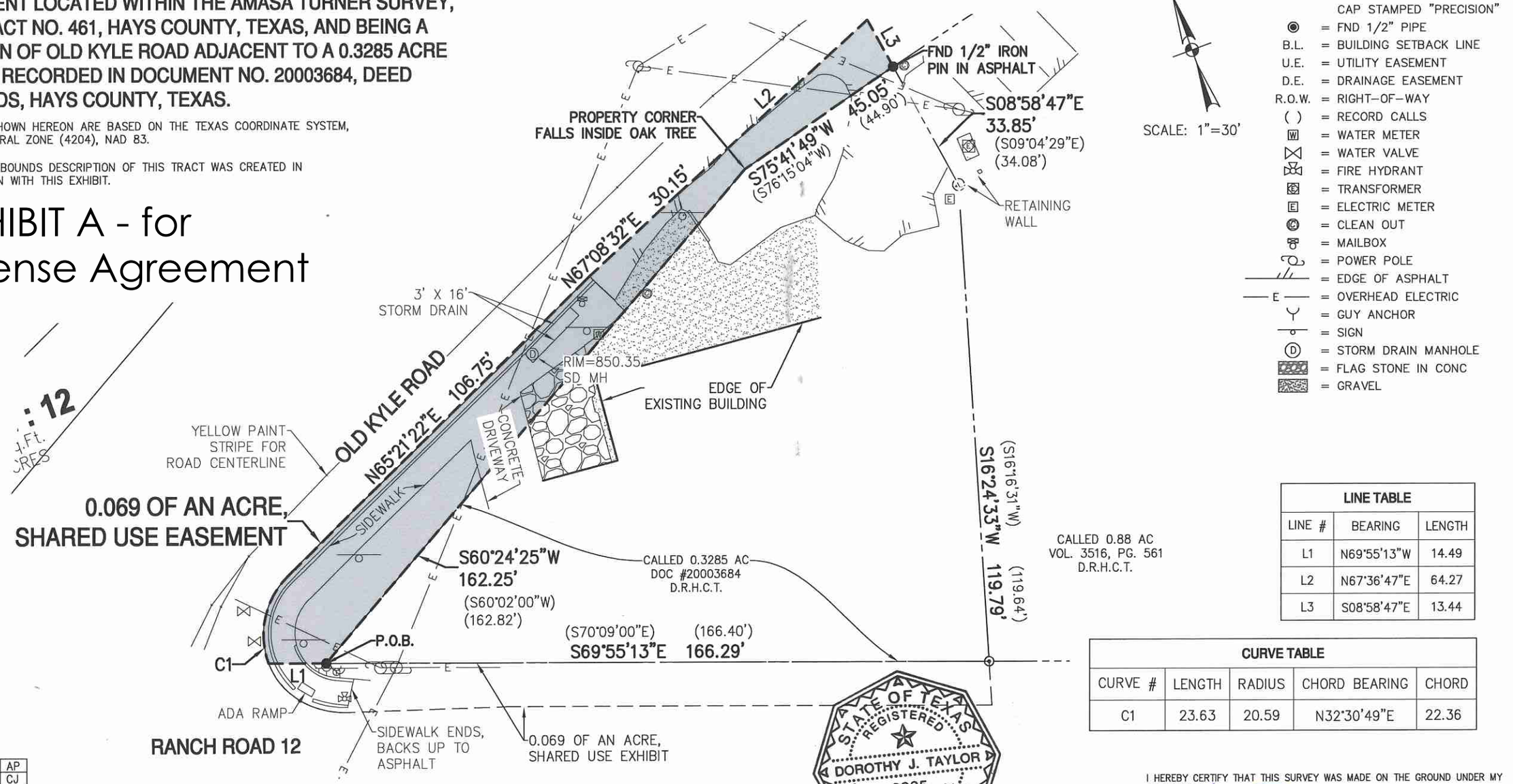
1. CoW 0.069 ac Shared Use Easement_21-1234
2. Schematic Design Package 011322
3. Right of Way License Agreement 2022-001

EXHIBIT "B" - BEING A 0.069 OF AN ACRE, SHARED USE EASEMENT LOCATED WITHIN THE AMASA TURNER SURVEY, ABSTRACT NO. 461, HAYS COUNTY, TEXAS, AND BEING A PORTION OF OLD KYLE ROAD ADJACENT TO A 0.3285 ACRE TRACT, RECORDED IN DOCUMENT NO. 20003684, DEED RECORDS, HAYS COUNTY, TEXAS.

BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD 83.

A METES & BOUNDS DESCRIPTION OF THIS TRACT WAS CREATED IN CONJUNCTION WITH THIS EXHIBIT.

EXHIBIT A - for License Agreement



LEGEND:

- ● = FND 1/2" IRON PIN CAP STAMPED "PRECISION"
- ◉ = FND 1/2" PIPE
- B.L. = BUILDING SETBACK LINE
- U.E. = UTILITY EASEMENT
- D.E. = DRAINAGE EASEMENT
- R.O.W. = RIGHT-OF-WAY
- ( ) = RECORD CALLS
- W = WATER METER
- = WATER VALVE
- = FIRE HYDRANT
- = TRANSFORMER
- E = ELECTRIC METER
- = CLEAN OUT
- = MAILBOX
- = POWER POLE
- = EDGE OF ASPHALT
- E — = OVERHEAD ELECTRIC
- = GUY ANCHOR
- = SIGN
- D = STORM DRAIN MANHOLE
- = FLAG STONE IN CONC
- = GRAVEL

LINE TABLE		
LINE #	BEARING	LENGTH
L1	N69°55'13"W	14.49
L2	N67°36'47"E	64.27
L3	S08°58'47"E	13.44

CURVE TABLE				
CURVE #	LENGTH	RADIUS	CHORD BEARING	CHORD
C1	23.63	20.59	N32°30'49"E	22.36

STATE OF TEXAS
REGISTERED
DOROTHY J. TAYLOR
6295
PROFESSIONAL
LAND SURVEYOR

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION

THIS 14th DAY OF Dec 2021

DOROTHY J. TAYLOR
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6295

12-14-21

DRAWN BY:	AP
FIELD CREW:	CJ

HMT ENGINEERING & SURVEYING
290 S. CASTELL AVE., STE. 100
NEW BRAUNFELS, TX 78130
TBPE FIRM F-10961
TBPLS FIRM 10153600

21-1234 (B)

Drawing Name: S:\Projects\Title Surveys\Turner, Amasa\0.3285 - 13904 Ranch Road 12\21-1234 Shared Use Exhibit\CAD\21-1234 - SHARED USE EXHIBIT - UPPER AREA (B).dwg User: dorothy-t Dec 15, 2021 - 7:55am

HMT
ENGINEERING & SURVEYING
290 S. Castell Avenue, Ste. 100
New Braunfels, TX 78130
(830) 625-8555
TBPE-FIRM F-10961
TBPLS FIRM 10153600

METES AND BOUNDS DESCRIPTION
FOR A 0.069 OF AN ACRE, SHARED USE EASEMENT
EXHIBIT "A"

Being a 0.069 of an acre, shared use easement located in the Amasa Turner Survey, Abstract No. 461, Hays County, Texas, being a portion of Old Kyle Road right of way adjacent to a 0.3285 acre tract of land, recorded in Document No. 20003684, Deed Records, Hays County, Texas, said 0.069 of an acre, shared use easement being more particularly described as follows:

BEGINNING at a 1/2" iron pin w/ cap stamped "Precision" found in the Southeast right of way of Old Kyle Road and the Northeast right of way of Ranch Road 12, same point being the Southwest corner of said 0.3285 acre tract, from which a 1/2" pipe bears S 69°55'13" E, a distance of 166.29 feet;

THENCE departing the Northwest line of said 0.3285 acre tract, continuing into and across the right of way of Old Kyle Road with the front of curb and edge of asphalt the following six (6) calls:

1. N 69°55'13" W, a distance of 14.49 feet to a point for a corner;
2. along a curve to the right, said curve having a radius of 20.59 feet, a chord bearing and distance of N 32°30'49" E, 22.36 feet, for an arc distance of 23.63 feet to a point for a corner;
3. N 65°21'22" E, a distance of 106.75 feet to a point for a corner;
4. N 67°08'32" E, a distance of 30.15 feet to a point for a corner;
5. N 67°36'47" E, a distance of 64.27 feet to a point for a corner;
6. S 08°58'47" E, a distance of 13.44 feet to a 1/2" iron pin found in asphalt for the North corner of said 0.3285 acre tract and the Northwest corner of a called 0.88 acre tract, recorded in Volume 3516, Page 561, Deed Records, Hays County, Texas;

THENCE continuing with the Southeast right of way of Old Kyle Road and the Northwest line of said 0.3285 acre tract the following two (2) calls:

1. S 75°41'49" W, a distance of 45.05 feet to a point for a corner;
2. S 60°24'25" W, a distance of 162.25 feet to the POINT OF BEGINNING, containing a 0.069 of an acre, shared use easement in Hays County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Written December 13, 2021.

Reference survey of said 0.069 of an acre, shared use easement prepared this same date.

