



Agenda Report

City Council

Date: February 8, 2022

To: Brian Saeki, City Manager

From: Virginia Santana, Director of Parks, Recreation and Community Services
Kyle Cason, Director of Public Works

Subject: Professional Services Agreement with SWA for concept designs for the Parnell Park Renovation and Improvement Project

RECOMMENDATION

Adopt Resolution No. 2022-10 approving authority to accept grant funds in the amount of \$5,019,000 from the State of California Specific Grant Funds and amending the FY 2021-22 Budget to receive and expend funds for the approved Parnell Park Renovation and Improvement Project and authorize the City Manager to execute a sole source professional services agreement with SWA-Laguna Beach, in the amount not to exceed \$112,000 to provide conceptual design services for the Parnell Park Renovation and Improvement Project.

BACKGROUND

Parnell Park, located originally at 10711 Scott Avenue, is a 12.8-acre park in a residential neighborhood between Lambert Road and Mulberry Drive. The Park was developed in 1967 after the City purchased the 6.4 acres from the Parnell Preparatory School for Girls and acquired an additional 6.4 acres from the County. The current Parnell Park Community and Senior Center now resides at 15390 Lambert Road and includes traditional amenities such as picnic tables, barbeques, a play area with play equipment, one basketball court, restrooms, and three parking lots. There is minimal security lighting in and around the park. In addition, there is a softball diamond, a spray pool, farm animal zoo and a recreation facility offering classes, trainings, events, and sports classes.

The playground equipment was last upgraded in 2009, including installation of rubberized surfacing. Due to wear and tear, the existing rubberized surfacing does not meet current Americans with Disabilities Act (ADA) requirements or current “fall zone” safety standards. Playground equipment has begun to crack and chip and no longer meets the current play styles of children and youth. Under regular conditions the playground usage is estimated at 8,000-10,000 children annually.

On March 9, 2021, City Council approved the filing for a statewide park development and community revitalization program grant, to begin seeking funds to renovate Parnell Park. The application process was multifaceted and required community outreach and input of the project. The community had several opportunities to submit surveys to include their desired amenities or changes to the Parnell Park site. Sports fields, an ‘all-abilities’ playground, splash pad, new restrooms, fitness equipment, walking path, lighting, and

updated landscape and irrigation were the most requested items. The City was notified on December 8, 2021, that the project application was not selected for funding.

On October 15, 2021, Senator Bob Archuleta presented City Council with the official notification that through the state budget process, budget trailer bills AB 170 and SB 170 included \$5,019,000 as designated grant funds to be awarded to the City of Whittier through the State of California, Specific Grant process for the Parnell Park Renovation and Improvement Project.

On November 9, 2021, City Council approved Resolution No. 2021-87 to begin the process to accept the grant and authorize the City Manager to conduct all negotiations, sign and submit all documents necessary for the completion of the grant. The State of California agreement has been executed for the project.

DISCUSSION

The State grant will fund \$5,019,000 in improvements at Parnell Park. Given that the prior public outreach process and previous consideration by City Council included a potentially transformative list of improvements to Parnell, staff recommends that a consultant provide conceptual designs and develop preliminary cost estimates to guide the development of the project scope for the state grant, and to inform the City Council of additional options that could be funded by the City outside of the grant award. The following items have been contemplated for the Parnell Park renovation:

- Youth Sports Fields, lighting, and ancillary improvements
- All Abilities Playground and Rubberized Surfacing
- Walking Path
- Fitness Par Course
- New Restroom Facility
- Splash Pad

SWA-Laguna Beach is an international landscape architecture, planning and urban design firm renowned for the creativity, responsiveness, and resilience of its work. From urban parks to city districts, university campuses to commercial complexes, premier resorts to new communities, SWA's professionals create beautiful, high-performing places. SWA's primary work is in Southern California, Western United States and Asia.

SWA has proposed concept design services (Attachment B) for the following scope items:

- Project vision and programming.
- Meeting with Client to discuss project goals.
- Conceptual hardscape design.
- Conceptual planting design.
- Conceptual location and character of site furnishings, amenities, play features, sports facilities, and signage, as applicable per project vision and programming.
- Geotechnical evaluations and reports, including infiltration testing.

- Topographic site survey and base mapping.
- Conceptual site grading, drainage, and wet utilities.
- Preliminary WQMP plan and hydrology study.
- Conceptual Opinion of Probable Cost.

