

# City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas, 78676  
Phone: (512) 847-0025 - Fax: (512) 847-0422

Mac McCullough, Mayor - John White, Mayor Pro-Tem  
Council Members - Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld  
Don Ferguson, City Administrator

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August 15, 2016

The purpose of this letter is to advise you that the City of Wimberley has issued a Request for Qualifications ("RFQ") for Wastewater Impact Fee Preparation Services. Attached is a copy of the RFP for your review and consideration.

Submissions, in response to the RFQ relating to the above-mentioned services, will be accepted at the Wimberley City Hall, 221 Stillwater, Wimberley, Texas, 78676, until **2 p.m. on Friday, August 26, 2016.**

Please be advised that submissions received after the underlined time and date specified above will not be considered.

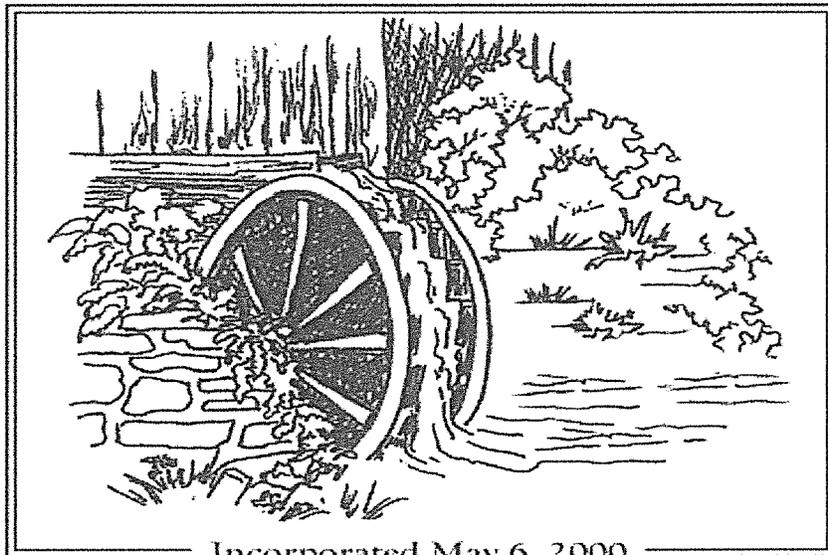
In the event you have any questions or need more information, please feel free to contact me at 512.847.0025.

Sincerely,

A handwritten signature in black ink, appearing to be "Don Ferguson", written over a horizontal line.

Don Ferguson  
City Administrator

**REQUEST FOR QUALIFICATIONS**  
**WASTEWATER IMPACT FEE PREPARATION**  
**SERVICES**



**CITY OF WIMBERLEY**

**P.O. BOX 2027 / 221 STILLWATER  
WIMBERLEY, TEXAS**

***SUBMISSION DEADLINE:***

***FRIDAY, AUGUST 26, 2016  
2 P.M.***

## I. INTRODUCTION

The City of Wimberley, Texas is accepting proposals from qualified planning consultants interested in providing professional services to establish impact fee land use assumptions, the impact fee capital improvements plan, the impact fee schedules and the impact fee ordinance for the Central Wimberley Wastewater System in accordance with the requirements of Texas laws and regulations. Such work shall be performed in accordance with Chapter 395 of the Texas Local Government Code.

It is the intent of the City of Wimberley to select a single consultant to accomplish all the services outlined in this Request for Qualifications (the "RFQ").

The City of Wimberley will receive responses to provide for a contract commencing within thirty (30) days after the date of the award by the City of Wimberley and continuing for a period sufficient to complete the original scope of work but no more than three (3) month period without specific approval from the City of Wimberley.

It is understood that the City of Wimberley reserves the right to negotiate all elements that comprise the response and to accept or reject part or all of any response.

RFQ documents are available at the City of Wimberley and online at [www.cityofwimberley.com](http://www.cityofwimberley.com). If

Addendums are posted online, they will be posted on the aforementioned website.

