

# City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas 78676

**SPECIAL CITY COUNCIL MEETING**  
**WIMBERLEY CITY HALL – CITY COUNCIL CHAMBERS**  
**221 STILLWATER, WIMBERLEY, TEXAS 78676**  
**TUESDAY, JULY 10, 2018 – 5:30 P.M.**

## MINUTES

### CALL TO ORDER

Mayor Susan Jagers called the meeting to order at 5:33 p.m.

### CALL OF ROLL

Council Members Present: Susan Jagers            Mayor  
   Craig Fore            Place Two  
   Allison Davis        Place Three  
   Gary Barchfeld     Place Four  
   Patricia Cantu Kelly Place Five

Council Members Absent: Mike McCullough    Place One

City Staff Present:            Shawn Cox            City Administrator  
   Laura Calcote        City Secretary  
   Rebecca Manning    Parks Director  
   Richard Shaver      Parks Operations Supervisor

### INVOCATION

Council Member Gary Barchfeld gave the invocation.

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

Mayor Susan Jagers led the pledges to the United States and Texas flags.

### PUBLIC COMMENT

**Motion to accept the new time system donated by Phil Collins was made by Council Member Patricia Cantu Kelly. Motion was seconded by Council Member Gary Barchfeld. Motion carried unanimously (4-0).**

There were sixteen public comments. They were as follows:

1. Peter Lingamfelter spoke regarding the wastewater treatment plant. Mr. Lingamfelter stated he believed City Council had already made-up their mind on the issue and moving forward with the Aqua Texas option. He requested an open dialogue between the public and Council on the topic before a final decision is made.

2. Stephanie Nestlerode noted she was disappointed in City Council's decision to allow only Wimberley residents or those affected by certain issues to speak at future meetings. Ms. Nestlerode also spoke on the importance of planning and contracting, and how regulatory agencies do not like their opinions second-guessed.
3. Linda Webb addressed Council regarding their promises during the election season regarding the Central Wimberley Wastewater Project, and supporting the Project as is. She noted the Aqua Texas suspicions during the campaigns are now coming to fruition with a majority of the current City Council leaning that direction.
4. Jo Kathryn Quinn thanked City Council for their service and asked them to be leaders of integrity. Ms. Quinn requested the Black Castle contract pause be immediately removed, and to move forward with the wastewater project as is. She stated Wimberley is the last jewel standing in Hays County and cautioned a move to Aqua Texas would possibly bring big development to the area.
5. Janice Mullennax addressed Council urging them to support the Central Wimberley Wastewater Project as funded and to remove the pause on Black Castle. She stated there would be no cost savings to go to Aqua Texas.
6. John Espinoza spoke regarding the Request for Proposal process for the wastewater project, and how the procurement process would be compromised if the Council decided to move forward with Aqua Texas.
7. Dan Gauthier addressed Council pertaining to the ecological and environmental impact to the area if the City moves forward with Aqua Texas. He also stated Aqua America has a Better Business Bureau rating of C minus.
8. Roberta Holland spoke regarding the Central Wimberley Wastewater Project and urged Council to move forward with the Project as designed and funded.
9. Linda Kaye Rogers addressed Council stating there is a problem with listening and heeding the citizenry's wishes. Ms. Rogers contended Council members are not openly communicating with the residents, and consequently causing a violation of trust in the community.
10. Steve Thurber spoke urging Council to move forward with the wastewater project as planning, and stated he was disappointed to hear public comment may be limited at future meetings.
11. Casey Craig thanked City Council for their service. She also stated a wastewater agenda item is premature, and there had been a violation of trust from previous City Councils and Mayors regarding the topic.
12. William "Bo" Bowman III presented Council with an Anti-Aqua Texas Petition with almost 1,200 signatures.
13. Roberta Shoemaker Beal addressed Council by responding to the Mayor's Corner weekly column found in the Wimberley View. Ms. Beal stated the current wastewater project had

been explored and vetted by numerous individuals and parties over time and should move forward as planned. She also noted Aqua America, Inc. is traded on the New York Stock Exchange, and does not have Wimberley's best interest in mind.