Estimated fee schedule by phase:

Phase	Fee	Duration
Existing Conditions Documentation and Analysis	\$24,000	2 weeks
Project Vision and Concept Design	\$38,000	4 weeks
Refined Concept Design	\$50,000	12 weeks
Fee Total	\$112,000	

Staff is confident that SWA-Laguna Beach will be successful in providing professional and timely services for the Parnell Park Renovation and Improvement Project.

FISCAL IMPACT

Resolution No. 2022-10 adds additional revenues in the amount of \$5,019,000 to the Subventions and Grants Fund's State – Specific Grant account (268-22-950-922 427230) and supplemental appropriations to the Subventions and Grants Fund's Parnell Park Master Plan account (268-22-950-922 852220) in the amount of \$5,019,000. Therefore, adoption of this resolution will not affect the Subventions and Grants Fund's balance, as estimated revenues and supplemental appropriations will increase by the same amount of \$5,019,000. Adoption of the Resolution will provide sufficient funds in the Subventions and Grants Fund's Parnell Park Master Plan account (268-22-950-922 852220) to fund the professional services agreement.

STRATEGIC PLANNING GOAL

- Maintain and Enhance Quality of Life

ATTACHMENTS

- A. Resolution No. 2022-10
- B. SWA-Laguna Beach Proposal
- C. Professional Services Agreement – SWA Laguna Beach

RESOLUTION NO. 2022-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, APPROVING AUTHORITY TO ACCEPT GRANT FUNDS IN THE AMOUNT OF \$5,019,000 FROM THE STATE OF CALIFORNIA SPECIFIC GRANT FUNDS AND AMENDING THE FY 2021-22 BUDGET TO RECEIVE AND EXPEND FUNDS FOR THE APPROVED PARNELL PARK RENOVATION AND IMPROVEMENT PROJECT

RECITALS

- A. The State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of a grant to the City of Whittier, setting up necessary procedures governing application(s).
- B. Said procedures established by the State Department of Parks and Recreation require the applicant's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State.
- C. The applicant will enter into a contract with the State of California to complete project(s).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are a substantial part of this resolution.

SECTION 2. Certifies that City of Whittier has or will have available, prior to commencement of project work utilizing specified grant funds, sufficient funds, including those provided by this grant, to complete the projects.

SECTION 3. Certifies that the City of Whittier has or will provide sufficient funds to operate and maintain the project(s).

SECTION 4. Certifies that the City of Whittier has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide.

SECTION 5. The following estimated revenue shall be added to the City's 2021-22 Fiscal Year budget:

<u>Account No.</u>	<u>Account Name</u>	<u>Amount</u>
268-22-950-922 427230	State - Specific Grant	\$5,019,000

SECTION 6. The following supplemental appropriations shall be added to the City's 2021-22 budget:

<u>Account No.</u>	<u>Account Name</u>	<u>Amount</u>
268-22-950-922 852220	Parnell Park Master Plan	\$5,019,000

SECTION 7. The City Clerk shall certify to the passage and adoption hereof.

APPROVED AND ADOPTED this 8th day of February 2022.

JOSEPH A. VINATIERI, Mayor

ATTEST:

RIGOBERTO GARCIA JR., City Clerk
(seal)

**PROFESSIONAL SERVICES AGREEMENT
WITH
SWA GROUP**

THIS AGREEMENT is made and entered into this 8th day of February, 2022 ("Effective Date"), by and between the CITY OF WHITTIER, a municipal corporation ("CITY"), and SWA Group, a California Corporation ("CONSULTANT").

WITNESSETH:

A. CITY proposes to utilize the services of CONSULTANT as an independent contractor to provide concept design services and other preliminary engineering tasks as more fully described herein.

B. CONSULTANT represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated.

C. CITY and CONSULTANT desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed.

D. No official or employee of CITY has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. CONSULTANT shall provide the professional services described in the CONSULTANT's Proposal ("Proposal"), attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. CONSULTANT also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise CITY of any changes in any laws that may affect CONSULTANT's performance of this Agreement. CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this section.