## II. DEFINITIONS

*City* – City of Wimberley, Texas

*Consultant* - Professional or consulting firm submitting a response to this RFQ. This shall also include the successful Consultant or Firm.

*Plan* - Impact Fee related documents, including but not limited to Land Use Assumptions, Capital Improvements Plan, Fee Schedules, Impact Fee Report and City Resolutions & Ordinances.

*RFQ* - Request for Qualifications; this solicitation.

## III. OVERVIEW OF WIMBERLEY, TEXAS AND ITS IMPACT FEES

Wimberley is a small city located in Hays County, the fifth fastest growing county in the United States and the fastest growing county in the State of Texas. It features a tourist based economy with no ad valorem tax. The city relies largely on sales tax revenues to meet the needs of its residents and visitors. Steady growth has been reported in sales tax revenues in the last two (2) years. The most recent population estimate for Wimberley is 2,670 (2015)

The City of Wimberley is a General Law-Type A municipality. As of 2016, the Wimberley City Council includes Mayor Mac McCullough, Mayor Pro-Tem John White, and Council members Bob Dussler, Craig Fore, Sally Trapp and Gary Barchfeld. The City Administrator is Don Ferguson.

The heart and economic core of Wimberley is its central business district, commonly referred to as the Wimberley Square. Bounded by the Cypress Creek and Blanco River, the business district is facing serious wastewater issues which threaten the future of the district. Properties in this business district rely on largely outdated and inadequate septic systems, some of which are failing and causing serious environmental concerns. Many property owners do not have the financial means and almost no property owners have the additional land needed to bring their systems into compliance with current regulations. As a result, many could be forced to close their businesses if they are required to make their septic system compliant.

To protect the environment, preserve existing businesses and facilitate future economic development in the district, the City is preparing to construct a wastewater collection system and treatment plant to serve the approximately 170 properties that make up the city's central business district. The subject wastewater system will be the City's only wastewater system and serve only the referenced service area. The City currently does not have impact fees established for the wastewater system.

#### IV. PROJECT OVERVIEW

The City is soliciting the services of qualified professional service firms ("Consultant") for the purpose of entering into a consulting services agreement to provide professional services for the process of developing wastewater impact fees. The Consultant will take the lead role in all public forums, workshops, meetings, and hearings. City Staff will provide a support role during this period. The Consultant will be expected to begin work as soon as the contract is executed. The Consultant will be expected to produce a capital improvement plan and to assist in the calculation of, notice of, and public hearings on wastewater impact fees.

The proposing firm should be able to provide, at a minimum, the services listed below. The City recognizes the services identified below are not exhaustive and therefore will rely upon the Consultant to identify other topics or services of importance to include. The City desires to select a Consultant capable of performing all responsibilities normally associated with the development of an impact fee capital improvements plan, impact fee land use assumptions, impact fee schedules and impact fee ordinances needed for the adoption of the impact fee. **The scope of services for the project should include, but are not limited to, the following tasks:**

##### 1. Public Participation:

An effective schedule, proper facilitation of public hearings with the City Council, and submission of draft wastewater impact fee-related documents for review and distribution to the public will be necessary to successfully complete the project. This shall include assisting in the development and preparation of public notices and news releases. The Consultant shall assist the City in the development of a schedule to complete the project, and ensure that all relevant materials are presented to and considered by the public as required by Chapter 395 of the Texas Local Government Code. This shall also include assisting the City in establishing its Wastewater Impact Fee Advisory Committee as required by state law including Chapter 395 of the Texas Local Government Code.

##### 2. Plan Elements:

- a. Develop project schedule identifying key tasks and completion dates.

- b. Review all relevant current City of Wimberley documents including but not limited to Land Use Assumptions, Capital Improvements Plan, Fee Schedules, and City Resolutions & Ordinances.
- c. Review of all relevant long-range plans of the City for the planned service area, including their respective proposed capital improvements for appropriate inclusion.
- d. Review of all relevant infrastructure models and the City's planning & development projections for the planned service area, including discussions with the City's staff as appropriate to complete project tasks.
- e. Update the Land Use Assumptions for the planned service area in compliance with the requirements of state laws and regulations including Texas Local Government Code Chapter 395.
- f. Update Capital Improvements Plan for the City's planned wastewater system in compliance with the requirements of state laws and regulations including Texas Local Government Code Chapter 395.
- g. Review and assess legislative requirements to determine any consequences on the City's Wastewater Impact Fee development and implementation.

