

RESOLUTION NO. R-017-2001

**RESOLUTION OF THE VILLAGE OF WIMBERLEY, TEXAS,
DESIGNATING THE SENIOR CITIZENS CENTER AS THE NO. 1
PRIORITY FOR TEXAS PARKS AND WILDLIFE GRANT**

WHEREAS, the City Council of the Village of Wimberley is in support of community projects for the development of recreational facilities within the City; and

WHEREAS, the Senior Citizens of Wimberley, through their organization known as the Wimberley Senior Citizens Activities, Inc., a Texas nonprofit corporation ("WSCAI"), have an ongoing project to construct an indoor recreation project for its Parks and Recreation Master Plan; and

WHEREAS, the WSCAI has prepared a Grant Application for submittal for a TRPA Indoor Recreation Grant; and

WHEREAS, the City Council believes that the Community Center should be the number one priority of community projects;

BE IT RESOLVED by the City Council of the Village of Wimberley:

That the City Council of the Village of Wimberley hereby ranks the Community Center as its first priority indoor recreation project for its Parks and Recreation Master Plan.

PASSED AND APPROVED this 21st day of June, 2001, by a 5 to 0 vote of the City Council of the Village of Wimberley.

VILLAGE OF WIMBERLEY

By _____
Linda Hewlett, Mayor

ATTEST:



Adelle Turpen, City Secretary

COMMUNITY CENTER AGREEMENT

DATE: Executed this 7th day of June, 2001.

PARTIES TO THIS AGREEMENT ARE: Village of Wimberley, Hays County, Texas ("Village") and Wimberley Senior Citizens Activities, Inc., a Texas nonprofit corporation ("WSCAI").

PREAMBLE: The purpose of this agreement is to provide a Community Center (the "Community Center") in the Wimberley Valley through voluntary contributions rather than from community tax resources. Full cooperation between the Village and WSCAI is necessary to construct and operate the Community Center. The citizens and friends of the Wimberley Valley have contributed over Eight Hundred Thousand (\$800,000) Dollars in cash and kind toward the Community Center and the "Community Land" property on which it will be built. WSCAI has served as "Steward of Record" for the property and led fundraising efforts. WSCAI, as the designee of the Village, intends to apply for an Indoor Recreation Grant from Texas Parks & Wildlife Account Program ("TPRA") for Seven Hundred Fifty Thousand (\$750,000) Dollars, which will allow building of the Community Center. The Village ranks the Community Center as its number one priority indoor recreation grant project for its Parks and Recreation Master Plan. To comply with Texas Parks & Wildlife Department regulations at the award of the Indoor Recreation Grant, the site and the building at the required time will be donated to the Village for use in perpetuity as a Community Center. In consideration of the above conditions, the Village and WSCAI do now agree to cooperate with each other in carrying out the above purposes and providing for the operation of the Community Center by agreeing as follows:

WHEREAS, WSCAI is a corporation organized under the Texas Nonprofit Corporation Act and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Village will support application for a TRPA Indoor Recreation Grant by passing a resolution authorizing WSCAI to act as its representative; and

WHEREAS, the Village ranks the Community Center as its first priority indoor recreation project for its Parks and Recreation Master Plan; and

WHEREAS, when the TPRA grant is awarded and accepted, the Community Center and "Community Land" on which it is to be built, to the extent required by the TPRA grant, will be donated by WSCAI to the Village; and

WHEREAS, the Community Center is dedicated to be used as a public indoor recreational center; and

WHEREAS, WSCAI is an appropriate entity for the operation and management of recreational services and programs; and

WHEREAS, the management and operation of the recreational services and programs of the Community Center will be conducted by WSCAI under the terms of this agreement; and

WHEREAS, the agreement shall not be in force and effect unless and until the Community Center property has been conveyed to the Village in conjunction with the approval of the grant application referred to above:

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants as herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Engagement. The Village hereby engages WSCAI to oversee, manage and supervise the operation and management of the Community Center, and WSCAI hereby accepts such engagement, subject to and upon the terms and conditions hereof.

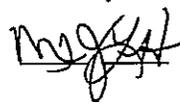
Section 2. Management Standards. WSCAI shall use its best efforts in managing the Community Center and in supervising any persons or entities employed or contracted in connection therewith, and shall discharge its duties hereunder in compliance with all applicable governmental rules and regulations. In performing its obligations hereunder, WSCAI shall be held to that standard of care as would be exercised by a prudent operator of a publicly owned community center.

Section 3. Construction; Operation; Maintenance Costs. WSCAI will be wholly liable for all construction, operation and maintenance costs of the Community Center.

Section 4. Management Fee. WSCAI shall retain any and all fees for the use of the Community Center paid by private and public entities.

Section 5. Operating Committee. WSCAI and Village shall form a five member operating committee consisting of representatives from various civic and public entities in the Wimberley Valley. The Operating Committee shall be responsible for the rules, regulations and procedures that will govern the day to day operation of the Community Center.