14. Andrew Weber spoke as an attorney representing a group of Wimberley citizens and their wishes not to move forward with Aqua Texas for the Central Wimberley Wastewater Project. Mr. Weber questioned the legality of some of Council's actions in taking the Aqua Texas route. Additionally, Mr. Weber noted Ordinance No. 2018-23, amending the Parks and Recreation Board, if passed, would be prospective and only apply to future Board appointments. He stated Merry Gibson's and Lin Weber's terms overlapped.
15. Bruce Grether addressed Council regarding an open records request revelation that the City plan is to move forward with Aqua Texas and cautioned Aqua Texas is interested in the City's Certificate of Convenience and Necessity (CCN). Mr. Grether urged Council to move forward with the wastewater project as currently funded and designed.
16. Tom Keyser spoke regarding 2016, 2017 and 2018 elections, and how the majority was elected to manage the City.

### **CONSENT AGENDA**

**Motion to approve the Consent Agenda, with several corrections to the June 21, 2018 meeting minutes and to notate Mike McDonald's name should be Mark McDonald, was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Allison Davis. Motion carried unanimously (4-0).**

- A. Approval of minutes from the Regular City Council Meeting held June 21, 2018.
- B. Approval of Mayor Susan Jagger's appointment of Mike McDonald to the Planning and Zoning Commission.

### **PARKS DIRECTOR UPDATE**

Parks Director Rebecca Manning provided Council with an update regarding Blue Hole Regional Park operations for 2018. The topics discussed included increase in Park visitor attendance, nature camps and programs, revenue and expenditures and the online reservation system.

### **CITY ADMINISTRATOR REPORT**

City Administrator Shawn Cox provided an update regarding the Central Wimberley Wastewater Project. Mr. Cox noted over 4,000 feet of line has been laid, which equated to about 20 percent (20%). He also stated the City still needed to acquire easements along Henson for the Project. Alternate locations for the lift station were being evaluated, but no decision had been made. Additionally, Mr. Cox sought direction regarding the Texas Water Development Board interest payment options, which is due on August 1<sup>st</sup>. There was discussion among Council members regarding the third and fourth invoice payments for Black Castle being on hold, the lift station site survey cost and change orders for the Project.

### **DISCUSSION AND POSSIBLE ACTION**

- A. Discuss and consider possible action to approve a professional services agreement with Environmental Concepts, LLC to serve as the Environmental Health/OSSF Inspector for the City of Wimberley.

**Motion to approve a professional services agreement with Environmental Concepts, LLC to serve as the Environmental Health/OSSF Inspector for the City of Wimberley was made by Council Member Allison Davis. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).**

- B. Discuss and consider possible action to amend the Comprehensive Fund Balance Policy regarding the Blue Hole Parkland Fund.

Parks Director Rebecca Manning presented information regarding revenue generators and operating expenses for Blue Hole Regional Park. Mrs. Manning was requesting a minimum threshold of 75% be placed on the Blue Hole Parkland Fund for the restricted fund balance of the Park's fiscal year operating budget. There was discussion among Council members and Mrs. Manning regarding the 75% reserve for the fund.

**Motion to approve the amendment to the Comprehensive Fund Balance Policy regarding the Blue Hole Parkland Fund was made by Council Member Allison Davis. Motion was seconded by Council Member Gary Barchfeld. Motion carried unanimously (4-0).**

- C. Discuss and consider possible action to approve Resolution No. 19-2018, authorizing the submission of a community development and revitalization 2015 housing project application to the Texas General Land Office.

The City of Wimberley was allocated \$1,353,711.76 from the General Land Office (GLO) to be utilized for housing recovery efforts after the 2015 flood. Even though the money had been allocated, the City still needed to submit a project application. Resolution No. 19-2018 would authorize the submission of the application to the GLO, with the assistance of Langford Community Management Services.

