

Wimberley Parks & Recreation Department
Request for Proposals
Comprehensive Master Plan



RFP #2023-1

Issue Date: January 5, 2023

Submission Deadline: February 23, 2023, 4:00 P.M. CST

RFP Coordinator:

Richard Shaver

Director, Parks and Recreation

512-660-9111 ext. 209

rshaver@cityofwimberley.com

Submit to:

City of Wimberley

ATTN: Richard Shaver

221 Stillwater Rd.

Wimberley, TX 78676

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1. General Information

1.1 Project Overview

The City of Wimberley Parks and Recreation Department is soliciting qualified professional consulting services in Park and Recreation Master Planning and community engagement. The Master Plan will serve as a guiding document for park system infrastructure and programming for the next decade.

Wimberley is located in the middle of the beautiful Texas Hill Country with over 200 acres of parkland including Blue Hole Regional Park which has been awarded top 10% of attractions worldwide by TripAdvisor 2 years in a row (2020, 2021). Wimberley was designated as an International Dark Sky Community in 2018, a Film Friendly City in 2019, and a Music Friendly City in 2022.

Wimberley was incorporated in May 2000 and operates as a Type A, General Law City. The City is governed by the City Council, which is composed of a Mayor and five Council members, who are elected for staggered two-year terms.

Current Mission Statement:

Our mission is to enhance the quality of life of current and future citizens of Wimberley by protecting our natural resources, providing safe spaces for recreation, and encouraging environmental education through our parks, trails, and open spaces while fostering a creative community through our programs and events.

Wimberley residents and visitors alike value the importance of parks and recreational opportunities as an essential public service. Wimberley's Parks and Recreation system currently consists of:

- 7 Parks
- 200+ acres of public open space
- 8 miles of walking and hiking trail
- 3 miles of biking trail
- 1 multi-purpose Community Center

The 2018 Master Plan <https://www.cityofwimberley.com/DocumentCenter/View/519/City-of-Wimberley-Parks-and-Recreation-Master-Plan-2018-PDF> lacks significant planning, investment, development, and public input data. The original Parks and Recreation Master Plan completed in 2007 and the update in 2018 was completed by City Staff and the Parks and Recreation Advisory Board at the time.

The city is now embarking on a new Parks and Recreation Comprehensive Master Planning process to guide decision making and investment for the next decade.

Additional detail is provided in **Part 4** of this RFP.

1.2 Calendar of Events

The city will make every effort to adhere to the following schedule:

Activity	Date
Issue date	JANUARY 5, 2023
Deadline to submit questions via email to rshaver@cityofwimberley.com	JANUARY 26, 2023
Answers to questions will be posted to the city website no later than this date	FEBRUARY 2, 2023
Proposals must be received at Wimberley City Hall by 4:00 PM on this date. (221 Stillwater Rd, Wimberley, TX 78676)	FEBRUARY 23, 2023

1.3 Rejection of Proposals. The City reserves the right, in its sole and complete discretion, to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in its best interests. The City is not liable for any costs the Proposer incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

1.4 Questions & Answers. Any questions regarding this RFP must be submitted by e-mail to the Parks Director at rshaver@cityofwimberley.com no later than the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

1.5 Addenda to the RFP. If the City deems it necessary to revise any part of this RFP before the proposal response date, the city will post an addendum to its website www.cityofwimberley.com. Although an e-mail notification will be sent, it is the Proposer's responsibility to periodically check the website for any new information

1.6 Proposals. To be considered, hard copies of proposals must arrive at the city on or before the time and date specified in the RFP Calendar of Events. The city will not accept proposals via email or facsimile transmission. Proposals need to be mailed or delivered at City Hall, 221 Stillwater, Wimberley, TX 78676. It is recommended that you have proposals delivered the day before the deadline to ensure they are delivered on time. The City reserves the right to reject or to deduct evaluation points for late proposals.

Proposals must be signed by an official authorized to bind the Proposer to its provisions. If the official signs the Proposal Cover Sheet attached as Appendix A, this requirement will be met. Proposals must remain valid for 60 days or until a contract is fully executed.