STATE OF TEXAS
REGISTERED
DOROTHY J. TAYLOR
6295
PROFESSIONAL
LAND SURVEYOR

Dorothy J. Taylor
Registered Professional Land Surveyor No.6295

12-14-21

S:\!Projects\!Title Surveys\Turner, Amasa\0.3285 - 13904 Ranch Road 12\21-1234 Shared Use Exhibit\M&B\0.069 AC. SHARED USE M&B (B).docx

MARKET SQUARE

13904 RANCH ROAD 12

SCHEMATIC DESIGN PACKAGE
01.13.22

Neel Morton AIA

Office of Architecture
P.O. Box 895
Wimberley, TX 78676

www.ooarch.com

(512) 847-7600

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

LOCATION MAP

N

OFFICE OF ARCHITECTURE

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

SITE PLAN - EXISTING

OFFICE OF ARCHITECTURE

PROPOSED SITE IMPROVEMENTS

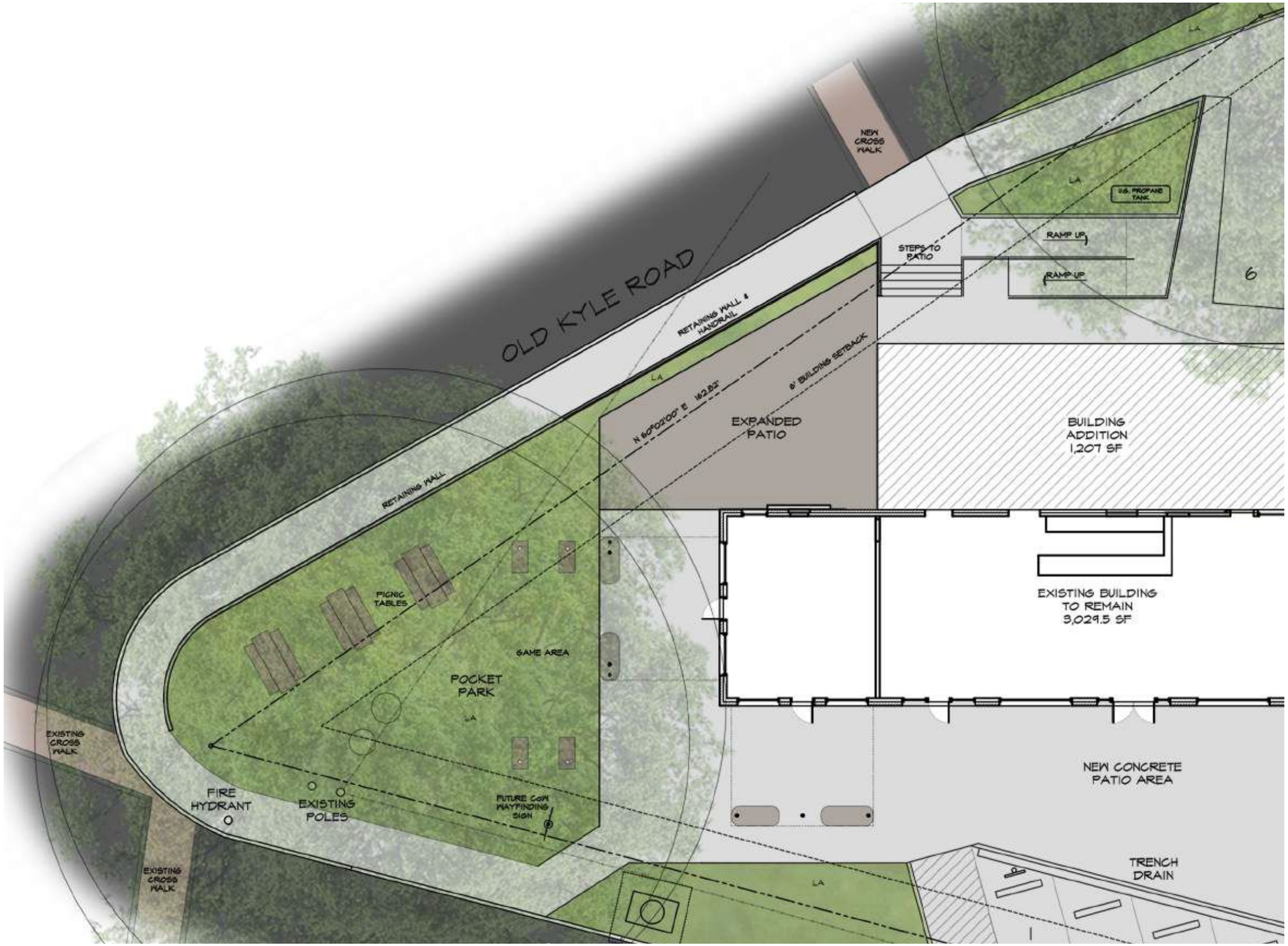
- EXTENDED SIDEWALKS ALONG OLD KYLE ROAD AND RR12
- ACCESSIBLE RAMP AND STEPS FROM SIDEWALK ALONG OLD KYLE ROAD
- NEW EXPANDED OUTDOOR PATIO SPACE ON OLD KYLE ROAD SIDE
- NEW OUTDOOR PEDESTRIAN SPACE BETWEEN BUILDING AND PARKING ON RR12 SIDE
- NEW ACCESSIBLE SIDEWALKS THROUGH SITE
- POCKET PARK AT CORNER WITH SEATING, GAMES AREAS, AND LANDSCAPING

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

SITE PLAN - PROPOSED

OFFICE OF ARCHITECTURE



MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

SITE PLAN - PROPOSED ENLARGED

N

OFFICE OF ARCHITECTURE

VIEW FROM OLD KYLE ROAD

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

EXTERIOR - EXISTING

OFFICE OF ARCHITECTURE

VIEW FROM OLD KYLE ROAD

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

EXTERIOR - PROPOSED

OFFICE OF ARCHITECTURE

VIEW FROM RANCH ROAD 12

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

EXTERIOR - EXISTING

OFFICE OF ARCHITECTURE

VIEW FROM RANCH ROAD 12

MARKET SQUARE
13904 RR12

SCHEMATIC DESIGN

EXTERIOR - PROPOSED

OFFICE OF ARCHITECTURE

Right of Way Encroachment
License Agreement No. # 2022-001

The City of Wimberley, a Type A General Law municipal corporation located in Hays County, State of Texas (the **"CITY"),** acting through its duly authorized agent the City Administrator or designee (the **"PROPERTY MANAGER"** or **"City"),** and Kontiki LLC, a Texas Limited Liability company **("LICENSEE"),** enter into this License Agreement (this **"AGREEMENT"),** effective upon final signature under the terms and conditions set forth below.

1. **Premises.** The City grants Licensee the right to use 0.069 acres out of the right-of-way within RR12 and Old Kyle Road (public rights-of-way), Wimberley, Texas (the **"LICENSED PROPERTY"),** as shown on the attached and incorporated **Exhibit "A",** (the **"ADJOINING PROPERTY').**

   The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

2. **Purpose.** The City grants Licensee permission to use the Licensed Property solely to install, repair, maintain and remove **grading, sidewalk(s), retaining wall(s), handicap accessible ramp, stairs, patio, and safety railing** of the size and in the method shown on the attached and incorporated Site Plan Set attached as **Exhibit "B",** (collectively, the **"IMPROVEMENTS").**

3. **Consideration.** In consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, Licensee is not required to pay any monetary consideration. However, Licensee covenants to properly and timely maintain the Improvements.

4. **Damages and Destruction.** The parties agree the City is not obligated to restore or repair the Improvements that may be removed, altered, damaged or destroyed as a result of the City's use, maintenance, and repair of the underlying right-of-way or easement.

   If the City causes damage to or destruction of Licensee's Improvements, Licensee covenants not to sue the City, or pursue other remedies, legal or equitable, against the City to recover costs of repairing or replacing the Improvements.

   If the City's use of the Licensed Property substantially interferes with or destroys Licensee's use of the Licensed Property, or any Improvements placed thereon or therein by Licensee, then this Agreement automatically terminates, and Licensee must immediately remove its Improvements at its sole cost.

5. **Term.** This Agreement begins on the execution date and continues thereafter for so long as the Licensed Property is used solely for the purposes set out

in this Agreement, subject to earlier termination as set out in this Agreement.

6. **Limits on License.** The existence of this Agreement is expressly subordinate to the present and future right of the City, its successors, assigns, lessees, and grantees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, transportation facilities, franchised public utilities, rights-of-way, roadways, sidewalks, or streets on, beneath, or above the surface of the Licensed Property (the **"FACILITIES").**

The City may enter the Licensed Property without giving notice and without incurring any obligation to Licensee and remove the Improvements or any alteration thereof. Such removal will occur only if the Property Manager deems it is necessary: (a) to exercise the City's rights or duties with respect to the Licensed Property; (b) to protect persons or property; or (c) for the public health or safety with respect to the Licensed Property.

7. **Conditions.**

A. **Repair or Relocate Existing Facilities.** Licensee must pay all costs required to repair damage to or relocate existing Facilities, which are damaged or destroyed or need to be relocated as a result of activities under this Agreement by, or on behalf of, Licensee.

B. **Covenant on Adjoining Property.** This Agreement, until its expiration or relocation, runs as a covenant on the Adjoining Property; therefore, the conditions set forth herein inure to and bind each party's successors and assigns. Licensee, and its assigns, if any, must notify any immediate successors-in-interest to the Licensed Property or Adjoining Property about the existence of this Agreement.

C. **Remove or Modify Improvements.** Licensee agrees to pay all costs required to remove or modify any Improvements now existing or to be replaced if the Property Manager determines that the Improvements need to be removed or modified. If Licensee voluntarily removes all Improvements, Licensee must provide at least thirty (30) days' written notice to the other owners of the Adjoining Property at the time, if any.

D. **Maintenance.** Licensee shall maintain the Licensed Property by keeping the area free of debris and litter on an ongoing basis. Further, Licensee must timely and properly maintain all Improvements. After any installation or repair of any Facilities is complete, Licensee must repair or replace any damaged Improvements such that pedestrian safety and accessibility within the Licensed Property, if applicable, is reestablished within forty-eight (48) hours.

E **Security Deposits.** Licensee is not required to post a security deposit.

F. **Recording.** The City will file this Agreement in the applicable official public records to inform all future owners of any interest in the Adjoining Property of the existence of this Agreement and the obligations hereunder.

8. **Insurance.** Licensee at its expense shall provide a commercial general liability insurance policy with a combined single limit of not less than $1,000,000, written by a company acceptable to the Property Manager and licensed to do business in Texas. The coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The insurance must cover all perils arising from the activities of Licensee, its officers, employees, agents, contractors, and invitees, related to the Improvements authorized to be placed on the Licensed Property by this Agreement. Licensee must pay all deductibles stated in the policy.

The insurance must specifically name the City of Wimberley as an additional insured and provide a waiver of subrogation in favor of the City. A certificate of insurance evidencing coverage must be provided and delivered to the Property Manager with this executed Agreement.

Licensee must ensure that the Property Manager receives written notice of any cancellation, non-renewal, reduction, restriction or other limitation of the insurance policy. This notice is required to be provided thirty (30) days before any of the above actions are taken on the insurance policy. A substitute certificate of insurance evidencing equivalent substitute insurance must be received by the Property Manager prior to the date shown on the notice. All certificates must affirmatively show that the City of Wimberley is named as an additional insured.