1.3. Performance to Satisfaction of City. CONSULTANT agrees to perform all the work to the complete satisfaction of the CITY and within the hereinafter specified. Evaluations of the work will be done by the Director or his or her designee. If the quality of work is not satisfactory, CITY in its discretion has the right to:

- (a) Meet with CONSULTANT to review the quality of the work and resolve the matters of concern;
- (b) Require CONSULTANT to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. CONSULTANT warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. CONSULTANT shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITY for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of CONSULTANT's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, CONSULTANT shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

CONSULTANT shall, in all solicitations and advertisements for employees placed by, or on behalf of CONSULTANT shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. CONSULTANT shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. CONSULTANT acknowledges that CITY may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITY. CONSULTANT may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at CONSULTANT's sole cost and expense.

1.8. Confidentiality. Employees of CONSULTANT in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of CITY. CONSULTANT covenants that all data, documents, discussion, or other

information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without written authorization by CITY. CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to CITY upon the termination of this Agreement. CONSULTANT's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. CONSULTANT shall be paid in accordance with the fee schedule set forth in Exhibit "A". CONSULTANT's total compensation shall not exceed One Hundred Twelve Thousand Dollars (\$ 112,000), unless CITY has given specific advance approval in writing.

2.2. Additional Services. CONSULTANT shall not receive compensation for any services provided outside the scope of services specified in the CONSULTANT's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the CITY or the Project Manager for this Project, prior to CONSULTANT performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the CITY request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the CONSULTANT's standard hourly rates shall be paid to the CONSULTANT for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or \$25,000 whichever is more. The CITY Engineer is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. CONSULTANT may submit invoices to the CITY for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all CONSULTANT's services which have been completed to CITY's sole satisfaction. CITY shall pay CONSULTANT's invoice within forty-five (45) days from the date CITY receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of CONSULTANT's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by CITY as set forth in Exhibit "A."

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the CONSULTANT is encountered, a time extension may be mutually agreed upon in writing by the CITY and the CONSULTANT. The

CONSULTANT shall present documentation satisfactory to the CITY to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of six months, ending on August 8, 2022, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The CITY reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to CONSULTANT. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by the CITY. If the CITY suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the CONSULTANT defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time, the CITY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

CITY shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the CONSULTANT, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, CITY shall pay CONSULTANT for reasonable costs incurred and professional services satisfactorily performed up to and including the date of CITY's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees

set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the CITY or in the possession of the CONSULTANT. CITY shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by CONSULTANT in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the CITY within ten (10) days of delivery of termination notice to CONSULTANT, at no cost to CITY. Any use of uncompleted documents without specific written authorization from CONSULTANT shall be at CITY's sole risk and without liability or legal expense to CONSULTANT.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. CONSULTANT shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by CITY:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by CONSULTANT for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the CITY, the CONSULTANT shall file with the Administrative Services Director the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of

Workers' Compensation or to undertake self-insurance before commencing any of the work.

The CONSULTANT shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Public Works Director/City Engineer before execution of this Agreement by the CITY. CITY, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the CONSULTANT to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. CONSULTANT shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither CITY nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by CONSULTANT under this Agreement are adequate to protect CONSULTANT. If CONSULTANT believes that any such insurance coverage is insufficient, CONSULTANT shall provide, at its own expense, such additional insurance as CONSULTANT deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The CITY and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the CONSULTANT pursuant to its contract with the CITY; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; automobiles owned, leased, hired, or borrowed by the CONSULTANT."
- (b) Notice: "CONSULTANT shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONSULTANT shall forthwith obtain and submit proof of substitute insurance. Should CONSULTANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at CONSULTANT's sole cost and expense."
- (c) Other insurance: "The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the CITY shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to CITY, its officers, officials, agents, employees, and volunteers.
- (e) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. CONSULTANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Executive Director or his or her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

CONSULTANT shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of CONSULTANT called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. CITY shall designate a Project Manager to work directly with CONSULTANT in the performance of this Agreement. It shall be the CONSULTANT's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision, which must be made by CITY, to the Project Manager. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Project Manager.

