

RESOLUTION NO. R-79-2004

A RESOLUTION OF THE VILLAGE OF WIMBERLEY, TEXAS, AUTHORIZING ACTION BY THE LAW FIRM OF BICKERSTAFF, HEATH, SMILEY, POLLAN, KEVER & MCDANIEL, L.L.P., AS ATTORNEY FOR THE VILLAGE, TO RESPOND TO AN OFFER OF COMPROMISE AND SETTLEMENT FROM CERTAIN LITIGANTS AND POTENTIAL LITIGANTS REGARDING THE PURCHASE AND ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS ASSOCIATED WITH THE COMMUNITY CENTER PROJECT AND RELATED ISSUES, INCLUDING BUT NOT LIMITED TO THE CONCLUSION AND SETTLEMENT OF PENDING LITIGATION IN EXCHANGE FOR A SETTLEMENT PAYMENT; PROVIDING FOR AN EFFECTIVE DATE; AND MEMORIALIZING PROPER NOTICE AND MEETING.

WHEREAS, the Village of Wimberley ("Village") is currently engaged in a worthwhile and important public works project regarding the construction and operation of a Community Center for the benefit of the community of Wimberley, Texas, and all of its citizens and visitors ("Community Center Project"); and

WHEREAS, the Village is currently engaged in construction activities on the land pertaining to the Community Center Project; and

WHEREAS, the Village is currently engaged in litigation regarding the acquisition by eminent domain authority of a certain alleged reversionary interest relating to a part of the land associated with the Community Center Project, pursuant to Cause No. 04-0013 now pending in the District Court of Hays County, Texas, in which the condemnee/defendant is the Johnnie Lewis McNeill Trust, by and through its Successor Trustee, Harriett Stroud McCrocklin ("the McNeill Trust"); and

WHEREAS, the Village has authorized, but not yet filed, additional litigation in the District Court of Hays County, Texas in order to clarify, construe, and obtain a judicial declaration of its rights regarding the alleged reversionary interest relating to a part of the land associated with the Community Center Project, in view of the competing claims and allegations regarding said reversionary interest alleged by other parties, including: John H. McCrocklin; Harriett Stroud McCrocklin, Successor Trustee for the following educational trusts: the Katherine Ann McCrocklin Educational Trust; the Jennifer Kay McCrocklin Educational Trust; the Matthew Thomas McCrocklin Educational Trust; the John Clinton McCrocklin Educational Trust; the Julie Christine McCrocklin Educational Trust and the Courtney Elizabeth McCrocklin Educational Trust ("the Educational Trusts"); and the McNeill Trust; and

WHEREAS, the Village, John H. McCrocklin, the McNeill Trust and the Educational Trusts, have been engaged in settlement discussions, through counsel,

regarding all litigation issues in the pending and contemplated suits, as well as potential settlement alternatives; and

WHEREAS, on or about August 16, 2004, John H. McCrocklin, the McNeill Trust, and the Educational Trusts communicated to the Village through counsel in substance the following offer of compromise and settlement: the conveyance to the Village of all outstanding interests in the disputed tract of land, including the alleged reversionary interest, and an agreed settlement of all pending or contemplated litigation and related issues, in exchange for a settlement payment by the Village; and

WHEREAS, the Village desires to formally tender the following counter-offer to the August 16, 2004 position of John H. McCrocklin, the McNeill Trust and the Educational Trusts, in view of the litigation risk and expense associated with the pending and contemplated suits, the limited litigation resources of the Village, the desire of the Village to complete the Community Center Project on time and on budget, and to avoid additional contract construction expense: a total settlement payment of \$85,000.00 by the Village to the McNeill Trust and the Educational Trusts, in exchange for a conveyance to the Village, with warranty, of all outstanding interests in the subject tract of land, including the alleged reversionary interest, and an agreed settlement of all pending or contemplated litigation issues and suits, said settlement to contain negotiated releases from liability, and all appropriate default conditions and remedies, representations, warranties, and closing conditions; and

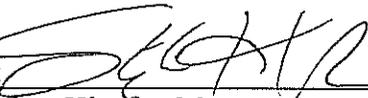
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE VILLAGE OF WIMBERLEY, TEXAS:

- (1) The City Council of the Village of Wimberley hereby authorizes the law firm of Bickerstaff, Heath, Smiley, Pollan, Kever and McDaniel, L.L.P., as attorney for the Village, to formally tender the following counter-offer to the August 16, 2004 position of John H. McCrocklin, the McNeill Trust and the Educational Trusts, in view of the factors described herein: a total settlement payment of \$85,000.00 by the Village, to be paid from the Community Center Fund after transfer from the Village Capital Reserve Fund, to the McNeill Trust and the Educational Trusts, in exchange for a conveyance to the Village, with warranty, of all outstanding interests in the subject tract of land, including the alleged reversionary interest, and an agreed settlement of all pending or contemplated litigation issues and suits, said settlement to contain negotiated releases from liability, and all appropriate default conditions and remedies, representations, warranties, and closing conditions; and
- (2) The City Council hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the City Council hereby incorporates such findings as a part of this Resolution.

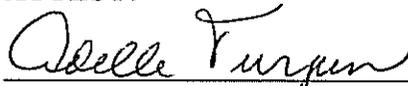
- (3) This Resolution shall take effect immediately from and after its passage and publication as may be required by governing law, if any.
- (4) It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551 of the Texas Government Code and as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED by the City Council of the Village of Wimberley, Texas this 23 day of August, 2004.

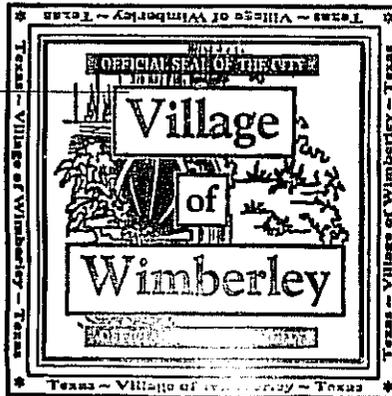
VILLAGE OF THE WIMBERLEY

By: 
Stephen Klepfer, Mayor
Village of Wimberley, Texas

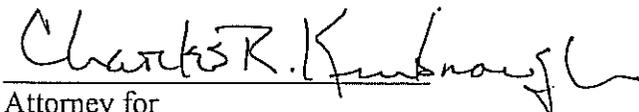
ATTEST:


Adelle Turpen, City Secretary
Village of Wimberley, Texas

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APPROVED AS TO FORM:


Attorney for
Village of Wimberley, Texas