9. **INDEMNIFICATION. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND INSURERS, INCLUDING WITHOUT LIMITATION THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES"), FROM ALL LIABILITY, LOSS, CLAIMS, SUITS, ACTIONS, AND PROCEEDINGS WHATSOEVER ("CLAIMS") THAT MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF OR GROWING OUT OF ANY AND ALL INJURIES OR DAMAGES, INCLUDING DEATH, TO PERSONS OR PROPERTY RELATING TO THE USE OR OCCUPANCY OF THE LICENSED PROPERTY DURING THE TERM INCLUDING CLAIMS THAT ARISE OUT OF OR RESULT FROM THE ACTIVE OR PASSIVE NEGLIGENCE, OR SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF**

ANY OF THE INDEMNIFIED PARTIES AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR ALLEGED AGAINST SUCH INDEMNIFIED PARTIES, AND ALL LOSSES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS, PENALTIES, DAMAGES, AND EXPENSES RELATING THERETO, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND OTHER ACTUALOUT OF POCKET COSTS OF DEFENDING AGAINST, INVESTIGATING, AND SETTLING THE CLAIMS.

Licensee shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against any of the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Licensee of any obligations in this Agreement. In no event may Licensee admit liability on the part of an Indemnified Party without the written consent of the City Attorney.

Maintenance of the insurance referred to in this Agreement does not affect Licensee's obligations under this Section. Licensee shall be relieved of its obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of Licensee and either (a) paidto City or (b) paid for City's benefit in reduction of any liability, penalty, damage, expense, or charge actually imposed upon, or incurred by, City in connection with the Claims. Licensee may contest the validity of any Claims, in the name of the City, as the City may in good faith deem appropriate, provided that the expenses thereof are paid by Licensee, or Licensee shall cause the same to be paid by its insurer, and provided further Licensee maintains adequate insurance to cover any loss(es) that might be incurred if such contest is ultimately unsuccessful.

Licensee shall require its general partner, if applicable, and all subcontractors to indemnify City as provided in this Section.

Licensee accepts the Licensed Property "AS IS," and its duty to indemnify **extends to injuries caused by defective conditions present on the Licensed Property, INCLUDING DEFECTS ALLOWED TO EXIST BY THE CITY'S OWN NEGLIGENCE.**

10. Termination.

A. Termination by Licensee. Licensee may terminate this Agreement by delivering written notice of termination to the Property Manager not later than 30 days before the effective date of termination. Licensee shall remove all Improvements from the Licensed Property within the 30-day notice period at its sole cost and expense. Failure to do so constitutes a

breach of this Agreement and authorizes the Property Manager to notify Licensee of the cost of such removal and disposal and Licensee shall pay such costs within 30 days of such notice. The Property Manager may file a lien against the Adjoining Property and the cost of such removal and disposal if the Licensee fails to timely pay these costs. Additionally, in such an event, the Property Manager may draw down the Security Deposit, if any.

B. **Termination by City.** Subject to prior written notification to Licensee or its successor-in-interest, this Agreement is revocable by the Property Manager if any of the below conditions are met and the Property Manager receives no substantive response within fourteen (14) days, unless another timeframe is specifically identified:

1. The Improvements, or a portion of them, interfere with the City's rights in any of the rights-of-way;
2. Use of any of the rights-of-way areas becomes necessary for a public purpose;
3. Immediately, if the Improvements, or a portion of them, constitute a danger to the public, which the Property Manager deems not to be remediable by alteration or maintenance of such Improvements;
4. Despite forty-eight (48) hours' prior notice to Licensee, maintenance or alteration to the Improvements necessary to alleviate a danger to the public has not been made;
5. Despite fourteen (14) days' written notice to Licensee, Licensee has not provided certificates of insurance to the Property Manager;
6. Licensee fails to properly and timely maintain the Improvements as set out herein; or
7. Except as provided for above, City provides ninety-one (91) days' prior written notice of such termination for any reason.

C. **Termination by Abandonment.** If Licensee abandons or fails to maintain the Licensed Property, and the Property Manager receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all Improvements. Licensee covenants to pay the City's actual expenses incurred in connection therewith within thirty (30) days after being billed therefor. All of Licensee's Improvements not removed are deemed property of the City when abandoned by Licensee.

11. **Eminent Domain.** If eminent domain is exerted on the Licensed Property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to affect the removal of Licensee's affected Improvements thereon, at

Licensee's sole expense. Licensee may retain all monies paid by the condemning authority for Licensee's Improvements taken, if any.

12. **Venue/Controlling Law.** Venue for all claims, actions, lawsuits or damages of any kind arising under this Agreement shall lie exclusively in Hays County, Texas. This Agreement shall be subject to and construed under Texas law.

13. **Assignment.** Licensee shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the Property Manager. Such consent shall not be unreasonably withheld, subject to the assignee's compliance with the insurance requirements set forth herein, if any and the assignee's promise to comply with all covenants and obligations herein. Licensee shall provide the Property Manager a copy of any such proposed assignment or transfer of any of Licensee's rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.

14. **Notice.** Notice may be given by hand delivery or certified mail, postage prepaid, and is deemed received on the day hand delivered or on the third day after deposit if sent certified mail. Notice must be sent as follows:

If to City:
City Administrator
221 Stillwater
Wimberley, TX 78676
Phone: 512-847-0025, ext. 202

If to Licensee:
Kontiki LLC
1604 Little Ranches Rd
Wimberley TX 78676
Phone: 651.472.2592

15. **Default.** If Licensee fails to provide certificates of insurance, maintain the Licensed Property, comply with the insurance requirements of this Agreement, or otherwise comply with the terms or conditions herein, then the Property Manager shall give Licensee written notice as set forth herein. Licensee will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required, and, if Licenseedoes not satisfactorily remedy the same within that thirty (30) day period, the City may remedy the default or contract to remedy the default. However, if the default is a monetary default, Licensee must cure that within ten (10) business days of notice. Licensee covenants to pay within ten (10) days of written demand by the Property Manager, all reasonable costs expenses incurred by

the City in remedying the default.

Either party may waive any default of the other at any time, without affecting or impairing anyright arising from any subsequent or other default.

16. **Compliance with Laws.** Licensee covenants that all construction, installation, repair, maintenance, and removal of the Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

17. **Interpretation.** Although drafted by the Licensee, this Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against either party.

18. **Application of Law.** This Agreement must be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

Terms and Conditions Accepted on _____, 2022.

CITY OF WIMBERLEY, a Texas Type A General Law municipal corporation

By:_____
Michael Boese, City Administrator
City of Wimberley

LICENSEE:
Kontiki LLC

By: _____
Russell Whisler
Managing Partner
Kontiki LLC

STATE OF TEXAS §
COUNTY OF _____ §

Before me, the undersigned Notary Public of the State of Texas, on this day personally appeared Michael Boese, City Administrator, City of Wimberley, a Texas municipal corporation, on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, A.D., 2022

_____

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Williamson §

Before me, the undersigned Notary Public of the State of Texas, on this day personally appeared Russell Whisler, Managing Partner, Kontiki LLC, a Texas Limited Liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3rd day of January, A.D., 2022

STACY GOODLOW NOTARY PUBLIC STATE OF TEXAS NOTARY ID 128141562 MY COMM. EXP. 02-05-2022

Stacy Goodlow

Notary Public, State of Texas

After recording, return to:

City of Wimberley
221 Stillwater
Wimberley, TX 78676

Attn: Michael Boese

EXHIBIT A

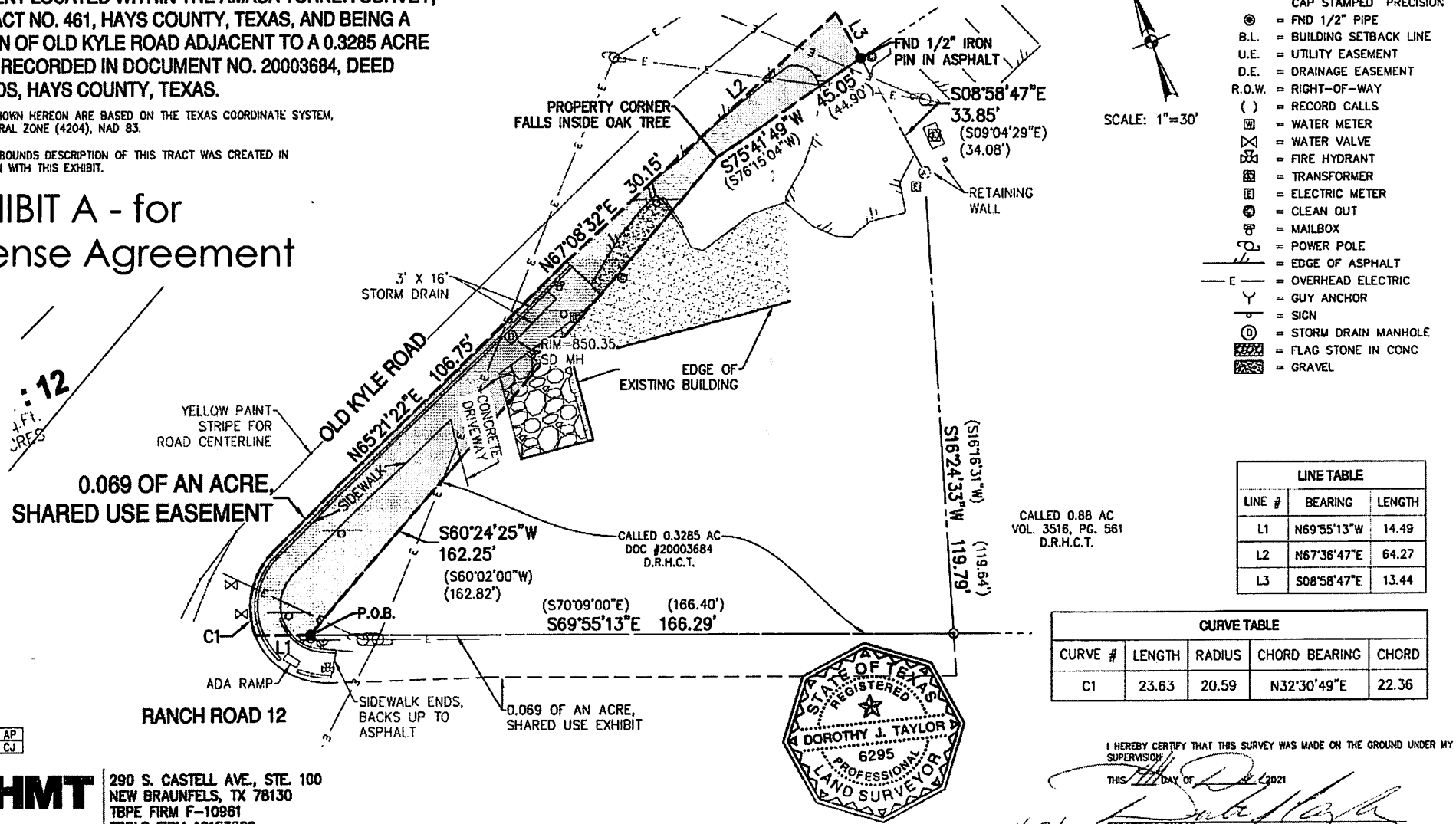
METES AND BOUNDS DESCRIPTION

EXHIBIT "B" - BEING A 0.069 OF AN ACRE, SHARED USE EASEMENT LOCATED WITHIN THE AMASA TURNER SURVEY, ABSTRACT NO. 461, HAYS COUNTY, TEXAS, AND BEING A PORTION OF OLD KYLE ROAD ADJACENT TO A 0.3285 ACRE TRACT, RECORDED IN DOCUMENT NO. 20003684, DEED RECORDS, HAYS COUNTY, TEXAS.

BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD 83.

A METES & BOUNDS DESCRIPTION OF THIS TRACT WAS CREATED IN CONJUNCTION WITH THIS EXHIBIT.

EXHIBIT A - for License Agreement



LEGEND:

- ● = FND 1/2" IRON PIN CAP STAMPED "PRECISION"
- ⊛ = FND 1/2" PIPE
- B.L. = BUILDING SETBACK LINE
- U.E. = UTILITY EASEMENT
- D.E. = DRAINAGE EASEMENT
- R.O.W. = RIGHT-OF-WAY
- ( ) = RECORD CALLS
- W = WATER METER
- ⋈ = WATER VALVE
- = FIRE HYDRANT
- = TRANSFORMER
- E = ELECTRIC METER
- = CLEAN OUT
- = MAILBOX
- = POWER POLE
- = EDGE OF ASPHALT
- E — = OVERHEAD ELECTRIC
- = GUY ANCHOR
- = SIGN
- Ⓓ = STORM DRAIN MANHOLE
- = FLAG STONE IN CONC
- = GRAVEL

LINE TABLE		
LINE #	BEARING	LENGTH
L1	N69°55'13"W	14.49
L2	N67°36'47"E	64.27
L3	S08°58'47"E	13.44

CURVE TABLE				
CURVE #	LENGTH	RADIUS	CHORD BEARING	CHORD
C1	23.63	20.59	N32°30'49"E	22.36

DRAWN BY: AP
FIELD CREW: CJ

HMT ENGINEERING & SURVEYING
290 S. CASTELL AVE., STE. 100
NEW BRAUNFELS, TX 78130
TBPE FIRM F-10961
TBPLS FIRM 10153600

STATE OF TEXAS REGISTERED DOROTHY J. TAYLOR 6295 PROFESSIONAL LAND SURVEYOR

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION THIS 7th DAY OF Dec 2021

12.14.21

DOROTHY J. TAYLOR
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6295

21-1234 (B)

HMT
ENGINEERING & SURVEYING
290 S. Castell Avenue, Ste. 100
New Braunfels, TX 78130
(830) 625-8555
TBPE-FIRM F-10961
TBPLS FIRM 10153600

METES AND BOUNDS DESCRIPTION
FOR A 0.069 OF AN ACRE, SHARED USE EASEMENT
EXHIBIT "A"

Being a 0.069 of an acre, shared use easement located in the Amasa Turner Survey, Abstract No. 461, Hays County, Texas, being a portion of Old Kyle Road right of way adjacent to a 0.3285 acre tract of land, recorded in Document No. 20003684, Deed Records, Hays County, Texas, said 0.069 of an acre, shared use easement being more particularly described as follows:

BEGINNING at a 1/2" iron pin w/ cap stamped "Precision" found in the Southeast right of way of Old Kyle Road and the Northeast right of way of Ranch Road 12, same point being the Southwest corner of said 0.3285 acre tract, from which a 1/2" pipe bears S 69°55'13" E, a distance of 166.29 feet;

THENCE departing the Northwest line of said 0.3285 acre tract, continuing into and across the right of way of Old Kyle Road with the front of curb and edge of asphalt the following six (6) calls:

1. N 69°55'13" W, a distance of 14.49 feet to a point for a corner;
2. along a curve to the right, said curve having a radius of 20.59 feet, a chord bearing and distance of N 32°30'49" E, 22.36 feet, for an arc distance of 23.63 feet to a point for a corner;
3. N 65°21'22" E, a distance of 106.75 feet to a point for a corner;
4. N 67°08'32" E, a distance of 30.15 feet to a point for a corner;
5. N 67°36'47" E, a distance of 64.27 feet to a point for a corner;
6. S 08°58'47" E, a distance of 13.44 feet to a 1/2" iron pin found in asphalt for the North corner of said 0.3285 acre tract and the Northwest corner of a called 0.88 acre tract, recorded in Volume 3516, Page 561, Deed Records, Hays County, Texas;

THENCE continuing with the Southeast right of way of Old Kyle Road and the Northwest line of said 0.3285 acre tract the following two (2) calls:

1. S 75°41'49" W, a distance of 45.05 feet to a point for a corner;
2. S 60°24'25" W, a distance of 162.25 feet to the POINT OF BEGINNING, containing a 0.069 of an acre, shared use easement in Hays County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Written December 13, 2021.

Reference survey of said 0.069 of an acre, shared use easement prepared this same date.

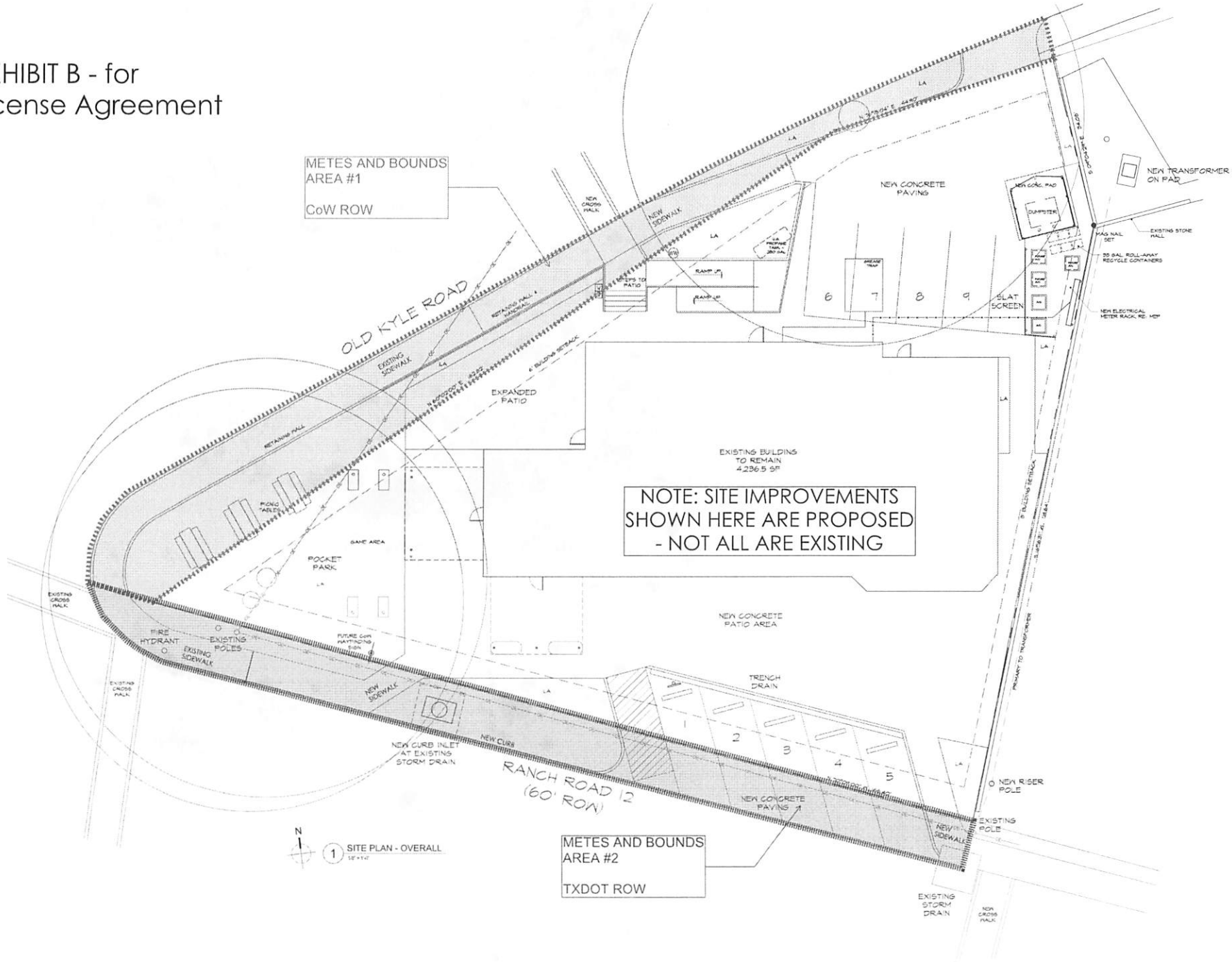
Dorothy J. Taylor
Registered Professional Land Surveyor No.6295 12-14-21

S:\Projects\Title Surveys\Turner, Amasa\0.3285 - 13904 Ranch Road 12\21-1234 Shared Use Exhibit\M&B\0.069 AC. SHARED USE M&B (B).docx

EXHIBIT B

SITE PLAN

EXHIBIT B - for License Agreement



MARKET SQUARE SITE IMPROVEMENTS
13904 RANCH ROAD 12
WIMBERLEY, TEXAS 78676

PRELIMINARY
NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION

A1.0
SITE PLAN OVERALL

AGENDA ITEM:	**Blue Hole Lift Station Panel**
SUBMITTED BY:	M. Boese, City Administrator
DATE SUBMITTED:	January 13, 2022
MEETING DATE:	January 20, 2022

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

Currently, the Blue Hole Lift Station Panel is in a state of weathered and heavy use. The panel has not been replaced since the lift station was constructed. The lift station panel controls the operation of the pumps and all other related mechanisms. The panel needs to be in good working condition for the system to function properly.