CONSULTANT shall designate a Project Manager who shall represent it and be its agent in all consultations with CITY during the term of this Agreement and who shall not be

changed by CONSULTANT without the express written approval by the CITY. CONSULTANT or its Project Manager shall attend and assist in all coordination meetings called by CITY.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

SWA Group
570 Gleneyre Street
Long Beach, CA 92651
Tel: 949-497-5471
Attn: Sean O'Malley

IF TO CITY:

City of Whittier
13230 Penn Street
Whittier, CA 90602
Tel: 562-567-9500
Attn: Kyle Cason

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California. CONSULTANT agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. CONSULTANT shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of CONSULTANT's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release CONSULTANT of CONSULTANT's obligation to perform all other obligations to be performed by CONSULTANT hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. To the fullest extent of the law, and consistent with Civil Code section 2782.8, CONSULTANT agrees to defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers, agents and employees, at CONSULTANT's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against CITY, its elected and appointed officials, officers, agents, and employees to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, in performing design professional services pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of the CONSULTANT, its employees, and/or

authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected and appointed officials, officers, agents, and employees based upon such negligence, recklessness, or willful misconduct, whether or not the CONSULTANT, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONSULTANT shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole or active negligence or willful misconduct of the CITY. Further, in no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault, unless otherwise specified in Civil Code section 2782.8. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONSULTANT's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. CONSULTANT is and shall be acting at all times as an independent contractor and not as an employee of CITY or the CITY. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or the CITY or otherwise act on behalf of CITY or the CITY as an agent. Neither CITY or the CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as set forth in this Agreement. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of CITY. CONSULTANT shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CONSULTANT and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CONSULTANT shall indemnify and hold CITY harmless from any and all taxes, assessments, penalties, fines and interest asserted against CITY and any legal fee incurred by the City by reason of any challenge/claim made against CITY regarding the independent contractor relationship created by this Agreement. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against CITY relating to CONSULTANT's performance or services rendered under this Agreement, CONSULTANT shall render any reasonable assistance and cooperation which CITY might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by CONSULTANT or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. CONSULTANT agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to CONSULTANT. CITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by CONSULTANT. CONSULTANT shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY. CONSULTANT or CONSULTANT's agents shall execute such documents as may be necessary from time to time to confirm CITY's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. CONSULTANT has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by CONSULTANT, or any of its subcontractors, pursuant to this Agreement and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which CONSULTANT informs CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. CITY shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. CONSULTANT and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to CONSULTANT's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, CONSULTANT and its officers, employees, associates and subconsultants shall not, without the prior written approval of the CITY Representative, perform work for another person or entity for whom CONSULTANT is not currently performing work that would require CONSULTANT or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. CONSULTANT shall be responsible for its work and results under this Agreement. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by the CITY's representative, regarding any services rendered under this Agreement at no additional cost to CITY. In the event that an error or omission attributable to CONSULTANT occurs, then CONSULTANT shall, at no cost to CITY, provide all necessary design drawings, estimates and other CONSULTANT professional services necessary to rectify and correct the matter to the sole satisfaction of CITY and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. CONSULTANT will not employ any regular employee of CITY while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and CONSULTANT and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WHITTIER,
A municipal corporation

BRIAN SAEKI, City Manager

Date: _____

ATTEST:

RIGOBERTO GARCIA, JR. City Clerk
(seal)

CONSULTANT

Signature

Date: _____

Sean O'Malley, Contracting Agent

APPROVED AS TO FORM:

RICHARD D. JONES, City Attorney

Date: _____

EXHIBIT A
CONSULTANT'S PROPOSAL

SWA Laguna Beach

570 Glenneyre Street
Laguna Beach, California
92651-2453
+1.949.497.5471
www.swagroup.com

December 16, 2021

City of Whittier
13230 Penn Street
Whittier, CA 90602

Sean O'Malley
Xiao Zheng
Andrew Watkins
Dhaval Barbhaya
Stephen Rydzon
Gerdo P Aquino
Thomas Balsley
Kinder Baumgardner
Matt Baumgarten
Natalia Beard
René Bihan
Shuyi Chang
Richard Crockett
Ning Deng
Marco Esposito
Leah Hales
Andy Harcar
Ying-Yu Hung
Hui-Li Lee
James Lee
Margaret Leonard
Chih-Wei Lin
John Loomis
Ye Luo
Scott McCready
Charles S McDaniel
Timothy Peterson
Rhett Rentrop
R Joseph Runco
Raymond Siu
Todd Strawn
David P Thompson
James Vick
John L Wong
Jack Wu
Shuntaro Yahiro

Attn: Kyle Cason, Director of Public Works
Re: Parnell Park Concept Design
Whittier, Los Angeles County, California (WHIT103)

Dear Kyle:

We are pleased to submit the following proposal for Professional Services in connection with the project referenced above.