**Motion to approve Resolution No. 19-2018, authorizing the submission of a community development and revitalization 2015 housing project application to the Texas General Land Office was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).**

- D. Discuss and consider possible action to approve Resolution No. 20-2018, authorizing the submission of a community development and revitalization 2015 non-housing project application to the Texas General Land Office.

The City of Wimberley was allocated \$311,217.39 from the GLO to be utilized for non-housing recovery efforts, including infrastructure needs, such as roads and bridges. The City still needed to submit a project application. Resolution No. 20-2018 would authorize the submission of the application to the GLO, with the assistance of Langford Community Management Services.

**Motion to approve Resolution No. 20-2018, authorizing the submission of a community development and revitalization 2015 non-housing project application to the Texas General Land Office was made by Council Member Craig Fore. Motion was seconded by Council Member Gary Barchfeld. Motion carried unanimously (4-0).**

- E. Discuss and consider possible action to approve Ordinance No. 2018-23, amending Chapter 33, Subsection 33.04 (C)(2), (D), (E), and (G), for the Parks and Recreation Board.

There was lengthy discussion regarding Ordinance No. 2018-23 and Ordinance No. 2018-24 amending the Parks and Recreation Board and the Transportation Advisory Board. Term limits were discussed, along with the number of Board members. Whether Board members should reside in the City limits or extraterritorial jurisdiction was also discussed. The two

Ordinances would need to be amended once more to incorporate the new changes.

**Motion to table Ordinance No. 2018-23 was made by Council Member Craig Fore. Motion was seconded by Council Member Patricia Cantu Kelly. Motion carried unanimously.**

- F. Discuss and consider possible action to approve Ordinance No. 2018-24, amending Chapter 33, Subsection 33.02 (C), (D), (E), and (G), for the Transportation Advisory Board.  
**Motion to table Ordinance No. 2018-24 was made by Council Member Craig Fore. Motion was seconded by Council Member Patricia Cantu Kelly. Motion carried unanimously.**

- G. Discuss and consider possible action to approve Ordinance No. 2018-25, amending Chapter 33, Subsection 33.03 (C), (D)(1), (E), (F), and (G), for the Water Wastewater Advisory Board. There was discussion regarding Ordinance No. 2018-25 amending the Water Wastewater Advisory Board, including the Board's scope and purpose. Council members decided a separate ad hoc wastewater board should be formed for one year and with six members. Staff was directed to draft an ordinance for the ad hoc board and bring it back to the next Council meeting for discussion and possible action.  
No action was taken on this item.

- H. Discuss and consider possible action to approve the first reading of Ordinance No. 2018-26, amending Ordinance No. 2015-017, regarding the Hotel Occupancy Tax Advisory Committee.  
**Motion to approve the first reading of Ordinance No. 2018-26, amending Ordinance No. 2015-17, regarding the Hotel Occupancy Tax Advisory Committee was made by Council Member Patricia Cantu Kelly. Motion was seconded by Council Member Gary Barchfeld. Motion carried as follows (3-1):**

Craig Fore	Aye
Gary Barchfeld	Aye
Patricia Cantu Kelly	Aye
Allison Davis	Nay

- I. Discuss and consider possible action regarding appointments to the Hotel Occupancy Tax Advisory Committee.  
Council discussed the applications received for appointment to the Hotel Occupancy Tax Advisory Committee. There was also discussion on the Hotel Occupancy Tax Fund, and the future tourism plan for the City.  
**Motion to approve the following members Clay Ewing, Traci Ferguson, Julie Ray, Dan Sturdivant, Lois Mahoney, Mark Bursiel and Natalie Meeks to the Hotel Occupancy Tax Advisory Committee was made by Council Member Patricia Cantu Kelly. Motion was seconded by Council Member Craig Fore. Motion carried as follows (3-1):**

Craig Fore	Aye
Gary Barchfeld	Aye
Patricia Cantu Kelly	Aye
Allison Davis	Nay

- J. Discuss and consider possible action regarding short-term vacation rentals within the City of Wimberley.