This purchase is eligible for American Recuse Plan funds. Wastewater projects as well as upgrades to sewer infrastructure are specifically listed.

REQUESTED ACTION

Motion ☒

Discussion ☒

Ordinance ☐

Resolution ☐

Other ☐

FINANCIAL

Budgeted Item ☐

Non-budgeted Item ☒

Not Applicable ☐

Original Estimate/Budget: N/A

Current Estimate: $ 33,668

Amount Under/Over Budget: $ N/A

STAFF RECOMMENDATION

Staff recommends City Council approve the purchase of the SCADA equipment and software for the city's wastewater system.

ATTACHMENT/S

Date: January 6, 2022 Alterman Bid #: 469-AH
To: City of Wimberley
Attn: Mike Boese
Ref: Blue Hole Lift Station Panel
Automation, Instrumentation and Controls

Alterman is pleased to submit this proposal for the scope of work to be completed on the project referenced above, per the following:

Referenced Documents:
Drawings: N/A
Date: N/A
Prepared by: N/A
Specifications: N/A
Date: N/A
Prepared by: N/A
Addendum(s): N/A

Scope of Work:
- Furnish and Install New Stainless Steel Lift Station Panel
- Removal and Disposal of Existing Panel
- Panel will include all new componets
- Panel will be designed in such a Fashion that Furture SCADA controls will be built in
- Panel will be designed to be similar in appearance to main Lift Station
- Alterman includes startup assistance for the scope provided herein.
- Alterman includes contract documentation for the scope provided herein.
- Alterman includes contract management for the scope provided herein.

Special Qualifications and/or Clarifications:
- This proposal is based solely on the Engineer-furnished design documents. Alterman does not include assumed clarifications. Alterman shall not be responsible for any costs or expenses necessitated by changes and/or corrections due to errors or omissions in the design documents.
- Any design services provided by Alterman will be reviewed by the Engineer to assure acceptability when integrated with the entire work. Owner is entitled to rely on the accuracy and completeness of design services or certificated provided by Alterman only to the extent that design responsibility is specifically delegated to Bidder by agreement in writing and all design and performance criteria are furnished to Alterman.

Exclusions:
- Any additional Repairs to Lift Station
- Any cleaning of inside the wet well
- Furnshing and installation of any new electrical service, disconnects, etc..
- Furnishing and Installation of any electrical conduit, raceways, cable cray, wireways, etc.
- Furnishing, Installing and termination of the Fiber Optic System
- Furnishing and Installation of any Electrical Equipment (i.e. gear, fixtures, devises, etc.)
- Installation of inline devices (i.e. flow meter, valves, pressure switches with concentric seals, etc.)
- Temporary power and temporary lighting for general use during construction
- Utility company's service charges and administration fees
- Existing utility service size and condition

- Furnishing and installation of hydraulic equipment (i.e. motors, pumps, valves, blowers, appliances, etc.)
- Furnishing and installation of HVAC equipment and controls
- Saw cutting and/or replacing concrete and/or asphalt
- Formed concrete (i.e. equipment pads, pole bases, tower foundations, etc.)
- Engineering of structural components (i.e. equipment pads, pole bases, foundations, supports, etc.)
- Welding, torching, tapping, or cutting structures (i.e. tanks, pipe, footplates, beams, etc.)
- Fabrication and installation of structural items (i.e. canopies, walkways, ladders, etc.)
- Functionality and warranty of existing electrical and control systems
- Safety and functionality of existing electrical systems maintained by others during or prior to work described herein (i.e. owner's maintenance departments, maintenance contracts, etc.)
- Solid rock excavation that requires blasting and/or the use of a hoe ram
- Spoil relocation from work area/site
- Trash dumpsters and portable toilets
- Sandblasting or painting
- Potholing, investigative excavation, location services, and all associated fees
- Dewatering
- Tunneling and/or boring
- Furnishing and installation of heat trace pipe armor and insulation
- Overtime, expediting, and acceleration fees
- Payment and performance bonds, unless specifically listed under "**Pricing:**"

Terms:
- Price is contingent upon execution of a mutually acceptable contract and project schedule
- Price is valid for 30 days from date listed above

Pricing:

Bid Item :	$	22,393
Total:	**$**	**22,393**

We appreciate the opportunity to submit this proposal. If there are any questions, please contact us.

Sincerely,

Roger Barrett
Associate Director of System Automation - Industrial Division
17750 Lookout Rd, Suite 150, Schertz, TX 78154
Office: (210) 496-6888 X 122
Mobile: (830) 743-4544
Roger.Barrett@goalterman.com
www.GoAlterman.com

I, the undersigned, hereby accept this proposal and the contents herein.

Signature: _____ Date: _____

Print Name: _____

RESOLUTION NO. 02-2022

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2021/2022 OPERATING BUDGET (BUDGET AMENDMENT NO. 4), AUTHORIZING EXPENDITURES FROM THE AMERICAN RESCUE PLAN FUND 6751 (OUTLAY – PROJECTS) AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved the 2021/2022 Operating Budget.

WHEREAS, the City Council has reviewed and approved the purchase of an updated lift station panel for the Blue Hole Lift Station to operate the wastewater pumps and associated mechanisms and recognized the need to appropriate funds from the American Rescue Plan Fund – Outlay – Projects Account.

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 2021/2022 Revenue / Operating Budget (Budget Amendment No. 4) for the purpose and in the amounts shown below.

American Rescue Plan Fund - Expenditures

The effect of these transactions will increase expenditures in the American Rescue Plan Fund Account Number 6751 (Outlay - Projects) by $22,393.00.

Section 2

The City Council of the City of Wimberley, Texas, hereby amends the 2021/2022 Revenue / 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 February, 2022**.**

The City of Wimberley, Texas

_____
Gina V. Fulkerson, Mayor

ATTEST:

_____

Laura J. Calcote, City Secretary

AGENDA ITEM:	5. Discuss and consider possible action to authorize a Request for Proposal (RFP) for Short-Term Rental Compliance Software. *(City Administrator, Mike Boese)*
SUBMITTED BY:	Mike Boese
DATE SUBMITTED:	02/02/2022
MEETING DATE:	February 7, 2022

AGENDA FORM

ITEM DESCRIPTION/SUMMARY

The City of Wimberley has experienced exponential growth in short-term rental (STR) properties. The City has not assessed a Hotel Occupancy Tax for the past two (2) years. Challenges include compliance and adherence to the STR permitting requirements, educating overnight rental operators, tracking and addressing complaints related to noise, trash, occupancy violations, etc., and ensuring every overnight rental operator is remitting Hotel Occupancy Taxes (HOT).

The City of Wimberley (“City”) would like to seek proposals from qualified respondents interested in assuming responsibility for administration of the short-term rental ordinance, as well as the collection and remittance of Hotel Occupancy Taxes ("HOT") assessed within the incorporated boundaries of the City, and extraterritorial jurisdiction (ETJ) of the City. The City envisions utilizing one qualified firm that can serve as a one stop shop for all short-term rental services and Hotel Occupancy Tax collections, reporting and property discovery needs. In addition, the successful respondent will assist the City in the discovery, recovery, auditing, reporting and compliance (land use and tax payment) for all overnight rental operators.

REQUESTED ACTION

Motion
Discussion

FINANCIAL

STAFF RECOMMENDATION

ATTACHMENT/S

1. Wimberley HOT RFP Services
2. Professional Services Agreement Template

CITY OF WIMBERLEY

REQUEST FOR PROPOSAL FOR SHORT-TERM RENTAL ADMINISTRATION AND COLLECTION OF HOTEL OCCUPANCY TAX

CITY OF WIMBERLEY
221 STILLWATER
WIMBERLEY, TX 78676

SECTION 1 – TABLE OF CONTENTS

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SECTION 3 – GENERAL INFORMATION	4
SECTION 4 – INSTRUCTIONS FOR RESPONSE	6
SECTION 5 – GENERAL	9
ATTACHMENT A – RESPONDENT CERTIFICATIONS	13
ACKNOWLEDGEMENT	15

DRAFT

Restrictions on Communication

Please note that to ensure the proper and fair evaluation of a proposal, the City of Wimberley prohibits ex parte communication (e.g., lobbying and/or unsolicited) initiated by the Proposer to an Elected Official, City Official or Employee evaluating or considering the statements prior to the time a formal decision has been made. Refer to Section 5.4 for more information.

Written Communications shall be made to:

Michael Boese, City Administrator via email mboese@cityofwimberley.com

(512) 648-2402

DRAFT

SECTION 2 – SCOPE AND SPECIFICATIONS

2.1 BACKGROUND:

The City of Wimberley ("City") seeks proposals from qualified respondents interested in providing the services described in this RFP. The successful respondent will assume responsibility for administration of the short-term rental ordinance as well as the collection and remittance of Hotel Occupancy Taxes ("HOT') assessed within the incorporated boundaries of the City, and extraterritorial jurisdiction (ETJ) of the City. In addition, the successful respondent will assist the City in the discovery, recovery, auditing, reporting and compliance (land use and tax payment) for all overnight rental operators.

The City of Wimberley has experienced exponential growth in short-term rental properties. The City has not assessed a Hotel Occupancy Tax for the past two (2) years. Challenges include compliance and adherence to the STR permitting requirements, educating overnight rental operators, tracking and addressing complaints related to noise, trash, occupancy violations, etc., and ensuring every overnight rental operator is remitting Hotel Occupancy Taxes. The City envisions utilizing one qualified firm than can serve as a one stop shop for all short-term rental services and Hotel Occupancy Tax collections, reporting and property discovery needs.

The City has a robust tourism industry drawing visitors from various parts of the country and world. As a result, the City anticipates the visitors will generate substantial Hotel Occupancy Tax revenue.