This Agreement is by and between SWA Group (SWA), a California corporation, and the City of Whittier (the Client), in California.

SWA shall provide professional services on the project referenced above, the extent of which is indicated on the attached drawing entitled Exhibit A, which may be generally described as the existing extents of Parnell Park in Whittier.

I. SCOPE OF SERVICES

A. SWA will provide concept design services, as later described, for the following scope items:

1. Project vision and programming.
2. Conceptual hardscape design.
3. Conceptual planting design.
4. Conceptual location and character of site furnishings, amenities, play features, sports facilities, and signage, as applicable per project vision and programming.
5. Geotechnical evaluations and reports, including infiltration testing.
6. Topographic site survey and base mapping.
7. Conceptual site grading, drainage, and wet utilities.
8. Preliminary WQMP plan and hydrology study.
9. Conceptual Opinion of Probable Cost.

B. Consultants Contracted to SWA

At the request of the Client, SWA has retained and will coordinate the services of Tait & Associates, Inc., Civil Engineer, and LGC Geotechnical, Inc., Geotechnical Engineer.

C. Limitations of SWA Scope of Work

Design of Scope Items shall not include structural provisions for support of such items in the structure of the building; penetrations of the structure of the building for structural, mechanical, electrical or plumbing connections; actual connection to structural, mechanical, electrical and plumbing systems of the building; waterproofing of the structure or protective covering of that waterproofing; or waterproofing of penetrations of the structure.

II. PROCEDURE

A. Existing Conditions Documentation & Analysis

1. Attend one (1) online or Zoom meeting with the Client to discuss project goals and process.
2. Visit the site to obtain documentation of existing conditions.
3. Perform topographical site survey and base mapping.
4. Provide site constraints and opportunities analysis.
5. Attend one (1) online or Zoom meeting with the Client for review and discussion.

B. Project Vision and Concept Design

1. Based on the Client's direction for park programming, provide the Client with three (3) concept plan sketch alternatives.
2. Upon selection of the Client's preferred option, develop the conceptual design plan and define conceptual material, planting and amenity character.
3. Perform conceptual grading and drainage evaluation to verify concept feasibility .
4. Create a conceptual 3D model in Sketchup or Rhino and Lumion format.
5. Prepare concept presentation including:
 - a. Vision reference imagery.
 - b. Site circulation diagram.
 - c. Site programming diagram.
 - d. Illustrative site plan.
 - e. Four (4) 3D renderings.
6. Provide conceptual opinion of probable cost.
7. Attend up to two (2) online or Zoom meetings with the Client, if needed.
8. Presentation to the City Council.

C. Refined Concept Design

1. Review feedback from the City Council.
2. Refine the conceptual design plan.
3. Refine concept materials, planting and amenity character.
4. Provide geotechnical field evaluations, infiltration testing, lab testing, and report.

5. Provide conceptual grading and drainage plan.
6. Provide conceptual wet utility plan.
7. Provide conceptual WQMP plan and Hydrology Study.
8. Provide updated concept presentation with revised plan graphics and renderings.
9. Update conceptual opinion of probable cost.
10. Attend up to two (2) online or Zoom meetings with the Client for progress review, if needed.
11. Present to the City Council.

III. DESIGN APPROVAL

Kyle Cason has been designated as the person responsible for design direction to SWA for this project and has the authority for design approval. In the event that the design, as approved by Mr. Cason is rejected by others, and re-design is required, such re-design services shall be compensated as Additional Services.

IV. MEETINGS AND PRESENTATIONS

- A. This proposal includes Professional Service time for one (1) site visit; up to two (2) in-person meetings with the City Council; and up to six (6) online or Zoom meetings if needed, as outlined above.
- B. Additional meetings or presentations, if requested by the Client, shall be provided as Additional Services.

V. EXCLUSIONS TO SCOPE OF SERVICES

Items not specifically identified in the scope of services sections of this proposal are excluded from this work effort and if requested by the Client shall be considered Additional Services. The Client shall provide the following information or services as required for performance of the work. SWA assumes no responsibility for the accuracy of such information or services and shall not be liable for error or omissions therein. Should SWA be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

1. Construction documentation.
2. Finish grading provided by the Client's Civil Engineer.
3. Engineering other than that provided within the Scope of Services.
4. BIM or Revit drawings.
5. Site environmental studies and documentation.
6. Irrigation design.
7. Waterproofing design.
8. Filing or permit fees.
9. Graphic design.
10. Expediting, code, zoning consultant.
11. Professional renderings.
12. Any item not specifically addressed in this proposal.