Please submit three (3) paper copy of the Technical Submittal and three (3) paper copy of the Cost Submittal. In addition, Proposers shall submit one copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on a Flash drive in Microsoft Office-compatible or pdf format.

All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is completed and an award decision made.

1.7 Contract. The successful proposer shall negotiate price with the City and execute a contract with the City in a form substantially similar to the attached Appendix “B.”. The term of the contract will begin once the contract is fully executed and is anticipated to end by September 30, 2023. The selected Proposer shall not start the performance of any work, nor shall the City be liable to pay the selected Proposer for any service or work performed or expenses incurred before the contract is executed.

1.8 Mandatory Disclosures. By submitting a proposal, each Proposer understands, represents, and acknowledges that:

- A. Their proposal has been developed by the Proposer independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer.
- B. There is no conflict of interest. A conflict of interest exists if a Proposer has any interest that would conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.
- C. It is not currently under suspension or debarment by the State of Texas, any other state, or the federal government.

1.9 Notification of Selection. Proposers whose proposals are not selected will be notified in writing when contract negotiations have been successfully completed and the City has received the final negotiated contract signed by the selected Proposer.

2. Proposal Requirements

Submittal of the Request for Proposals should include the following criteria and be structured accordingly:

1. Cover Letter
2. Firm Information
 - A. Name of Firm/Discipline
 - B. Contact Information
 - C. Staff Size

3. A description of your firm's experience in completing work of this type including three (3) specific examples and project references (include reference name, phone number and email).
4. Provide an overview and description of the firm's total qualifications including any special or unique services it may provide.
5. List whether or not your agency is the sole consultant for the entire project. Include any sub-contractors who will be working with your firm on this project, what their responsibilities will be, and a summary of applicable experience and qualifications.
6. A summary of your firm's understanding of the project including your firm's scope of services necessary to perform and fulfill the objectives and methods of how your firm plans to fulfill those objectives.
7. Cost of your services, in detail, including hours dedicated to each area defined within the scope of services. Cost will be a factor after the technical evaluation process is completed.
8. Detail meetings and community outreach with Parks and Recreation staff, Parks and Recreation Commission, City officials, stakeholder interviews and public forums.
9. Proposed schedule for the project.

3. Criteria for Selection

The proposals will be reviewed by City Staff. The intent of the selection process is to review proposals submitted by at least three qualified consultants and make an award based upon qualifications as described therein, successful negotiation of a price and execution of a contract with the City. Should the proposer deemed most qualified fail to negotiate an acceptable price with the City and execute the contract, the City may move to the next most qualified proposer. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

1. Qualifications and Similar Project Experience, Including References (25%)
2. Effectiveness of Proposed Work Plan and Project Understanding (25%)
3. Innovative Engagement Strategy (20%)
4. Timeline and previous demonstrated ability to stay on schedule (15%)
5. Cost to complete the project (15%)

The consultant team should have expertise in comprehensive long-range park system planning of communities of similar size and scope. Each proposal will be evaluated based on qualifications. The City has the right to refuse any and all RFP's in whole or in part and select the proposal deemed by the governing body to be in the best interest of the City. Firms that are not selected will be notified in writing.

4. Project Detail

4.1 Guiding Principles

The Wimberley Parks and Recreation Comprehensive Master Plan and Planning process will be guided by a set of Guiding Principles that set the stage for planning process design, citizen engagement, prioritization of plan elements/programming and implementation/decision making. The following Guiding Principles will help guide the Mission and Vision of City of Wimberley Parks and Recreation Department:

1. *Inclusion and Equity:*
 - A. Provide multi-generational opportunities
 - B. Implement community outreach and participation to ensure multi-cultural opportunities
 - C. Ensure equitable access to park facilities, programs, and events
 - D. Design and implement park projects and programming to include access by people with disabilities.
 - E. Geographic diversity of projects and programs
 - F. Respond to changing recreational needs and priorities
2. *Quality over Quantity:* A necessary balance between the quality of parks and community recreation facilities with the overall quantity of facilities.
3. *Resiliency and Sustainability:* Adhere to climate change adaptation strategies and approaches for recreation. Ensure long-term adaptability and provide recreational opportunities that will not compromise environmental quality over time. Other considerations include:
 - A. Cost reasonableness
 - B. Operational and maintenance costs, including energy efficiency and energy reduction strategies
 - C. Use durable, low-maintenance, and natural/native materials
 - D. Balance of naturalized and maintained landscapes from a user, ecological, and maintenance perspective
 - E. Place-appropriate use of the land
 - F. Create high quality, timeless design
 - G. Follow best practices in the management and maintenance of our built assets
4. *Natural Resource Management:* Protect, restore, and preserve natural resources and ecological systems.
 - A. Native and Invasive Species – promote the removal of invasive species and incorporate the use of native plantings.
5. *Community Partnerships:* Cultivate strategic use of volunteers and community groups to perform mission critical work that would otherwise go undone due to staffing and funding limitations.
6. *Healthy Community:* Supporting health and well-being is a priority. The City will actively promote access for all to recreation in a clean, safe environment. Investments and policies will advance and maximize health and healthy equity.
7. *Safety:* Provide a safe, secure, and welcoming park and recreational experience.
 - A. Ensure adequate and appropriate lighting when applicable

- B. Provide trail wayfinding and trail length and character information, through on-site signage, online platforms, or other means
 - C. Signage and wayfinding placement is done in collaboration with emergency response teams
 - D. Apply crime prevention principles in planning and design of individual parks, trails, and facilities
8. *Cost Recovery*: Apply a cost recovery and financial performance model to sustain programs, built assets/facilities and lands over a 10-year period.
 9. *Land Management*: Designate land that requires protection as open space, including ecologically valuable areas or natural areas.

5. General Project Scope

5.1 Deliverables

The City of Wimberley Parks & Recreation Department is soliciting qualified professional consulting services in Park and Recreation Comprehensive Master Planning and community engagement. The Master Plan will serve as a guiding document for park system infrastructure and programming for the next decade. Deliverables of the Master Planning process must include:

1. A **professional team** of staff that adheres to the guiding principles in the previous section.
2. Community and stakeholder **engagement plan**. Develop and conduct a public engagement strategy to gather public opinion regarding the adequacy of existing parks, recreation, and facilities and future/proposed investments. Strategy should address disparities and engage a diversity of people including (but not limited to) geographic, generational, racial, socio-economic and accessibility.
 - A. Proposers are encouraged to be creative in their approach when responding to the RFP. We are seeking innovative ways to reach as broad an audience as possible to have meaningful conversations about the City's park system future. Such approach might include, but is not limited to the following:
 - a. **Charettes and Coffees**
 - b. **Breweries and Restaurant Meeting Spaces**
 - c. **Town Hall Meetings**
 - d. **Key Stakeholder Engagements**
 - e. **Online Engagement and Social Media**
 - f. **Guerilla Marketing Engagement Campaign**
3. Regular **communication** with Parks and Recreation leadership team and internal staff steering committee. Provide presentations to policy makers, including: the Wimberley Parks and Recreation Advisory Board, City Council, and other commissions or stakeholder groups as needed.

4. Internal **steering committee meetings**: develop agendas, materials, and lead or assist with meeting facilitation.
5. **Maintain documentation** from all meetings, correspondences, site visits and workshops.
6. **Conduct research** pertaining to plan components listed in section 5.
7. Submit **Draft Plan** for Wimberley Parks and Recreation Advisory Board and Wimberley City Council review
8. **Develop, propose, and present plan amendments** to achieve project purpose. Use illustrations and figures to convey design concepts for final product and required presentations.
9. Submit **Final Plan** to include executive summary, introduction, planning process, appendices, recommendations, implementation plan, probable cost estimate, funding source recommendations.
 - A. All parent files of graphics, tables, maps, and illustrations shall be provided to the City in digital format for future use.
 - B. Final Plan in PDF and editable formats.
 - C. All workshop related exhibits and documents compiled and delivered in editable format, to include format(s) that are sharable to the public and web-friendly.
10. **Develop Recommendations, Priorities, and Implementation Strategies** to ensure that the Plan is implementable upon its adoption by the District Board, it must include realistic, feasible, and clearly defined planning scenarios. Based on new ideas, existing planning information and the City's strategic direction, the firm will be expected to develop the following:
 - A. Prioritized recommendations to meet current and future needs through, but not limited to, land acquisition, construction or development of indoor and outdoor facilities, development of additional recreational amenities, park maintenance, etc.;
 - B. Review existing staff recommendations for addressing operations, staffing, maintenance, technology, programming, services, and funding need to support implementation of this Plan; and
 - C. Evaluation of the feasibility, cost-effectiveness/return on investment of suggested strategies and recommendations.