Council Member Patricia Cantu Kelly presented this item, noting there are over 300 short-term vacation rentals operating illegally within the City of Wimberley and the extraterritorial jurisdiction. She suggested forming an advisory team to gather information pertaining to the size of the problem and to make a recommendation to Council within the next 60 days.

**Motion to establish a short-term rental advisory team would consist of Phil Collins, Tomas Palm, Robbie Walker, Alberta Valera, Sandy Floyd, Laura Calcote, Patricia Cantu Kelly and Mike McCullough. Motion was seconded by Council Member Gary Barchfeld.** There was discussion on the scope of the team and to remove City staff members Sandy Floyd and Laura Calcote from the team.

**Motion was amended to remove City staff employees Sandy Floyd and Laura Calcote. Motion carried unanimously (4-0).**

- K. Discuss and consider possible action regarding Capital Excavation Change Order No. 2 for the provision of materials testing.

City Administrator Shawn Cox presented information pertaining to Capital Excavation Change Order No. 2 for materials testing. The testing was needed to ensure adequate materials had been utilized and compacted to prevent the future failing/sinking of roadways or roadway shoulders. The estimated cost for the testing was \$19,842 and was not expected to increase the total contract amount. There was discussion regarding the testing process.

**Motion to approve Capital Excavation Change Order No. 2 for the provision of materials testing was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).**

- L. Discuss and consider possible action to continue with the current Central Wimberley Wastewater Project, as funded, including immediately removing the pause on the Black Castle contract.

**Motion to continue with the current Central Wimberley Wastewater Project, as funded, including immediately removing the pause on the Black Castle contract was made by Council Member Allison Davis.**

City Council adjourned into Executive Session at 8:39 p.m. in accordance with Texas Government Code, Chapter 551, Subchapter D, Section 551.071 to receive legal advice from Deputy City Attorney Cameron Cox.

Regular Session reconvened at 9:00 p.m.

No action was taken from Executive Session.

Council Member Allison Davis submitted three letters for public record, which are attached to the minutes.

**Council Member Davis withdrew her motion.**

- M. Discuss and consider possible action to approve Resolution No. 21-2018, authorizing an amendment to the Economic Development Administration (EDA) Grant Application to allocate funding associated with the Central Wimberley Wastewater Project from the Wastewater Treatment Plant Project to the Collection Line Project.

There was discussion on previous correspondence with the EDA, regarding their funding for the project, including a letter sent on January 12, 2018 from the City to the EDA and the EDA's response to the City on January 29, 2018, allowing the grant amendment/change to provide only for the construction of the wastewater treatment plant. Council questioned why this correspondence had not been provided to all Council members before now.

Additionally, Council wanted to use the EDA funds for the entire project, not just the plant portion. The EDA requested a resolution to allow for such a change to the wastewater project. However, the EDA had not made a final decision on whether the funds could be allocated for the collection line portion of the project.

**Motion to approve Resolution No. 21-2018, authorizing an amendment to the Economic Development Administration (EDA) Grant Application to allocate funding associated with the Central Wimberley Wastewater Project from the Wastewater Treatment Plant Project to the Collection Line Project was made by Council Member Gary Barchfeld. Motion was seconded by Council Member Patricia Cantu Kelly. Motion carried as follows (3-0-1):**

Craig Fore	Aye
Gary Barchfeld	Aye
Patricia Cantu Kelly	Aye
Allison Davis	Abstain

- N. Discuss and consider possible action to amend the City of Wimberley Governance Policy and Rules of Procedure pertaining Section 5.9 – Agenda. There was discussion among Council members regarding the proposed amendment to the City of Wimberley Governance Policy and Rules of Procedure, Section 5.9 pertaining to agendas. City Council members had not been following the deadline for submitting items for the agenda. Therefore, Council decided all agenda items must be submitted seven days prior to a City Council meeting, either regular or special. There was further discussion on setting time limits for Council meetings.