VI. FEES AND TERMS

Services described above shall be provided for the fixed sum of One Hundred Twelve Thousand (\$112,000) Dollars, not including Reimbursable Costs, in accordance with the terms and conditions in Appendix A attached hereto and which is incorporated and made part of this Agreement by reference.

We estimate the following fee breakdown by phase:

Phase	Fee	Duration
Existing Conditions Documentation and Analysis	\$24,000	4 weeks
Project Vision and Concept Design	\$38,000	8 weeks
Refined Concept Design	\$50,000	10 weeks
Fee Total	\$112,000	

We estimate the cost of Reimbursable Costs will not exceed \$5,500 without further authorization from the Client.

We would be pleased to answer questions you may have or to clarify the various points above.

If this proposal meets with your approval, please issue a formal authorization so we may commence with work.

Sincerely yours,

SWA Group



Sean O'Malley
Contracting Agent

Landscape Architect, CA License #3286

Landscape Architects are licensed by the State of California.

SOM/LK/CN/dp

Proposal copyright ©2021 by SWA Group. No portion of this proposal may be copied or distributed to without the written permission of SWA Group.

APPENDIX A

Appended to and part of Agreement for Professional Services between SWA Group (SWA) and the City of Whittier (the Client), dated December 16, 2021.

FEES FOR PROFESSIONAL SERVICES

Services outlined under the Scope of Services shall be provided for the fixed sum stipulated in the Agreement for Professional Services.

REIMBURSABLE COSTS

The following costs shall be reimbursed at cost plus ten percent (10%) and are not included in the Fee for Professional Services:

Cost of copies of drawings, specifications, reports and cost estimates; xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract.

- A. Cost of commercial carrier and public transportation, lodging, car rental and parking, subsistence and out-of-pocket expenses. Private automobile travel at the IRS-allowable rate at the time of traveling.
- B. Cost of postage and shipping expenses other than first class mail.
- C. Special renderings, special process printing, special equipment, special printed reports or publications, maps and documents, requested by the Client and approved in writing.

ADDITIONAL SERVICES

Provided SWA has been paid per this agreement, Additional Services may be provided on a time basis computed by the number of hours spend in connection with the referenced project. The following principal(s) are committed to this project:

Principals	Rate / Hour
O'Malley	\$310

Other principals, if used on this project, have rates ranging from \$200 to \$355 an hour. These rates may be increased subsequently without written notice. Current staff rates range between \$100 and \$170.

Additional Services are any services not included within the contract scope and include but are not limited to:

- A. Making planning surveys, feasibility studies, and special analyses of the Client's needs to clarify requirements for project programming.
- B. Master planning.
- C. Site planning.
- D. Professional renderings.
- E. Preparation of technical sections of specifications in other than Construction Specifications Institute (CSI) format.
- F. Cost of review as to form of lenders documents, certifications and consents to assignment requested of SWA during the term of this Agreement.
- G. Fees for additional consultants not included in SWA's Basic Services and retained with the approval of the Client.
- H. In-house professional photography or drone photography.

STATEMENTS

Fees for Professional Services shall be billed monthly for progress payment based upon percentage of work complete. Reimbursable Costs shall be billed with fee invoices. The Client will notify SWA of any disputes or questions regarding an invoice within fifteen (15) days of the Client's receipt of the invoice in question.

ACCOUNTS

Accounts are payable net thirty (30) days from date of invoice at our office in Sausalito, California. A service charge of 1.25% of invoice amount per month (15% annual rate) will be applied to all accounts not paid within sixty (60) days of invoice date.