2.2 SCOPE OF WORK:

The selected respondent will provide various services related to the administration of:

2.3 Short-term rental ordinance to include, but not limited to the following:

a. Identify all overnight rental properties conducting business within the incorporated city limits, and ETJ to include STR's and Hotels/Motels.
b. Provide online portal for overnight rental property owners, monthly occupancy tax payments and reporting information.
c. Online tools for registration, permitting, tax remittance, monitoring and code violation reporting to include tracking of compliance.
d. Provide detailed lists to the City of these accounts, to include identifying and owner contact data. The information requested includes but is not limited to:
    - Owner name and contact information (i.e. mailing address, telephone number, email address)
    - Property management company name and contact information (i.e. mailing address, telephone number, email address)
    - Address of property
    - Number of bedrooms
    - Permit number
    - Zoning district
    - Appraisal district parcel number
    - Listing Platform and ID (ie. AirBnB, VRBO, Homeway).
    - Photos of property (if available)

e. Work with City staff in contacting and communicating (via letters, emails, phone calls) to overnight rental property owners regarding various subjects to include:
    - STR permitting and tax remittance procedures, methods and contact information

DRAFT

- Potential land use, permitting violation(s)

f. Supply lists of overnight rental properties that may be in violation of permitting obligations at a mutually agreed upon frequency.
g. Provide reports and analysis to the City to support potential audits and other enforcement inquiries at a mutually agreed upon frequency.
h. Provide City Staff the ability to run basic reports such as:
   - STR permit revenue received during a specific period.

2.4 Hotel Occupancy Tax ordinance, collections and compliance to include, but not limited to the following:

i. Provide detailed lists to the City of these accounts, to include identifying and owner contact data. The information requested includes but is not limited to:
   - Owner name and contact information (i.e. mailing address, telephone number, email address.
   - Property management company name and contact information (i.e. mailing address, telephone number, email address).
   - Address of property.
   - Booking frequency.
   - Average daily rate.
   - Listing Platform and ID (i.e., AirBnB, VRBO, Homeway).

j. Work with City staff in contacting and communicating (via letters, emails, phone calls) to overnight rental property owners regarding various subjects to include:
   - Potential tax violations of tax remittance compliance
   - Notice of selection for audit review

k. Supply lists of overnight rental properties that may be in violation of tax remittance obligations at a mutually agreed upon frequency.
l. At the request of City staff, determine estimated revenues for overnight rental properties.
m. Provide reports and analysis to the City to support potential audits and other enforcement inquiries at a mutually agreed upon frequency.
n. Provide City Staff the ability to run basic reports such as:
   - Revenue received during a specific period
   - Revenue received by STR's vs. Hotels/Motels
   - Revenue received by STR's in the ETJ for the City of Wimberley
   - Percentage of HOT revenue generated by STR's vs. Hotels/Motels
   - Number of Hotels/Motels, and STR's in the City Limits and ETJ
o. Audit overnight rental properties to ensure compliance with Hotel Occupancy Tax obligations.

SECTION 3 – GENERAL INFORMATION

3.1 AVAILABLE DOCUMENTS:

3.01 Proposals are due Friday, February 18, 202,2 at 3:00 P.M. (Central Time) at the Wimberley City Hall located at 221 Stillwater., Wimberley, Texas 78676. Solicitation documents may be obtained from:

- *the Finance Clerk in the Finance Dept. at Wimberley City Hall*
- *the City of Wimberley's website,* https://www.cityofwimberley.com/bids

3.2 EXCEPTIONS AND DEVIATIONS:

Any exceptions to the specifications or RFP objectives must be clearly stated in Respondent's proposal.

DRAFT

3.3 COMPETITIVE PROPOSALS:

3.3.1 Proposals will not be opened publicly to avoid disclosure of contents to competing respondents and kept confidential during the process of negotiation. However, all proposals will be open for public inspection after award except for trade secrets and confidential information contained in the proposals and identified as such by the proposer. Marking the entire proposal as confidential and/or proprietary is not in conformance with the Texas Open Records Act.

3.3.2 The City of Wimberley will review proposals, and the respondent will be recommended for award by City Council, based upon the published Evaluation Standard noted below. The evaluation committeerecommendations are subject to approval by the City of Wimberley City Council.

3.3.2.1 The City will evaluate price as an important, but not sole, factor, considering the cost of basegoods/services and any requested optional features.

3.3.2.2 City reserves the right to accept one or more submittals or reject any or all submittals received in response to this solicitation, and to waive informalities and irregularities in the proposals received.

3.3.2.3 The City reserves the right to award to one or more companies or individuals as necessary to meet the contract demands.

3.3.2.4 The contracts, if awarded, will be awarded to the respondents whose submittals are deemedmost advantageous to City, as determined by the Evaluation Committee.

3.3.2.5 The recommended respondent will be submitted to the City Council for approval.

3.3.3 **Evaluation Standard:** The City of Wimberley will review proposals on the basis of professional qualifications, experience, background, references, contents of the proposal and best value to the City.

3.3.4 Negotiations may be conducted with responsible respondents who submit proposals determined by city staff to be reasonably susceptible of being selected for award. All respondents will be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. Revisions to proposals may be permitted after submission and before award for the purposeof obtaining best and final offers.

(i) Any oral negotiations must be confirmed in writing prior to award.

(ii) Award may be made without negotiation of proposals with any respondent.

3.3.5 Cost and/or Pricing Data will be required to be submitted with the proposal, as specified elsewhere in this RFP, or, during the process of any negotiations that may be conducted after receipt of proposals and prior to award.

3.3.6 **Presentations:** After an initial review and compilation process, the City may ask for presentation of services from selected firms or individuals to clarify and/or develop a comprehensive assessment of the submissions.

3.3.7 **Other Considerations:** The City reserves the right to consider historical information and facts, whether gained from the proposal, references, or any other source, in the evaluation process, including Respondent's past working or business relationship with the City, if any. The City further reserves the right to consider a respondent's background, personnel, experience, financial and other references, management practices, exceptions to the RFP or subsequent contract, and any working relationships, past or present, a respondent may have with its other clients.

3.4 CONTRACT TERM:

The term of a contract awarded pursuant to this RFP shall be for a one (1) year period, beginning on March 11, 2022, or award of the contract, and terminating March 31, 2023. City shall also have the right to extend the contract under the same terms and conditions for two (2) one (1) year periods. Renewing term dates shall be April 1st to March 31st.

DRAFT

3.5 Contract Form:

The successful respondent shall be required to execute the attached professional services agreement with an appropriate Scope of Work and Compensation structure attached.

SECTION 4 – INSTRUCTIONS FOR RESPONSE

4.1 ANTICIPATED SOLICITATION SCHEDULE:

DATE	EVENT
Friday, February 4, 2022	*RFP issued on* https://www.cityofwimberley.com/bids
Friday, February 11, 2022	Deadline for questions and requests for clarification.
Friday, February 18, 2022	Deadline for submitting RFP's.
February 18-22, 2022	Review RFP's and Schedule Qualified Firms for Demos
Wednesday, February 23, 2022	Schedule Demos by 2-3 Companies
Thursday, February 24, 2022	Discuss and identify which Firm best meets the City's needs and select a Firm to begin negotiations
Friday, February 25, 2022	Negotiate Contract with the selected Firm
Monday, February 28, 2022	Complete Staff Report and Recommendations for City Council
Thursday, March 3, 2022	Council Approval of Contract
March 10 – March 30, 2022	Employee Training and Education of the Firms Tools and Online Utilities
Thursday, March 10, 2022	Effective Date for New Contract

4.2 CONTACT FOR QUESTIONS:

Questions relating to definitions, interpretations, and/or requests for clarification must be in writing, on or before **Friday, February 11, 2022, at 4:30 P.M. (Central Time)**, directed to:

Michael Boese, City Administrator. via email mboese@cityofwimberley.com

No questions will be accepted after the afore-mentioned deadline.

4.3 EVALUATION CRITERIA:

As per Section 4.3(c), the City of Wimberley will review proposals on the basis of professional qualifications, experience, background, references, contents of the proposal and best value to the City.

- Each proposal must clearly cover all items in this Request for Proposal and supply complete responses to all items mentioned. Additional information may be included, and a clear table of contents must make all information easily referenced.

- Each proposal must indicate a contact person for purposes of discussion related to this proposal process. Additionally, this person must be one authorized to make commitments on behalf of the firm and should indicate the firm's overall intentions toward this contract in a signed cover letter accompanying the firm's

proposal.

4.4 PROFESSIONAL QUALIFICATIONS, EXPERIENCE, AND BACKGROUND

The City will evaluate Respondent's qualifications and successful experience with the project scope. The City will consider the relevance of experience for all parties proposed as a part of the Respondent's team.

4.4.1 Client references that may be contacted to discuss your firm's work history within your contract. Include the contact's name, title, phone number, email address and full business address.

4.4.2 A complete listing indicating all of your current municipal clients throughout the state. Please include municipality's name, address, contact name and phone number as well as email address.

4.4.3 Each proposal must provide a full history of the firm and some description of its various activities. Include in an overall history of the firm and its length of experience; services offered; specific information that will support the project scope.

4.4.4 Prepare and submit narrative responses to address the following items:

a. List of primary contacts and 1-page-resume for those individuals assigned to the account.

b. Experience relevant to the Scope of Services requested by this RFP.

c. List and describe relevant projects of similar scope performed over the past four years. Includedate(s) and client names. Identify associated results or impacts of the work performed.

d. Years of experience the Respondent has with providing services of similar type, scope and complexity.

e. Specify experience with public entity clients in Texas.

1. Explain the top challenges in providing short term rental and tax compliance services and monitoring for public entities and what your recommendations are to overcome those obstacles.

4.5 PROPOSED PLAN FOR CITY OF WIMBERLEY

The firm shall submit information in a detailed narrative that clearly and concisely describes the organization and approach to the project to include availability and ability to commit to successful and expeditious completion of the scope of services requested.

4.5.1.1 Describe, in detail, the proposed plan to meet the scope of services requested

4.5.1.2 Describe the specific format in which the discovery and compliance data will be provided to the City

4.5.1.3 Provide detailed information regarding your method for accepting occupancy taxes and reportinginformation.

4.5.1.4 Provide description of any additional services that have not directly been requested.

4.5.1.5 Provide a description of resources available to identify potential tax and/or permitting violations.

4.5.1.6 Describe technical support services available

4.5.1.7 Provide an implementation plan which includes and estimated number of days after contract executionuntil all resources are "live".