**Motion to amend the City of Wimberley Governance Policy and Rules of Procedure pertaining to Section 5.9 – Agenda for a firm deadline to submit an item for the agenda seven days prior to the requested Council Meeting date was made by Council Member Allison Davis. Motion was seconded by Council Member Craig Fore. Motion carried unanimously (4-0).**

### CITY COUNCIL REPORTS

A. Announcements – None.

B. Future agenda items – None.

### ADJOURNMENT

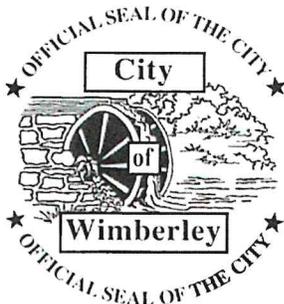
Mayor Susan Jagers adjourned the meeting at 9:24 p.m., without objection.

### RECORDED BY:

Laura J. Calcote  
Laura J. Calcote, City Secretary

### APPROVED BY:

Susan B. Jagers  
Susan B. Jagers, Mayor



# KELLY HART

ANDREW WEBER  
andrew.weber@kellyhart.com

TELEPHONE: (512) 495-6451  
FAX: (512) 495-6401

July 8, 2018

## VIA U.S. POSTAL MAIL AND EMAIL

Mayor Susan Jagers: [mayor@cityofwimberley.com](mailto:mayor@cityofwimberley.com)  
Council Member Mike McCullough: [place1@cityofwimberley.com](mailto:place1@cityofwimberley.com)  
Council Member Craig Fore: [place2@cityofwimberley.com](mailto:place2@cityofwimberley.com)  
Council Member Allison Davis: [place3@cityofwimberley.com](mailto:place3@cityofwimberley.com)  
Council Member Gary Barchfeld: [place4@cityofwimberley.com](mailto:place4@cityofwimberley.com)  
Council Member Patricia Cantu Kelly: [place5@cityofwimberley.com](mailto:place5@cityofwimberley.com)  
P.O. Box 2027  
Wimberley, TX 78676

Re: Mayor's Aqua Texas Plan

On behalf of concerned Wimberley citizens, I write to put you on notice that you will commit one or more unlawful acts, perhaps in your individual capacity, if you vote in favor of the Mayor's recommendation that you 1) terminate or further delay the Black Castle treatment plant contract or 2) vote to contract with Aqua Texas (AT) for treatment of downtown waste water without the following documents in your possession. I am not representing you, and not representing that the following is a complete list; that is, the following are necessary but may not be sufficient if you are called upon to justify your actions:

1. A written contract from, and executed by AT, with an open offer date good until at least July 20, 2018, detailing the terms under which AT will contract to treat the waste water. The terms would include, but not be limited to a) the City's unilateral right to terminate the contract for convenience upon 30-days' notice within five years or less; b) AT's commitment to treat all the wastewater generated from the service area for a fixed fee not to exceed \$54,000 per year; c) AT's express statement that nothing in this contract requires the City to transfer to AT the City's CCN; d) the City will pay up to, but no more than, \$300,000 toward the cost to upgrade AT's treatment facility so that facility will produce Type 1-enhanced water; e) that Type 1-enhanced water will be provided to Blue Hole Park, in an amount commensurate with what it would have received under the city-owned plant plan, at no cost during the term; f) AT's detailed, itemized estimate of the time required to permit and upgrade (time from requesting bids to construction completion) its plant to Type I-enhanced effluent, and g) AT's CIAC fee(s).

2. Your legal counsel's written opinion that modifying the existing plan as the Mayor proposes does not subject the council, wholly or individually, to causes of action by the bondholders for breach. Delay, not using the treatment plant funds as/when promised, using

bond funds to upgrade AT's privately owned plant, and/or using proceeds to construct the short-term Bypass purple-pipe line—any of those uses of bond funds contrary to the city ordinance and bond/loan agreements, could easily support a cause of action for breach of contract. In light of communications among some of you, going back years and including immediately post-election, showing intent to switch to AT—could support a bondholder suit for fraud or fraud in the inducement.