Section 6. Policy Board. WSCAI and Village shall form a Policy Board that shall consist of the mayor of the Village of Wimberley, the president of The Wimberley Senior Citizens Activities, Inc., and seven members representing various civic and public entities in the Wimberley Valley. The Policy Board shall be responsible for policies concerning the Community Center's use and operation.



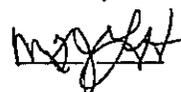
Section 7. Duties and Authority of WSCAI. During the term of this Agreement, WSCAI shall provide or contract for all services necessary for the management and operation of the Community Center as a recreational center for the purpose of serving the citizens of the Village, the Wimberley Valley and the public, including, but not limited to, the following:

- (A) Performance of all aspects of the daily operation and maintenance of the Community Center, including by way of illustration and not in limitation:
 - (i) The employment, instruction and supervision of all WSCAI personnel necessary to conduct daily operations of the Community Center and the setting of salaries, wages and benefits for such WSCAI personnel in accordance with industry standards;
 - (ii) Maintaining the Community Center, parking areas and other public use areas so as to appear attractive and inviting to the public;

Maintaining the Community Center sanitation and sanitary facilities in accordance with applicable health standards;
 - (iii) Maintaining the Community Center, parking areas and other public use areas so as to be reasonably safe for public use;
 - (iv) Keeping buildings, parking areas and other public use areas in good and reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
- (B) WSCAI shall not make any structural alteration to the Community Center or existing facilities without the prior written consent of the Village and such consent will not be unreasonably withheld.

Section 8. Indemnification by WSCAI. WSCAI shall indemnify the Village, its officers, employees, agents and representatives and hold them harmless from any and all claims, actions, damages, suits, proceedings, judgments, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of or in connection with, or resulting from, acts or omissions on the part of WSCAI or its officers, directors, employees, agents, subcontractors designees or representatives in connection with the operation and management services provided under this Agreement.

Section 9. Insurance. During the term of this Agreement, WSCAI and its designee shall, at its sole cost and expense, procure and maintain such policies of comprehensive general liability and professional liability insurance with coverage in the minimum amount of Five Hundred Thousand (\$500,000) Dollars for each person and Five Million (\$5,000,000) Dollars for each single occurrence for bodily injury or death to insure it and its officers and employees and the Village and its officers and employees



against such liability for damages directly or indirectly related to the performance of any service provided hereunder, and the use of any property and facilities provided by the parties in connection with this Agreement. WSCAI shall provide the Village with not less than fifteen (15) calendar days' written notice prior to any reduction in coverage, expiration or cancellation of any such coverage. Prior to a reduction in coverage, expiration or cancellation of any coverage, the WSCAI shall secure replacement of such coverage upon the same terms and conditions and shall furnish the Village with a certificate describing such replacement coverage. WSCAI shall furnish the Village with certificates of any such insurance coverage at any time during the term of this Agreement upon the Village's written request. WSCAI shall reimburse Village for the cost of cost of fire and other calamity insurance that covers the Community Center and its contents.

Section 10. Term. This Agreement shall commence on the date that the Community Center property is conveyed to the Village and shall continue in effect for a period of five (5) years unless earlier terminated as provided in Section 12 of this Agreement.

Section 11. Renewal. This Agreement shall automatically renew for successive one (1) year terms after the Initial Term of five (5) years unless termination occurs as provided in Section 12 of this Agreement.

Section 12. Termination. This Agreement may be terminated by the Village by providing ninety (90) days written notice of termination to WSCAI that contains a statement of the reasons for such termination.

Section 13. Books and Records. At all times during the Term of this Agreement, WSCAI shall cause accurate books and records of account to be maintained as are necessary to permit the verification of the services provided by WSCAI under this Agreement.

Section 14. Right of Inspection and Audit. The books and records required to be maintained by WSCAI shall be subject to audit by the Village Auditor. Further, the Village shall have the right, at its expense, to inspect, examine, and copy such portion of the books, records, files, and other documents maintained by WSCAI with respect to services provided under this Agreement, other than books, records, files and other documents that constitute confidential, proprietary information of WSCAI.

Section 15. Financial Audit. WSCAI shall have an annual audit completed by a certified public accountant and shall present the audit results to the Policy Board and the Village Council.

Section 16. Operating Budget. WSCAI shall present the Community Center operating budget to the Policy Board and the Village Council at a reasonable time prior to the beginning of each fiscal year.

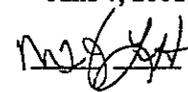
Section 17. Public Information Requests. WSCAI agrees that it shall immediately notify the Village upon receiving a request for public information with respect to the Community Center under the Texas Public Information Act, Tex. Gov't Code Ann. Ch. 552, and agrees to assist and cooperate with the Village in responding to any such requests.

Section 18. Regulatory Requirements. WSCAI shall operate the Community Center at all times in compliance with all applicable federal, state and local laws, rules and regulations.

Section 19. WSCAI Designee. WSCAI may contract with another organization (Designee) to perform all or part of its duties under this agreement after obtaining the Village's approval of such designee. WSCAI shall remain fully responsible for the proper performance of its duties and obligations under this agreement, even if they are performed by a designee.