### **3. Wastewater Impact Fee Elements and Adoption:**

- a. Prepare the City's Wastewater Impact Fee Land Use Assumptions Report in compliance with the requirements of state laws and regulations including Chapter 395 of Texas Local Government Code.
- b. Prepare the City's Wastewater Impact Fee Capital Improvements Plan Report in compliance with the requirements of state laws and regulations including Chapter 395 of Texas Local Government Code.
- c. Prepare the City's Wastewater Impact Fee Ordinances for the City Council's consideration and adoption in compliance with the requirements of state laws and regulations including Chapter 395 of Texas Local Government Code.

**4. Role of the City:** The City staff available to assist the selected Consultant is limited. Therefore, the Consultant must have the resources and abilities to fully complete the project. In addition, all public hearings notices and necessary facilities will be handled by City staff, but the Consultant shall provide any information needed to ensure the notices are sufficient. The City will provide all available current digital, GIS mapping related information to the Consultant to utilize during the adoption process, but provides no guarantee of compatibility of systems or software.

**5. Role of the Consultant:** The Consultant will furnish all required labor, materials, supplies and travel required in connection with the project. The City expects that the project staff will include individuals with expertise in fields of comprehensive planning, infrastructure systems, mapping and technical report writing.

### **6. Plan Refinement, Preparation and Adoption**

- a. Based on comments from the public, any city boards, commissions or advisory committees, City Council and City Staff, the Consultant shall prepare a draft copy to present to the City Council and public.
- b. The Consultant shall also provide fifteen (15) bound color (if appropriate copies, one (1) unbound color (If appropriate) copy, five (5) sets of all maps contained within the final capital improvements plan (minimum 24" x 36" dimensions), and one (1) electronic version of the final plan in Microsoft Word, Adobe Acrobat, ArcGIS shapefiles and map

files, and/or PDF format as best suits the City's compatibility. The Consultant shall also provide all geographic information system (GIS) data used to create maps that are contained in the Plan document

**The proposal shall address impact fee development for infrastructure as follows:**

- Central Wimberley Wastewater System (new impact fee)

## **V. PROPOSAL CONTENT**

1. Title Page: Show the proposal subject, the name of the Consultant's firm, and its address, telephone number, name of the contact person, and the date.
2. Table of Contents: Include a clear indication of the subject material by section and page number.
3. Transmittal Letter: A letter from an authorized representative of the responding firm that has the authority to bind the firm by entering into a formal agreement for the professional services required for the Wastewater Impact Fees.
4. Discuss understanding of the scope of work being requested by the City under this solicitation.
5. Discuss in detail how the responding firm will complete the scope of work and related services. Provide a work program that addresses in detail the anticipated approach of the firm. This should encompass a narrative and graphics detailing the project approach that would be employed to conduct and to complete the project. Describe the process approach that was used in the past to complete a similar project. Examples of work completed in other communities with similar geographic and demographic characteristics as Wimberley are strongly encouraged.
6. Provide resume of firm's personnel that will be assigned to perform tasks and services to complete the City's Wastewater Impact Fees, including their respective roles. Include an organizational chart identifying team members and their areas of responsibility for the project.
7. Describe background information concerning the firm, including number of years in business under this name and breakdown of personnel in the proposing office(s).
8. Information on similar planning projects completed by the firm within the past five (5) years, including contacts that may be used for references.
9. All proposals must state the period for which the proposal will remain in effect. Such period will not be less than 120 days from the proposal due date.
10. Submit a completed *Certification Form* with the response.
11. Submit a completed Conflict of Interest form ("CIQ") with the response.
12. If the Consultant intends to use sub-consultants, the proposal shall include the same information as that required for the Consultant. Once the Consultant's proposal is selected, sub-consultants may not be substituted without approval of the City.