5. Anticipated Plan Components

The 2023 Wimberley Parks and Recreation Comprehensive Master Plan should incorporate/highlight existing master plans/ projects found in Section 5: Reference Materials.

Components of the 2023 Wimberley Parks and Recreation Comprehensive Master Plan may include, but are not limited to:

1. Background Information Collection

- A. Review and affirm or revise mission and vision statements
- B. Review demographic information and projected community needs

2. Asset Quality and Management

- A. Inventory and analysis of existing facilities, parks, trails, open space.

Consultant will:

- a. Assess the quality and significance of assets, regardless of current condition
- b. Assess the functionality of assets compared to community needs and the Parks and Recreation Mission and Vision
- c. Prioritize future investment based on qualitative assessment of community need, including:
 - i. Park-specific buildings and community center including the proposed Blue Hole Nature Center
 - ii. Water access
 - iii. Dog park
 - iv. Skate Park/ Veloway/ Pump Track
 - v. Trail heads – usage, maintenance, gaps/placement
 - vi. Trail system – review proposed 2020 Wimberley valley trails Initiative
 - vii. Park/Trail/Natural Area/Open Space categories and priority levels
 - viii. Designated camping facilities
 - ix. Athletic facilities – Indoors and Outdoors
 - x. Natural Areas and management
- d. Review existing built infrastructure and make recommendations for improved usage and universal access measured against national park and recreation standards.
- e. Review our maintenance standards and schedule of identified and unidentified deferred infrastructure maintenance and provide recommendations on what to prioritize.

3. Governance and Funding Systems

- A. Review current and recommend future funding strategies related to the staffing, operations, programming, enhancement, and maintenance of the parks and recreation system:
 - a. Levies
 - b. General fund
 - c. Grant funding
 - d. Fees (permits, reservations, commercial users, program fees, etc.)
- B. Benchmark Wimberley's Parks and Recreation finances against other comparable park agencies
- C. What strategic actions must Wimberley take in order to meet the financial needs of the Parks and Recreation system in the future as defined in this new Master Plan?

4. Administrative and Operations Systems

- A. How are major priorities set and performance and progress toward goals tracked?
- B. Review and analyze current and historic staffing models
 - a. Benchmark against comparable park agencies

- b. Review and analyze volunteer initiatives and partnerships with user groups for strategic programming, facilities management, operations, and maintenance opportunities.
- C. Evaluate current marketing and public information efforts.
- D. Review and analyze effectiveness of applicable parks-related ordinances, rules, and policies
 - a. Evaluate effectiveness of enforcement
 - b. Recommend best practices from peer communities and organizations

5. Parks Programming and Operations Review and Analysis

- A. Review of Parks and Recreation-delivered programming
- B. Identify strategic opportunities to leverage community, non-profit organizations, and contract recreation instructors to deliver operational and programming services
- C. Propose cost-effective, meaningful options for recreational programming opportunities
- D. Evaluate potential for a Parks and Recreation Equipment Rental Service

6. Prioritization of Park Development and Capital Investment

- A. Prioritize existing parks, trails, facilities, and natural areas for improvement by neighborhood, region, natural area, etc.
- B. Prioritize of new or expanded parks, trails, facilities, and natural areas for development by neighborhood, region, natural area, etc.
 - a. Provide definitions and generic conceptual design templates for the following park types:
 - i. Greenway
 - ii. Open Space
 - iii. Community Park
 - iv. General Neighborhood Park
 - v. Pocket Park
 - vi. Plaza
 - vii. Pavilion/ Amphitheater
 - viii. Dog Park
 - ix. Playground
 - x. Community Garden
 - xi. Skate Park/ Pump Track