Section 20. Miscellaneous Provisions.

- (a) Assignment. WSCAI shall not assign this Agreement or any of its rights, duties and obligations hereunder to any person, without the prior written consent of the Village.
- (b) Successors Bound. Subject to the provisions of Section 20(a) immediately above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions of this Agreement, and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.
- (c) Dispute Resolution: Village and WSCAI agree to negotiate in good faith in an effort to resolve any dispute related to this Agreement that may arise between the parties. If the dispute cannot be resolved by negotiation the Village and WSCAI shall submit the dispute to mediation before resorting to litigation. If the need for mediation arises the Village and WSCAI shall choose a mutually acceptable mediator and shall share the cost of mediation services equally. Village and WSCAI agree that following mediation, all unresolved issues will be resolved by arbitration. Absent an agreement to use other rules, the arbitration will be controlled by the American Arbitration Association's Commercial Arbitration rules. Should mutual resolution and settlement not be obtained



through mediation or arbitration, either the Village or WSCAI may take action to resolve the dispute by other legal means.

- (d) Right to Sue: Village and WSCAI have the exclusive right to bring suit to enforce this Agreement, and no other party may bring suit, as a third party beneficiary or otherwise, to enforce this Agreement.
- (e) Notices: Any notice, request, instruction or other document deemed by any party hereunder to be necessary or desirable to be given to any other party shall be in writing and shall be conclusively deemed given if mailed by registered mail or certified mail, postage prepaid, with return receipt requested, addressed as follows:

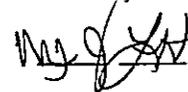
If to Village: Mayor, Village of Wimberley
14500 Ranch Road 12, Suite 22
P.O. Box 2027
Wimberley, Texas 78676

If to WSCAI: President, Wimberley Senior Citizens
Activities, Inc.
14050 Ranch Road 12
PO Box 678
Wimberley, Texas 78676

or to such other addresses as either party may designate in a written notice served upon the other party in the manner provided herein.

- (f) Waiver; Consents: No consent or waiver, express or implied, by either party hereto of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any other instance by or on behalf of any party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

- (g) Force Majeure: Each party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.
- (h) Section Headings: The section headings in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.
- (i) Entire Agreement: This Agreement represents the entire agreement among the parties relating to the subject matter hereof. No changes to this Agreement shall be made except upon written agreement of both parties.
- (j) Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.
- (k) Governing Law and Venue: This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. This Agreement shall be deemed to be performable in the Village of Wimberley, Hays County, Texas, and any suits for any and every breach of this Agreement shall be instituted and maintained in any court of competent jurisdiction in Hays County, Texas.
- (l) Nondiscrimination. The Village and WSCAI shall not discriminate on the basis of race, sex, age, religion, national origin, or handicap in providing services under this Agreement or in the selection of employees or independent contractors. The Village and WSCAI shall comply with Title VI of the Civil Rights Act of 1964, which in part, (a) prohibits discriminatory employment practices resulting in unequal treatment of persons who are or should be benefiting from a grant-aided facility; and (b) prohibits discriminating against any person on the basis of residence.



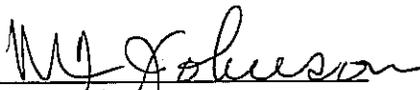
- (m) Severability. If any provision herein is found to be unenforceable, invalid or illegal, such provision shall be deemed deleted from this Agreement, and the remainder of this Agreement shall not be affected or impaired thereby.
- (n) Attorneys' Fees. If any action, including, without limitation, arbitration, should arise among the parties hereto under this Agreement, the prevailing party in such action shall be reimbursed for all reasonable expenses incurred in connection with such action, including reasonable attorneys' fees.
- (o) Pronouns and Number. Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural, and conversely.
- (p) Further Assurances. The parties hereto agree to execute any and all such further agreements, instruments or documents, and to take any and to take all such further action, as may be necessary or desirable to carry into effect the purpose and intent of this Agreement.
- (q) Independent Contractor. WSCAI is associated with the Village only for the purposes and to the extent set forth in this Agreement. With respect to the performance of the operation and management services set out herein, WSCAI is and will be an independent contractor and, subject to the terms of this Agreement, will have the sole right to manage, control, operate and direct the performance of the details of its duties and obligations under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer/employee or principal/agent, or to otherwise create any liability for the Village whatsoever with respect to the indebtedness, liabilities and obligations of WSCAI or any other party. WSCAI, its agents and employees shall not be considered agents or employees of the Village. WSCAI's agents and employees shall not accrue Village leave, retirement, insurance, bonding, use of Village vehicles or any other benefit afforded to the employees of the Village as a result of this Agreement.

IN WITNESS WHEREOF, the parties have set their hands effective as of the date first written above.

VILLAGE OF WIMBERLEY

By: 
Linda Hewlett
Mayor

THE WIMBERLEY SENIOR
CITIZEN ACTIVITIES, INC.,
a Texas nonprofit corporation

By: 
M. F. Johnson
President