## VI. EVALUATION AND SELECTION PROCESS

Proposals that comply with the instructions set forth in this document will be evaluated by the City of Wimberley; however, the City reserves the right to accept or reject any or all proposals received, in whole or in part. At its discretion, in the City's best interest, the City of Wimberley may choose to waive irregularities or deviations from the RFP instructions.

The City shall review and rank all responses according to qualifications, and consultants may be selected for interviews or oral presentations as deemed necessary by the City.

The City will evaluate the qualifications of consultants submitting responses based on, but not limited to, the following criteria and will award points in each category up to the maximum number of points listed:

<u>Criteria</u>	<u>Maximum # of Points</u>
1. Quality of response submission. All information requested has been submitted.	10
2. The consultant's history, background, staffing, and capabilities to complete this assignment.	15
3. Approach to providing services, proposed methodology and time lines. Commitment to meeting project agendas, time frames and budgets.	25
4. Personnel or sub-consultants' background, qualifications, demonstrated creativity and experience in the planning industry and particularly wastewater impact fee development.	25
5. Experience and demonstrated expertise in developing a similar Plan for similarly-sized communities. Municipal references and samples provided for work of similar scope.	25
<b>TOTAL</b>	<b>100</b>

1. Evaluation Committee and Ranking:

A committee comprised of City staff shall review and rank all responses according to qualifications, and consultants may be selected for interviews or oral presentations as deemed

necessary by the committee. The City makes no commitment to any respondent to this RFQ beyond consideration of its written response.

2. Interviews and Presentations:

The City may conduct interviews with one or more qualified consultants which timely and properly submit a response. The City reserves the right to select a consultant without interviews based solely on the information contained in the response.

3. Contract:

The selection of the consultants and the execution of a contract, while anticipated, are not guaranteed by the City. The City reserves the right to determine which response is in the City's best interest and to award the contract on that basis, to reject any and all responses or portions thereof, waive any irregularities of any response, negotiate with any potential proponent (after responses are opened) if such is deemed in the best interest of the City.

## VI. AWARD OF CONTRACT

1. Negotiations:

After selection of a consultant based on qualifications, the City will then enter into negotiations as to the terms of the contract, all aspects of services, and the compensation to be paid to the proponent.

2. Inability to Reach Agreement:

In the event the negotiations between the most qualified proponent(s) selected and the City cannot be completed as a result of an inability to reach agreement on the fee for services or the scope of work to be performed, then at the option of the City, the contract may be awarded to the next most qualified proponent. Negotiations will continue in this sequence until a contract is finalized or all responses are rejected.

3. Final Contract

- a. The selected consultant will be required to assume responsibility for all services offered in its response, whether or not such services are provided by a partnership arrangement. The successful consultant will be considered the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- b. CITY COUNCIL APPROVAL: Final contract shall be subject to approval by the City Council.
- c. The successful consultant will be required to enter into the draft form *Standard Contract/ Professional Services Agreement* with the City attached herein, subject to change.
- d. This RFQ and the successful consultant's response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful consultant.

**VII. ANTICIPATED CONSULTANT SELECTION SCHEDULE** *(subject to modification)*

The tentative schedule for this Request for Qualifications is as follows:

Issue RFQ to Consultants: 8/4/16

RFQ's and City plans are posted at [www.cityofwimberley.com](http://www.cityofwimberley.com)

Pre-Proposal/Submission Meeting (s): not applicable

Deadline for Questions and Inquiries: No later than 2 p.m. on 8/24/16

Submission Deadline: No later than 2 p.m. on 8/26/16

**VIII. SUBMISSION INSTRUCTIONS/REQUIREMENTS**

Submit two (2) originals, four (4) copies and a CD, thumb drive or DVD as a .pdf file of the proposal to the City of Wimberley:

**No later than 2 p.m. on 8/26/16**

**Qualifications must be received at the City of Wimberley before opening date and time, submitted in a sealed envelope or package stating on the outside: "Statement of Qualifications-Wastewater Impact Fee Preparation Services" submitted by the bidder's name, address, title, and due date.**