7. Goals, Objectives, and Evaluation

- A. Establish goals and objectives of the Master Plan based upon the Guiding Principles included in this RFP
- B. Develop and propose a strategic financial plan to achieve the recommendations for system improvements
- C. Develop an implementation plan and evaluation mechanism to monitor plan progress

5. Reference Materials

Wimberley Parks and Recreation Master Plan 2018:

<https://www.cityofwimberley.com/DocumentCenter/View/519/City-of-Wimberley-Parks-and-Recreation-Master-Plan-2018-PDF>

Wimberley Valley Trails Master Plan (2020):

<https://www.cityofwimberley.com/213/Wimberley-Valley-Trails-Project>

Wimberley Online Parks & Facilities:

<https://www.cityofwimberley.com/193/Parks-Facilities>

Blue Hole Nature Center Plans (2020):

<https://www.cityofwimberley.com/DocumentCenter/View/560/Blue-Hole-Nature-Center-Plans-PDF>

Past and present master plans for specific parks and trails:

Blue Hole Regional Park Master Plan (2007):

<https://www.cityofwimberley.com/DocumentCenter/View/521/Blue-Hole-Regional-Park-Master-Plan-PDF>

Cypress Creek Nature Preserve (2019):

<https://www.cityofwimberley.com/DocumentCenter/View/520/Cypress-Creek-Nature-Trail-and-Preserve-Master-Plan-PDF>

**APPENDIX A - PROPOSAL COVER SHEET
CITY OF WIMBERLEY
RFP #2023-1**

Proposer Information:	
Proposer Name	
Mailing Address	
Website	
Contact Person	
Contact Phone Number	
Contact Email	
Federal ID Number	

Submittals Enclosed	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Cost Submittal sealed separately
<input type="checkbox"/>	Digital Copy of both Technical and Cost Submittal

Signature	
Signature of an official authorized to bind the Proposer to the provisions contained in the proposal:	
Printed Name	
Title	

**APPENDIX B – PROFESSIONAL SERVICES AGREEMENT
CITY OF WIMBERLEY
RFP #2023-1**

Do not submit this portion of the RFP application. This will be required for the awarded consultant.

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This Agreement is entered into by and between the City of Wimberley, a Texas Municipal Corporation (“City”), acting by and through its City Administrator, and [REDACTED] (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Administrator” shall mean the City Administrator and/or his designee.

II. TERM

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

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES AND PROJECT SCHEDULE

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services and Project Schedule are detailed in [REDACTED] which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Administrator. The determination made by City Administrator shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Administrator. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to City Administrator; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Administrator, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed (\$00.00) as total compensation, to be paid to Consultant as further detailed in **Exhibit 1**.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

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

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

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

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

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

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

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

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

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure

the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Wimberley
Attn: City Administrator
221 Stillwater
Wimberley, Texas 78676

If intended for Consultant, to: **Name, Address**

IX. INSURANCE

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

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to

modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

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

City of Wimberley

Insurance Requirements

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

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

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

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations	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
Products/ Completed Operations	Or 2,000,000 combined single coverage limit	
		City to be provided a waiver of subrogation

Independent Contractors		City prefers that insurer be rated B+V1 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) 847-0025. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as **additional insured by endorsement under terms satisfactory to the City**, as respects operations and activities of, or on behalf of, the named insured 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 elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

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

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

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


10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on

the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant

from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Wimberley, Texas, then and in that event it is the intention of

the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HAYS COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Hays County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

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

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its

incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

25.5 Texas Government Code Mandatory Provision. The City of Wimberley may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2271.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

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

CITY OF WIMBERLEY

CONSULTANT

(Signature)

(Signature)

Printed Name:

Printed
Name:

Title: City Administrator

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

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