3. A letter from TCEQ agreeing, or at least legal counsel's opinion, that TCEQ will delay any enforcement/fines for ongoing non-compliance at the existing City treatment plant—for however long the Mayor's AT Plan delays decommissioning the existing treatment plant. Alternatively, obtain such assurance of delayed enforcement for at least a specific time—one year, or two or three—to complete the Mayor's AT Plan.

4. Written consent from the Texas Water Development Board (TWDB) to amend the schedule and scope of the WWTP. Without that consent, any change in scope or schedule is a breach of the City's loan agreement with TWDB.

5. Your legal counsel's written opinion that spending any part of the TWDB loan proceeds on AT's treatment plant does not breach covenants in the TWDB loan agreement. Also, counsel's opinion that spending public funds on a private facility is not unconstitutional on the basis that the spending fits the public-purpose test. And counsel's opinion on the need for compliance with public procurement law for the contract for any AT plant upgrade to address the public-funds issue.

6. All permits, including purple-pipe permit for the mayor's proposed reclaimed water line from RR 12 and the Winter's Mill, along the Winter's Mill, to Blue Hole Park.

7. The County's written consent to use its easement along that same route.

8. Counsel's written opinion that nothing about the Mayor's plan violates the City's settlement agreement with Paradise Hills and Blanco homeowners.

9. Counsel's written opinion that a delay in constructing the city-owned plant (for up to 5 years) does not jeopardize any existing permit from the TCEQ.

10. Counsel's written opinion that the expenditure of TWDB loan proceeds on the temporary Bypass water line does not violate the TWDB loan agreement. That is, can you use 20% of proceeds of *30-year loan* for a \$1M water line with no more than a *5-year life*?

11. Counsel's written opinion that this council can bind the City to 1) setting aside at least \$200,000 per year to build a city owned treatment plant and 2) build such a plant within 5 years as described in the Mayor's plan. Both proposed actions appear to violate the general rule that one council cannot bind a future council—as this council appears to be so inclined to prove. If counsel believes this council can bind future councils on these two critical parts of the Mayor's AG Plan, counsel should describe the method of enforcing those commitments.

12. A letter from Black Castle saying that they are prepared to terminate the treatment plant contract and move off of the construction site for a determined fee—with that fee stated in Black Castle's letter.

13. Written assurance from the EDA that the Mayor's plan does not jeopardize that \$1M grant. More specifically, written confirmation that the EDA has agreed to its funds being used to pay for the collection system instead of the treatment plant—following their receipt and consideration of a sufficiently detailed written plan and rationale for that plan, from the Mayor. See attached July 2, 2018 EDA letter to Mayor Jagers.

14. Written assurance from Peter Way that the Mayor's plan does not jeopardize his \$1M grant.

15. Written assurance from your project manager that the Mayor's plan does not delay the project. Any delay is a schedule change requiring TWDB written consent. Moreover, any delay (in addition to the 60 days of delay the City has already required) would appear to jeopardize funds anticipated/needed to service the TWDB loan.

16. A letter from the City's consulting engineering firm giving their estimate of the cost and time line to engineer, permit, and construct the Mayor's plan including how and where the collection system will connect to AT's lines, the Bypass purple pipe line, tank, and sprinkler system to serve Blue Hole Park.

17. Any permit required by TPWD in order to bore under Cypress Creek for the Mayor's proposed raw sewage pipe.

18. Any easement required from Texas GLO in order to bore under Cypress Creek for the Mayor's proposed raw sewage pipe.

19. Any required Corp of Engineers' Section 404 permit.

Without these written assurances, consents and proposals and legal opinions, terminating the Black Castle contract *or* voting to amend the project to contract with AT, even for a short term, is at least a breach of your TWDB loan agreement. You may also open yourselves, in your official or individual capacities, to other allegations ranging from 1) unconstitutional use of public funds to 2) breach of your oath of office to 3) a suit for fraud or breach by bondholders. And as the Mayor reminded me recently, any of you participating in the move to AT are susceptible, maybe likely, to being sued by Black Castle for tortious interference with its contract. Acting in bad faith or unconstitutionally are often what opens the door to individual, as opposed to official liability.