4.6 PROPOSED COST

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The City will evaluate price as an important, but not overriding, factor, considering the cost of base services and optional services if applicable. The City of Wimberley is open to negotiating a flexible pricing structure for the scope of services incorporated into the RFP. Generally, pricing will be categorized as below. Please indicate whether pricing is annual, monthly, per unit, per service, etc.

4.6.1 Provide itemized price schedule for services being proposed by your firm. Align pricing to the "Proposed Plan" for the City. Indicate cost on an annual basis.

4.6.2 Proposed Price should be inclusive of any and all labor and materials, service equipment, tools, transportation and set-up charges, methods of communication and miscellaneous services as necessary to complete the work as defined in the proposed plan.

Service Category	Pricing Structure	If Applicable
a. Short-term rental administration b. Hotel Occupancy Tax collection, remittance and reporting. c. Perform audits of overnight rental operators for occupancy tax compliance. d. Identification, notification and reporting of non-compliant overnight rental operators.		

4.7 SUBMISSION OF PROPOSAL:

4.7.1 Companies responding to the solicitation must follow the instructions below.

4.7.2 The following items request information that the Evaluation Committee will utilize to evaluate the proposal.Failure to provide any of the information below may result in a proposal being deemed non-responsive andtherefore not considered in the selection process.

4.7.3 To achieve a uniform review process and to obtain a maximum degree of comparability, the City of Wimberley requires that proposals be submitted with ***one original master (marked 'original'), threecopies, and one electronic copy of all documents listed below on USB.***

4.7.4 Each proposal completed and signed by person(s) authorized to bind individual, partnership, firm, corporation, or any other legal entity, will include the following in one envelope/package:

TAB 1 Solicitation and Offer:
TAB 2 Acknowledgment of Addenda; **if applicable**.
TAB 3 Cover Letter: Name and address of the Respondent, as well as a brief description of the firm and its history
TAB 4 Professional Qualifications and Experience (per Section 4.4.1 – 4.4.3)
TAB 5 Demonstrated Experience – References and Expertise in Projects of Similar Scope (per Section 4.4.4)
TAB 6 Recommended Approach to Implementation of Plan (per Section 4.5)
TAB 7 Proposed Cost (per Section 4.6)
TAB 8 Respondent Certifications – Attachment A
TAB 9 Certificate of Insurance: One copy completed and signed
TAB 10 Conflict of Interest Form
TAB 11 Certificate of Interested Parties - Form 1295
TAB 12 Additional Supporting Information as needed by respondent.

4.8 *Proposal identified on outside as a proposal to Owner, with Respondent's name and address, and solicitation name. Failure to submit proposal in this manner may subject Respondent to disqualification. Proposal may be delivered in person to the Wimberley City Hall, or by Express Mail or delivery service to:*

City of Wimberley
Attn: City Administrator
221 Stillwater
Wimberley, TX 78767

The outside of the envelope or package **must state**:
"RFP 01.22 STRHOT, Short-term Rental and Hotel Occupancy Tax Administration Services
Proposal Due Date: Friday, February 18, 2021, 3:00 P.M."

4.9 *It is the sole responsibility of the respondent to ensure timely delivery of the proposal. Owner will not be responsible for failure of service on the part of the U.S. Post Office, courier services, or any other form of delivery service chosen by the respondent.* ***PROPOSALS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE ACCEPTED OR CONSIDERED****.*

4.10 RESTRICTIONS ON COMMUNICATION

Respondents are prohibited from communicating with City officials and City employees regarding this solicitation to ensure the proper and fair evaluation of a proposal, the City of Wimberley prohibits ex parte communication (e.g., lobbying and/or unsolicited) initiated by the Proposer to an Elected Official, City Official or Employee evaluating or considering the statements prior to the time a formal decision has been made.

Anti-Lobbying terms ensure a fair and competitive bidding environment by preventing communication between City officials, employees, or representatives and parties involved in the bidding process that could create an unfair advantage to any party with respect to the award of a City contract.

All communication between Proposer and the City shall be made in writing to the Purchasing Coordinator. The Anti-Lobbying term does not apply to Questions of Process and Procedure, including oral communications with the Purchasing Coordinator provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document.

Written Communications shall be made to:
Michael Boese
mboese@cityofwimberley.com
(512) 648-2402

Ex parte communication may be grounds for disqualifying the offending Proposer from consideration or award of the solicitation then in evaluation, or any future solicitation.

SECTION 5 – GENERAL

5.1 INSTRUCTIONS TO PROPOSERS:

(a) Thoroughly examine this RFP and all other solicitation documents.

(b) Make all investigations necessary to be familiar with conditions that affect the proposal, such as but not limited to, plant and facilities for delivery of material and equipment. No plea of ignorance by the proposer because of failure to investigate or examine conditions or failure to fulfill details of the contractual documents will be accepted as a basis for varying the requirements of City or changing the compensations due.

(c) City contracts are subject to all legal requirements of City, state or federal statutes and regulations. Laws of the State of Texas apply.

(d) Provide all required information on the forms furnished in the solicitation. Print or Type name on proposal and **MANUALLY SIGN ALL COPIES IN THE SPACE AND ON THE FORMS PROVIDED**. **Telegraphic, Fax, Email and Online responses WILL NOT BE ACCEPTED unless specifically authorized in the**

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terms and conditions of the solicitation. If you obtained this solicitation by Internet posting, your response will not contain any alteration to the document posted other than entering data in the spaces provided or including attachments as necessary. By submission of a response, Respondent affirms that no alteration of any kind has been made to this solicitation.

(e) Alternate Proposals cannot be considered unless specifically invited and authorized by the solicitation.

(f) If applicable, provide your proposed delivery time. Include weekends and holidays in counting days or months.

(g) Do not include federal taxes or State of Texas limited sales excise and use taxes in proposal prices since a municipal government is exempt from payment of these taxes. (Sec 151.309 Tax Code)

(h) All proposals must be current and final at the time of opening to be considered responsive. No proposal will be accepted for consideration, and no award will be made, if at the time of opening anything contained therein is contingent upon, or subject to, any outstanding matter, including, but not limited to, any review, certification, or approval by any party that has not been received.

5.2 PROPOSER'S CERTIFICATIONS/AGREEMENTS:

By submission of a proposal:

- You certify that you are a duly qualified, capable, and otherwise bondable business entity authorized to business in Texas. You further certifythat the Company, Corporation or Partnership does not owe any back taxes within City. No award will be made to a firm owing back taxes within the City. Additionally, if taxes become delinquent after an award has been made to you, that fact may constitute cause for cancellation of this contract.

- You warrant that all applicable patents and Copyrights which may exist on items in proposal have been adhered to and further, you warrant that City will not be liable for any infringement of those rights. Such rights granted City will apply for the duration of the contract or for the life of the equipment or supplies purchased. City agrees not to sell, convey, barter, or otherwise extend the use or exclusive right granted herein to anyone other than City employees for official use as described in this contract. City will not knowingly or intentionally violate any patent, license or copyrights applicable to items sold hereunder.

- You warrant that upon execution of a contract with City you will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, race, color, sex, disability, creed, or national origin and will submit reports as City may require assuring compliance. Furthermore, City, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment, and services, will not discriminate based on race, color, religion, national origin, handicap, or sex in the award and/or performance of contracts. All vendors, suppliers, professionals, and contractors doing business, or anticipating doing business, with City will support, encourage, and implement affirmative steps toward the goal of establishing equal opportunity for all the citizens of City.

- **You warrant that the offered price will be held firm and subject to acceptance by the City Council for a period of one hundred-twenty (120) calendar days from solicitation closing date, or such longer period indicated in your offer.**

- You affirm that any response has not included any preparation in collusion with any other proposer, and that the contents of any response as to prices, terms or conditions of said response have not been communicated in any manner to any other person engaged in this type of business prior to the official opening of this solicitation.

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5.3 SUBMISSION OF PROPOSALS:

- Deliver your proposal, or changes to proposals, in SEALED ENVELOPES OR PACKAGES addressed to the Purchasing Coordinator. NAME AND ADDRESS OF PROPOSER, DATE OF RFP CLOSING, SERVICES PROPOSAL ON, and RFP NUMBER must be placed on the outside of the envelope or package.
- Submit signed offers with ONE ORIGINAL AND THREE COPIES (unless otherwise indicated) on the FORMS PROVIDED. **ALL ORIGINALS MUST BE MANUALLY SIGNED. Telegraphic, Fax, Email and Online responses WILL NOT BE ACCEPTED unless specifically authorized in the terms and conditions of the solicitation. If you obtained this solicitation by Internet posting, your response will not contain any alteration to the document posted other than entering data in the spaces provided or including attachments as necessary. By submission of a response, proposer affirms that no alteration of any kind has been made to this solicitation.** Modifications to offers on RFPs will be accepted by telegraphic notice or fax up to time for RFP closing and modifications to the solicitation may be distributed in that manner. Specific prices offered must not be exposed in telegraphic modifications.
- An authorized official of the firm must print or type their name and **MANUALLY SIGN THE PROPOSAL**.
- Proposals may not be withdrawn after the time set for the closing, unless approved by the City Council.
- **Your offer or a modification to your offer is LATE if received after the time set for proposal opening and will not be considered.**
- If you need clarification or have any question as to the true meaning of specifications or any other document in the solicitation, your concerns must be submitted in writing to the City's Purchasing Coordinator on or before seven (7) calendar days prior to scheduled opening of proposals. Late requests will not be honored. Timely requests will be interpreted or otherwise clarified by issuance of a modification to the solicitation distributed to all sources that received a set of the solicitation. No other interpretations or clarifications will be provided prior to award.
- Prompt payment discounts WILL NOT BE CONSIDERED in determining low proposal and making award. Prompt Payment Discounts offered by proposer, and earned by the City, will be taken. When computing the DISCOUNT PERIOD for payments, time will begin upon satisfactory delivery of goods and/or submission of acceptable invoice, whichever is later. Partial payments will not be made unless specifically requested and approved by City prior to award of contract.