IF HAND DELIVERED:

City of Wimberley

Attention: Don Ferguson

221 Stillwater

Wimberley, TX 78676

MAILING ADDRESS:

City of Wimberley

Attention: Don Ferguson

P.O. Box 2027

Wimberley, TX 78676

**VIII. INSTRUCTIONS, TERMS AND CONDITIONS**

General Instructions:

Consultants submitting responses should carefully examine all terms, conditions, specifications and related documents. Should discrepancies or omissions from the specifications or related documents be discovered, or should there be doubt as to their meaning, the City should be notified immediately for clarification prior to submitting the responses. In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City's interpretation shall govern.

Addenda and Questions:

All question regarding this response and any regarding the meaning or intent of the RFQ are to be directed to the following contact. Interpretations or clarification considered necessary by the City in response to such questions will be issued by Addenda and posted online. Questions received less than 48 hours prior to the due date and time will not be answered. Only questions answered by a formal written Addenda will be binding. No oral and other interpretations or clarification will be considered official or binding. All addenda shall be acknowledged on the *Certification* form attached herein.

City of Wimberley  
Contact: Don Ferguson  
dferguson@cityofwimberley.com

Altering Responses:

Responses cannot be altered or amended after submission deadline. Any alterations or erasures made before opening time must be initialed by the signer of the response, guaranteeing authenticity.

Certification:

Responses must be completed and submitted as required in this document. A *Certification* form, attached herein, must be fully completed. **Submittals that do not include a signed *Certification* form may be considered non-responsive and not evaluated.**

Communication:

The City shall not be responsible for any verbal communication between any employee of the City and any potential firm. Only timely and properly submitted written responses will be considered.

Conflict of Interest:

No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

Contract Award:

If a contract is awarded, the consultant will be selected on a rational basis using the response evaluation factors and results of subsequent negotiations. The City has the right to award a contract upon the conditions, terms, and specifications contained in a response submitted to the City for a period of up to one hundred twenty (120) days following the date specified for the response submission deadline.

Delivery:

All delivery and freight charges are to be included in the response price.

Descriptions:

It is the intent of the CITY to be **DESCRIPTIVE - NOT RESTRICTIVE** and to establish a desired quality level of product or to meet a pre-established standard of quality. Consultants may offer items of equal quality and the burden of proof of such quality rests with them. The City shall act as sole judge in determining quality and acceptability of products offered.

Disclosure:

There will be no disclosure of contents to competing firms and all responses will be kept confidential during the selection process to the degree permitted by law. The City is subject to the Texas Public Information Act, Texas Government Code, Chapter 552. Government Code 552.110 excepts from required public disclosure a trade secret or commercial or financial information that may be privileged or confidential by statute or judicial decision. However, the City considers all information, documentation, and other materials requested to be submitted in response to this RFQ to be non-confidential and/or non-proprietary and therefore subject to public disclosure after the contract are executed.

Documentation:

The Consultant shall provide with this response all documentation required by this RFP. Failure to provide this information may result in rejection of response. Vendor is encouraged to submit concise and clear responses to the RFQ. Responses of excessive length or complexity are discouraged. The City reserves the right to include the selected response or any part or parts of the selected response in the final contract.

Ethics:

The Consultant shall not offer gifts or anything of value or enter into any business arrangement with any employee, official or agent of the City or City of Wimberley. More than one response on any one contract from a firm or individual under different names shall be grounds for rejection of all responses in which the firm or individual has an interest. One or all responses will be rejected if there is any reason to believe that collusion exists between respondents. Consultants must comply with Chapter 176 of the Texas Local Government Code. Chapter 176 mandates the public disclosure of certain information concerning persons doing business or seeking to do business with City, including affiliations and business and financial relationships such persons may have with City officers. By doing business or seeking to do business with the City, including submitting a response to this RFP, the Consultant acknowledges that he/she has been notified of the requirements of Chapter 176 of the Texas Local Government Code and is representing that said Consultant is in compliance with those requirements. *Conflict of Interest Questionnaire* contained herein must be filled out and turned in with each response.