INSURANCE

At all times during the performance of its services under this Agreement, SWA shall maintain in full force and effect the following insurance, with the coverages and limits specified:

- A. Workers' compensation insurance, including occupational disease, in accordance with the statutory requirements set forth by the state in which the work is to be performed, and employer's liability insurance covering all of SWA's employees engaged in the performance of this Agreement, in the sum of \$1,000,000.00.
- B. Commercial general liability insurance, including Landscape Architect protective liability and contractual liability insurance, covering death or bodily injury and property damage of \$1,000,000.00 for any one accident, bodily injury and property damage combined single limit.
- C. Commercial automobile liability insurance covering SWA for claims arising from hired and non-owned vehicles covering death or bodily injury and property damage with limits of \$1,000,000.00 for any one accident, bodily injury and property damage combined single limit.
- D. Professional liability (errors and omissions) insurance, on a claims-made basis, with limits of \$2,000,000.00 per claim and \$4,000,000.00 in the aggregate.
- E. Certificates of insurance covering any or all of the above insurance required to be maintained by SWA shall be provided to the Client upon written request.
- F. Should the Client request in writing that modifications be made to the stated policy limits or deductibles, SWA shall use its best efforts to have its insurers accommodate such modifications. All charges and additional premiums levied by insurers for such modifications shall be paid by the Client in advance.
- G. Upon written request by the Client, SWA shall use its best efforts to have the Client named as an additional insured on the Commercial general liability and Commercial automobile liability policies described above, subject to acceptance by the insurer.

INDEMNIFICATION

- A. To the extent of available coverage under the insurance coverage as provided in this Agreement, SWA shall indemnify and save harmless (but not defend) the Client against any and all loss, liability and damages arising out of any claim, suit or legal proceeding to recover damages for wrongful death, bodily injury, illness or disease, or injury to, or destruction of property to the extent caused by the negligent errors or omissions or willful misconduct of SWA, its subcontractors, agents or employees.
- B. The Client shall indemnify and save harmless SWA from and against any and all loss, liability and damage arising out of any claim, suit or legal proceeding to recover damages for wrongful death, bodily injury, illness or disease, or injury to, or destruction of property, to the extent caused by or attributable to:

1. The negligent errors or omissions or willful misconduct of the Client, its contractors, subcontractors, agents or employees.
2. Any hazardous substance, condition, element or material, or any combination of the foregoing, produced by the Client; or emitted intentionally or unintentionally from the property on which the project is located or from the facilities to be designed; or specifically required by the Client to be used or incorporated by SWA into the work to be performed by SWA. SWA shall not be under any duty or obligation to investigate for the existence of such conditions, and shall not be responsible for any failure to discover such conditions.
3. Failure of the Client to provide information or services required to be provided by the Client under the terms of this Agreement or from any inaccuracy, error or omission in such information or services.
4. Any claim asserted by an individual Home Owner or a Homeowners' Association formed for or associated with this project or any portion of this project, except to the extent caused by the negligence of SWA, its subcontractors, agents or employees. The Client's obligation to indemnify SWA under this clause shall include (without limitation) reimbursement to SWA for all reasonable costs incurred in the defense of such claims, including attorneys' fees incurred in connection with any appeal of a legal action, and all reasonable settlement costs, unless SWA is found to be negligent with respect to such claim under the dispute resolution procedures agreed to in this Agreement, upon which finding the Client shall have no duty to reimburse SWA for any such damages or costs which are attributable to SWA's negligence.

STANDARD OF CARE

The standard of care applicable to this Agreement shall be that level of care and skill ordinarily practiced by professionals practicing in the same discipline, location, and at the same time as the services provided by SWA.

LIMITATION OF LIABILITY

The Client agrees, to the fullest extent permitted by law, to limit the liability of the SWA and SWA's officers, directors, partners, employees, shareholders, owners and subconsultants (the SWA Parties) for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the SWA Parties shall not exceed \$50,000.00, or one half (½) of the Architect's total stipulated fee for the services rendered under this Agreement, whichever amount may be greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

CONFIDENTIALITY

SWA will take reasonable precautions to protect and maintain the confidentiality of any information supplied by the Client during the course of this Agreement which is identified in writing by the Client as being confidential information, except to the extent that disclosure of such information to third parties is necessary in the performance of SWA's services. This clause shall not apply to any information which is in the public domain, or which was acquired by SWA prior to the execution of this Agreement, or obtained from third parties under no obligation to the Client.

RIGHT TO SUSPEND SERVICES

SWA shall have the right to suspend services on this project if (a) the parties have not executed a written contract for SWA's services and unpaid invoices have been rendered with an aggregate balance exceeding \$5,000.00; or (b) unpaid project invoices over ninety (90) days old exceed \$5,000.00 in the aggregate.