CONTACT THE CITY ADMINISTRATOR NOTED ON PAGE 2 IF YOU HAVE ANY QUESTIONS.

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ATTACHMENT A IS ON THE FOLLOWING PAGE

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ATTACHMENT A – RESPONDENT CERTIFICATIONS

To demonstrate qualifications to perform the scope of services, each Respondent is required to submit the following information to Owner for consideration.

Answer all questions. Provide responses that are clear and comprehensive. Attach any additional information provided on separate sheets.

Company Name: _____

Permanent Address of Primary Office: _____

Street City, ST ZIP

Tax ID Number: _____

1. If applicable, provide a list of officers of the firm who, while in the employ of the firm or the employ of previous firms, were associated with contracts which resulted in law suits, contracts defaulted or filed for bankruptcy.

2. Form of ownership: ☐ Proprietorship ☐ Partnership ☐ Corporation ☐ Other (specify) _____

DEBARMENT/SUSPENSION INFORMATION:

1. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity? ☐ **Yes** ☐ **No**

If yes, identify in an attachment the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

CERTIFICATIONS:

1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. ☐ **Yes** ☐ **No**

A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the solicitation process or in the Contract execution;

B. "fraudulent practice" means an intentional misrepresentation of facts made

1. to influence the solicitation process or the execution of the Contract to the detriment of Owner,
2. to establish Cost Proposal or Contract prices at artificial non-competitive levels, or
3 to deprive Owner of the benefits of free and open competition;

C. "collusive practice" means a scheme or arrangement between two or more Respondents, with or without the knowledge of Owner, a purpose of which is to establish Cost Proposals at artificial, non-competitive levels; and

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D. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the solicitation process or affect the execution of the Contract.

2. NON-COLLUSION CERTIFICATION:

A. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company’s cost proposal? ☐ **Yes** ☐ **No**

1. That you are fully informed of the contents of the solicitation and the circumstances of its preparation;
2. That your cost proposal is genuine and is not a collusive or sham cost proposal;
3. That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other respondent, firm or person to submit a collusive or sham cost proposal, or to refrain from responding, or sought by communication or conference with any other respondent, firm or person to fix the prices, overhead, profit, or any cost element in your cost proposal or in any other cost proposal, or to secure through any collusion, conspiracy, or agreement any advantage against the City of Wimberley or any other respondent; and
4. The prices quoted in your cost proposal are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful agreement on the part of your company or anyone acting on its behalf.

3. HOUSE BILL 89 VERIFICATION:

A. Contractor shall verify that it’s named company, under the provisions of Subtitle F Title 10 Government Code Chapter 2270: ☐ **Yes** ☐ **No**

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, Texas Government Code:

1. “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. “Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

SEE NEXT PAGE FOR ACKNOWLEDGEMENT

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ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF HAYS

I certify that I have read all of the specifications and general contract requirements and do hereby certify that all items submitted meet specifications. I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation, and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my response to this solicitation to be rejected.

_____

Company's Name

_____

Signature, Authorized Representative of Respondent

_____

Title

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PROFESSIONAL SERVICES AGREEMENT
FOR
<PROJECT NAME>

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 City Administrator, and _____ ("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.

"City Administrator" shall mean the City Administrator and/or his designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on _____ and terminate on _____.

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 AND PROJECT SCHEDULE

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services and Project Schedule are detailed in _____ 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 City Administrator. The determination made by City Administrator 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 City Administrator. 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 City Administrator; however, City shall have no

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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 City Administrator, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed _____ ($00.00) as total compensation, to be paid to Consultant as further detailed in Exhibit 1.

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 work products and services require written approval by City. The approval official shall be the City Administrator. Payment will be made to Consultant following written approval of the final work products and services by the City Administrator. 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

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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.

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 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* 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.

7.3 *Termination For Cause*. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 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

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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.

7.7 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.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, 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: City Administrator
221 Stillwater
Wimberley, Texas 78676

If intended for Consultant, to: Name, Address

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IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "*Project Name*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:
City of Wimberley

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Wimberley shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Wimberley.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

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Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations Products/ Completed Operations Independent Contractors Personal Injury Contractual Liability	1,000,000 per occurrence, 2,000,000 general aggregate Or 2,000,000 combined single coverage limit	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage City to be provided a waiver of subrogation City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Wimberley (512) 847-0025 A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Wimberley
Attention: City Administrator
221 Stillwater
Wimberley, Texas 78676

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured

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performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Wimberley where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Wimberley for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property

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damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 If services provided hereunder are that of an engineer or architect than CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2). With regard to all other services provided under this Agreement, the quality of Services provided under this Agreement, including the operation and maintenance of any software, shall be performed with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional holding the same professional license.

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 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

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party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: _____ Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant**,** for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 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.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she 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 venturers 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

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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.

XIII. CONFLICT OF INTEREST

13.1 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.

XIV. 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.

XV. 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 Charter, 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.

XVI. 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.

XVII. 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.

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XVIII. 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.

XIX. LAW APPLICABLE

19.1 **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.**

19.2 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.

XX. 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.

XXI. 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.

XXII. 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.

XXIII. 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:

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Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. 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 XIV. Amendments.

XXV. MISCELLANEOUS PROVISIONS

25.1 **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.

25.2 **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.

25.3 **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.

25.4 **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.

25.5 **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 2271.002) 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.

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CITY OF WIMBERLEY

CONSULTANT

_____ _____

(Signature) *(Signature)*

Printed Name: _____ Printed Name: _____

Title: City Administrator Title: _____

Date: _____ Date: _____

APPROVED AS TO FORM:

_____

Charles E. Zech
City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

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City of Wimberley

Fiscal Year 2022 City Council Priorities

Adopted: October 21, 2021

This document, adopted by the City Council represents the priorities for the City Council for Fiscal Year (FY) 2022, and is to be used as a reference and planning tool for City staff for the fiscal year. Council priorities are not listed in rank order.

Health & Public Safety

Improve communication and develop action plans for regular and emergency events.

Economy

Evaluate all opportunities to maintain a balanced annual budget and strong fund balances.

Growth/Preservation

Plan for the proper management of current and future development, while preserving Wimberley's character, natural beauty and resources.

Quality of Life

Maintain and expand natural and humanmade amenities for all.

Infrastructure

Improve traffic and pedestrian movement throughout the City, review current plan and prioritize future planning for infrastructure needs.

Identity

Provide a consistent "brand" for the City to be used in all internal and external communications.

Compliance & Documentation

Ensure City ordinances and codes are in compliance with federal and state laws and are aligned with City policy.

Relationships

Develop and maintain mutually beneficial relationships with relevant cities, county, state and other governmental and non-profit entities.

City Council Priorities –

This document, adopted by the City Council represents the priorities for the City Council for FY 2022, and is to be used as a reference and planning tool for City staff for the fiscal year. Council priorities are not listed in rank order.

A. PRIORITY: HEALTH & PUBLIC SAFETY

Improve communication and develop action plans for regular and emergency events.

Goals:

- Develop and distribute an Emergency Information Guide
- Maintain and improve coordination and communication with local law enforcement, emergency service agencies and HOA representatives
- Develop a Wimberley-specific emergency operations plan, including range of contingencies and best practices
- Identify potential emergency events (weather, human-made, etc. - Hays County Management Plan
- Establish responsibilities for staff, Mayor and Council – Part of the Emergency Operations Plan
- Create an informational guest card for short-term rentals and lodging facilities with relevant emergency information

B. PRIORITY: ECONOMY

Evaluate all opportunities to maintain a balanced annual budget and strong fund balances.

Goals:

- Development of a Capital Improvement Plan (CIP) and corresponding projects – Part of the signed Transportation Plan Agreement
- Evaluate the feasibility and effectiveness of a bond program to address transportation infrastructure needs
- Explore Historical District tax credits
- Engage Economic Support and Development Committee for Strategic Plan and Economic Development Plan
- Identify affordable housing opportunities and options in the Wimberley Valley
- Explore the reinstatement of the Hotel Occupancy Tax – Completed

C. PRIORITY: GROWTH/PRESERVATION

Plan for the proper management of current and future development, while preserving Wimberley's character, natural beauty and resources.

Goals:

- Evaluate the establishment of a Historical District, along with potential federal and state tax credits
- Review and evaluate the 2014 Proposed Downtown Plan
- Plan for future development, while maintaining the unique character of Wimberley

- Identify solutions to help preserve the environment

D. PRIORITY: QUALITY OF LIFE

Maintain and expand natural and humanmade amenities for all.

Goals:

- Assessment of current assets and identification of future needs and wants
- Maintain and improve communication efforts within the community – New website launch & PR communications
- Identify community priorities for amenities
- Explore new program opportunities for the Wimberley Community Center – Parks Director has been handling

E. PRIORITY: INFRASTRUCTURE

Improve traffic and pedestrian movement throughout the City, review current plan and prioritize future planning for infrastructure needs.

Goals:

- Conduct a comprehensive transportation and drainage study and develop a Transportation Plan – Agreement signed
- Identify pedestrian compliance issues and improve crosswalks – TxDOT is completing a study

- Improve GPS mapping and application directions/instructions
- Address walkability and mobility issues in the Wimberley Square
- ADA compliance and identification of compliance needs – Ramp installed at City Hall

- Lighting safety and aesthetics throughout the City

F. PRIORITY: IDENTITY – All ongoing

Provide a consistent "brand" for the City to be used in all internal and external communications.

Goals:

- Explore installing a "Welcome Monument" sign at the Junction
- Continue identifying City branding opportunities
- Evaluate the expenditure of the American Rescue Plan Act funds for possibilities

G. PRIORITY: COMPLIANCE AND DOCUMENTATION

Ensure City ordinances and codes are in compliance with federal and state laws and are aligned with City policy.

Goals:

- Develop an employee pay scale and general job descriptions - Ongoing
- Identify and update existing contracts and agreements with public entities
- Continue the transition to digital/cloud-based government records – Ongoing

H. PRIORITY: RELATIONSHIPS

Develop and maintain mutually beneficial relationships with relevant cities, county, state and other governmental and non-profit entities

Goals:

- Improve and foster relationships with other local, state and federal governments and various organizations
- Promote cohesiveness/respectfulness amongst the citizenry
- Better recognition of local volunteers – Reception Dinner on February 24, 2022