Conflict of Interest:

Chapter 176 of the Local Government Code creates a new filing requirement for persons who contract or are seeking to do business with local government entities to make financial and business disclosures.

A vendor or other person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local government entity, or is an agent of a vendor or person who is seeking to contract with the City must file a Conflict Disclosure Questionnaire (<https://www.ethics.state.tx.us/forms/CIQ.pdf>) within 7 business of:

- Beginning contract discussions or negotiations
- Or submitting an application, response to a request for proposal or bid,
- Or other communication related to a potential contract.
- Failure to file a questionnaire is a class C misdemeanor.

Note: As part of this proposal packet, please mark “Not Applicable” on any questions that do not apply to your affiliation or business relationship with a City of Wimberley elected officer and return with the

response package. Failure to return this document may disqualify your response from consideration.

A vendor required to file a Conflict of Interest Questionnaire is not required to file an updated questionnaire in a year in which they filed the initial questionnaire after June 1, but before September 1 of that year.

**Please submit the Conflict of Interest Questionnaire with your proposal/bid submission.**

Indemnification:

The successful Consultant shall indemnify, defend, and hold the City, its officers, agents, and employees, harmless from any claim, loss, damage, suit, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising from or caused by any act or omission of contractor, its officers, employees, agents, or subcontractors, in performing its obligations under this contract.

Invoices:

Invoices submitted for payment shall be addressed to City. Periodic payments will be made within thirty (30) days of invoice date provided that all other requirements are detailed in the contract have been fulfilled.

Late Responses:

Responses received after submission deadline will be considered void and unacceptable. The City is not responsible for lateness or non-delivery of mail/email, carrier, etc., and the date/time stamp in the City office or email message shall be the official time of receipt.

Lobbying Prohibited:

Consultants are prohibited from directly or indirectly communicating with any elected or appointed official of the City regarding the Consultant's qualifications or any other matter related to the eventual award of a contract for the services requested under this RFQ. Consultants are prohibited from contacting City and City staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member. Any violation will result in immediate disqualification of the Consultant from the selection process.

Management:

Should there be a change in ownership or management of the successful respondent, any and all contracts that result from this RFQ shall be canceled unless a mutual agreement is reached with the new owner or manager to continue the contract with its present provisions, requirements, terms, conditions, schedule, and fees. This contract is non-transferable by either party.

Pricing:

Prices for all goods and/or services shall be firm for the duration of this contract. **Prices shall be all inclusive.** Additional charges not shown in the response will not be honored. Responses must comply with all federal, state, county and local laws concerning this type of goods or service.

Reimbursement:

There is no express or implied obligation for the City to reimburse responding Consultants for any expenses incurred in preparing responses in response to this RFQ and City will not reimburse responding firms for these expenses, nor will City pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

Reservations:

The City reserves the right to accept or reject any or all responses as a result of this request, to negotiate with all qualified sources, or to cancel, add or subtract, in part or in its entirety, this RFQ if found in the best interest of the City. All responses become the property of the City.

Responsible Firms:

The City shall only consider responsible consultants who have the financial ability, experience, resources, skills, capability, reliability and business integrity necessary to perform the requirements of the contract. The City will consider references and other information available, whether specifically provided by the respondent or otherwise. Consultants with an owner or principal convicted within the past 10 years of a crime that impugns honesty or integrity, or with unsatisfied tax or judgment liens, are ineligible to participate and shall not submit.

Sales Tax:

The City is exempt by law from payment of Texas Sales Tax and Federal Excise Tax. **Do not include tax in response.**

Standard Contract(s):

This RFQ includes the City's *Standard Contract/Professional Services Agreement*; a statement of willingness to utilize such agreement must be provided. The Consultant should review the attached *Standard Contract/ Professional Services Agreement* thoroughly, and by submitting a response, the Consultant is agreeing to sign the City's *Standard Contract/Professional Services Agreement* without modification.