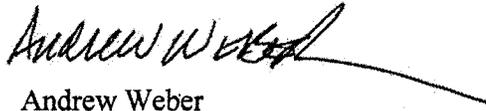
In fact, if Black Castle has *any* evidence suggesting your cancellation of its contract is in less than good faith, it has solid grounds to sue you, or some of you—as your counsel will tell you, termination for convenience won't hold up if the contractor can show bad faith.

All these concerns are irrespective of your bargaining position if you terminate Black Castle without the most iron-clad proposal from AT in hand; without that, you put yourselves at

Mayor Susan Jagers  
July 8, 2018  
Page 4

a tremendous negotiating disadvantage. But the consequences flowing from that, however, are beyond the scope of this notice.

Sincerely,

A handwritten signature in black ink that reads "Andrew Weber". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrew Weber

cc: Shawn Cox, City Administrator, City of Wimberley  
Jeff Walker, Executive Administrator, Texas Water Development Board  
Stephanie Bergeron Perdue, Interim Executive Director, Texas Commission on  
Environmental Quality  
Commissioner George P. Bush, General Land Office

Attachment



UNITED STATES DEPARTMENT OF COMMERCE  
Economic Development Administration  
AUSTIN REGIONAL OFFICE  
903 San Jacinto Blvd., Suite 206  
Austin, TX 78701

July 2, 2018

City of Wimberley  
P.O. Box 2027  
Wimberley, TX 78676-2028

Re: EDA Project No. 08-01-05136

Dear Mayor Jagers:

We have received the contract documents for the Wimberley Wastewater Collection System project. For EDA to provide a decision on what modifications can be made to the grant at this time cannot be assessed without further clarification from the City. Various options have been expressed recently by the City and will need to be further clearly expressed (the exact scope modification) to EDA in order to perform a thorough assessment on the changes.

We request the City to provide a formal letter for a grant modification outlining specifically what the City is wishing to do with the current project/grant. At a minimum, indicate what the project scope change is. When addressing the scope change please highlight exactly what the intent of changing the scope for the second time will include. Additionally, EDA will require a concise explanation for the change, impacts to funding, what the overall intention/goal is as a result of this change, and the exact economic impacts of the modification. Furthermore, we need a full understanding, in writing of the contracts currently in place and what, if any changes will have on said contracts. Since the grant is made up of two separate construction contracts, please address how this modification will affect both projects.

In addition, EDA request that the City provide a Council Resolution regarding this modification. Please provide by no later than July 11, 2018.

If you have any questions, you may contact me at (512) 381-8171.

Sincerely,

**MATTHEW  
GIANNINI**

Mathew Giannini  
Area Director  
Austin Regional Office

Digitally signed by MATTHEW GIANNINI  
DN: c=US, o=U.S. Government, ou=Department  
of Commerce, ou=Economic Development  
Administration, cn=MATTHEW GIANNINI,  
0.9.2342.19200300.100.1.1=13001001265282  
Date: 2018.07.02 11:13:08 -05'00'



July 6, 2018

VIA: Email, USPS

Mr. Shawn Cox, City Administrator  
City of Wimberley  
221 Stillwater  
Wimberley, TX 78626

RE: Wastewater Treatment Plant, Proj # 1732-002-01

Mr. Cox:

We acknowledge receipt of your letter of a (30) day project suspension dated June 22, 2018 referencing the City's right to suspend the project for up to 90 days. Invoking the suspension allows us to pursue additional contractual days and compensation related to the suspension. In addition, it must be noted that an initial prior email suspension of (30) days was issued on May 30<sup>th</sup> following a meeting between representatives of the City (City Admin, Mayor, two councilmen, and inspection) and Black Castle GC (President, Vice President, and PM). During this meeting, the initial suspension was discussed along with the payment of two outstanding invoices, Pay Estimates 3 and 4. All agreed that a suspension would take place to allow the City time to consider cancellation of the project as well as payment of Invoices 3 and 4 by June 9<sup>th</sup>. These invoices are still outstanding and past due per contract conditions. There are several email exchanges between the City and BCGC regarding the City's intent to pay. To note, on July 3<sup>rd</sup>, the engineer of record contacted me regarding the additional costs associated with closing out the project. This was considered an informal conversation as the only formal knowledge we had of the City's intention to cancel was email correspondence between the Mayor and the City's legal counsel on June 29<sup>th</sup>. BCGC stated to the engineer in this conversation that we would move forward on project termination with the payment of invoices 3 and 4 with invoice 4 and retainage being the nominal point of negotiation. This was also contingent upon formal issuance of a change order with intent to terminate the outstanding contract. A letter by the engineer addressed to you was issued after that conversation later that day.

In summary, with regard to the above noted project and noted recent correspondence between all contractual parties, Black Castle General Contractor offers the following-

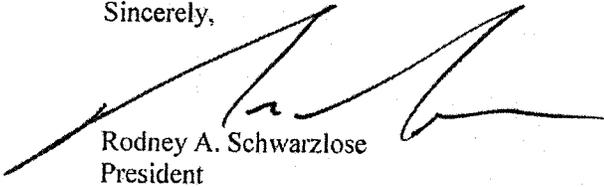
- 1) Pay invoices 3 and 4 immediately
- 2) Issue a formal request for termination
- 3) Enter into formal negotiations with all parties regarding closure of the project per the letter by the engineer of record dated July 3<sup>rd</sup>, 2018. This includes close out consultation and pricing from contracted suppliers and subcontractors required for the construction of the project bid April 19, 2017 and made contractually effective February 27, 2018.

2115 Stephens Place, Suite 210, New Braunfels, TX 78130  
O: (830) 387-4623/ F: (830) 387 4623  
info@blackcastlegc.com



We understand the City's position on the project and want to work toward an amicable end to the current situation.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney A. Schwarzlose". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rodney A. Schwarzlose  
President

2115 Stephens Place, Suite 210, New Braunfels, TX 78130  
O: (830) 387-4623/ F: (830) 387 4623  
info@blackcastlegc.com



UNITED STATES DEPARTMENT OF COMMERCE  
Economic Development Administration  
AUSTIN REGIONAL OFFICE  
903 San Jacinto Blvd., Suite 206  
Austin, TX 78701

July 2, 2018

City of Wimberley  
P.O. Box 2027  
Wimberley, TX 78676-2028

Re: EDA Project No. 08-01-05136

Dear Mayor Jagers:

We have received the contract documents for the Wimberley Wastewater Collection System project. For EDA to provide a decision on what modifications can be made to the grant at this time cannot be assessed without further clarification from the City. Various options have been expressed recently by the City and will need to be further clearly expressed (the exact scope modification) to EDA in order to perform a thorough assessment on the changes.

We request the City to provide a formal letter for a grant modification outlining specifically what the City is wishing to do with the current project/grant. At a minimum, indicate what the project scope change is. When addressing the scope change please highlight exactly what the intent of changing the scope for the second time will include. Additionally, EDA will require a concise explanation for the change, impacts to funding, what the overall intention/goal is as a result of this change, and the exact economic impacts of the modification. Furthermore, we need a full understanding, in writing of the contracts currently in place and what, if any changes will have on said contracts. Since the grant is made up of two separate construction contracts, please address how this modification will affect both projects.

In addition, EDA request that the City provide a Council Resolution regarding this modification. Please provide by no later than July 11, 2018.

If you have any questions, you may contact me at (512) 381-8171.

Sincerely,

**MATTHEW  
GIANNINI**

Mathew Giannini  
Area Director  
Austin Regional Office

Digitally signed by MATTHEW GIANNINI  
DN: cn=US, o=U.S. Government, ou=Department  
of Commerce, ou=Economic Development  
Administration, cn=MATTHEW GIANNINI  
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