Withdrawal of Responses:

Any response may be withdrawn prior to the scheduling time for opening. Notice to withdraw the response must be in writing and submitted to the City prior to the scheduled time for opening responses. Any response withdrawal notice, which is received after the deadline for receiving responses, shall not be considered.

Insurance:

The successful Consultant shall provide and maintain the minimum insurance coverage set forth in the *Standard Contract/ Professional Services Agreement* attached herein.

**ATTACHMENT A: CERTIFICATION**

The undersigned affirms that they are duly authorized and qualified to submit this response. The undersigned affirms that the firm is willing to sign the enclosed Standard Contract without modification.

**Respondent must initial next to each addendum received in order to verify receipt:**

Addendum #1 \_\_\_\_\_ Addendum #2 \_\_\_\_\_ Addendum #3 \_\_\_\_\_

**Respondent Must Fill in and Sign:**

NAME OF CONSULTANT/FIRM: \_\_\_\_\_

AGENT'S NAME: \_\_\_\_\_

AGENT'S TITLE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

PHONE & FAX NUMBERS: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
PREPARATION OF WASTEWATER IMPACT FEES**

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, pursuant to and \_\_\_\_\_ (“Consultant”), both of which may be referred to herein 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.

“Director” 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 be in accordance with the executed Task Orders attached hereto.

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**

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation to Consultant. Scope of Services will be as detailed in Attachment A of the assigned Task Orders associated with the Project which are incorporated by reference as if written and copied herein.

3.2 All work performed by Consultant hereunder shall be performed to the satisfaction of the Director. The determination made by Director 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 Director. 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 Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

#### IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, 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 detailed in Attachment D of the assigned Task Orders associated with the Project attached hereto.

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 Wimberley City Council.

4.3 If City disputes any item(s) in Consultant's invoice for any reason, including the lack of supporting documentation, City may temporarily delete the disputed item and pay the remaining amount of the invoice. City will notify Consultant within seven (7) days of the dispute and request clarification and/or correction. After any dispute has been settled, Consultant will include the disputed item on a subsequent, regularly scheduled invoice or on a special invoice for the disputed item only.

4.4 Excluding disputed items, City agrees to pay invoices within thirty (30) days from the date the City receives the invoice. In the event undisputed portions of the Consultant's invoices are not paid when due, Consultant also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Final payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

#### V. OWNERSHIP OF DOCUMENTS

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

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

#### VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain

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

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

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 XI. 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 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: Don Ferguson  
 City Administrator  
 P.O. Box 2027  
 Wimberley, Texas 78676

If intended for Consultant, to:      Name, Address

## 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:

### Insurance Requirements

Consultant's 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.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for:	1,000,000 per occurrence, 2,000,000 general aggregate	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage
Premises/Operations	Or	
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated A1(VII) or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
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) 312-0084. A contract will not be issued without evidence of Insurance. We 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  
P.O. Box 1380  
Wimberley, Texas 78610

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 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 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 officers or employees, 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 Consultant is required to perform services to the City under the standard of care provided for by H.B. 2049 passed by the Texas 84<sup>th</sup> Legislature pursuant to Texas Local Government Code § 271.904 (d)(1-2)

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

## XI. ASSIGNMENT AND SUB-CONTRACTING

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:

**List of Subcontractors:** Sub-contractors are identified in the Task Orders associated with this Project attached hereto.

Any deviation from this sub-contractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Wimberley City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for sub-contracting 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 Council.

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 ventures between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

## **XIII. CONFLICT OF INTEREST**

13.1 Consultant acknowledges that it is informed that the City of Wimberley and its Ethics Code prohibit a City officer or employee, from having a financial interest in any contract with the City except in full and impartial compliance with the City.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City.

## **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 subject to 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 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.

## **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 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined 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 interpreted in the order of priority as appears below:

Task Order, Attachment "A" Services to be provided by the Consultant; Attachment "D" Fee Schedule; Attachment "C" Work 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.

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

**CITY OF WIMBERLEY**

**CONSULTANT**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: City Administrator  
\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_