AUTHORIZATION TO PROCEED

If SWA is authorized to commence and/or continue providing its services on the project, either verbally or in writing, prior

to the full execution of a written contract, such authorization shall be deemed an acceptance of this proposal, and all such services shall be provided and compensated for in accordance with the terms and conditions contained herein as though this proposal were fully executed by the Client.

OWNERSHIP OF DOCUMENTS

Original drawings and other documents, as instruments of professional service, are the property of SWA. None of them is to be used on other projects except by written agreement of SWA. One reproducible set of final documents will be furnished to the Client upon request. The Client has license to use/reproduce for purposes of this project provided payments are made to SWA when due.

ESTIMATES OF PROBABLE COST

As SWA has no control over construction costs or contractor's prices, any construction cost estimates are made on the basis of the SWA's experience and judgment as a design professional; but SWA cannot and does not warrant or guarantee that contractor's proposals, bids or costs will not vary from its estimates.

DOCUMENTS FURNISHED IN ELECTRONIC MEDIA

Drawings and data provided to SWA in digital format must be in a form acceptable to SWA. Drawing files shall be in AutoCAD dwg format version 2004 or higher, or an SWA-approved alternative. All files must be created with a legal license. As restricted by copyright law, SWA cannot accept any dwg or other file generated under an educational AutoCAD software license.

Instruments of professional service provided by SWA in electronic media form, once released by SWA, may be subject to inaccuracies, anomalies and errors due to electronic translation, formatting or interpretation. SWA is not responsible for errors and omissions because of these conditions, nor for those resulting from conversion, modification, misinterpretation, misuse or reuse by others after electronic media is released by SWA.

CURRENCY

All payments to SWA will be made in lawful United States currency, free and clear of any taxes, liens or deductions of any type. The Client will reimburse SWA if any such assessments occur.

CREDITS/ACKNOWLEDGMENTS

SWA shall be given proper credit and acknowledgments for all services rendered including, but not limited to, planning, design and implementation. Proper credit shall be defined as being named by the Client (or their agent/client) in project identification boards, published articles, promotional brochures, social media and similar communications.

FORCE MAJEURE

SWA shall not be responsible for any delay in the performance or progress of the work, or liable for any costs or damages sustained by the Client resulting from such delay, caused by any act or neglect of the Client or the Client's representatives, or by any third person acting as the agent, servant or employee of the Client, or by changes ordered in the work, or as a result of compliance with any order or request of any federal, state or municipal government authority or any person purporting to act therefore, or by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the reasonable control and without the fault or negligence of SWA. In the event of any such delay, SWA shall proceed with due diligence to alleviate such delay and continue the performance of all obligations under this Agreement. The time during which SWA is delayed in the performance of the work, shall be added to the time for completion of its services to the extent such time is specified in this Agreement. All additional costs or damages resulting from any delay in the performance or progress of the work caused by any act or neglect of the Client, its agents or representatives, shall be borne entirely by the Client.

LAW

This Agreement shall be interpreted and enforced according to the laws of the State of California.

VALIDITY

Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of the Agreement are declared to be severable.

DISPUTE RESOLUTION

Any controversy, claim or dispute arising out of or relating to the interpretation, construction, or performance of this Agreement, or breach thereof, shall be referred to voluntary, nonbinding mediation to be conducted by a mutually acceptable mediator prior to resorting to arbitration pursuant to the JAMS Arbitration Rules then in effect. Arbitration through JAMS shall be the sole and exclusive venue for any dispute and the Client waives any right to challenge such jurisdiction. The Prevailing Party—defined as the party ultimately more successful relative to the final offer or demand—shall be entitled to recover its reasonable attorneys' fees and costs. All disputes shall be governed by the law of the jurisdiction where the project is located.

SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon the Client and its successors and assigns and upon SWA, its successors and assigns. Neither party shall assign nor transfer its interest in this Agreement or any part thereof without the written consent of the other party.

TERMINATION AND WORK STOPPAGE

It is understood that these services may be terminated upon ten (10) days' written notice for good reason by either party. In this event, SWA shall be compensated for all work performed prior to date of termination at the rates set forth above. Additionally, in the event that the Client stops the project for longer than thirty (30) days, SWA will be compensated for all work which has been performed by SWA prior to the date of work stoppage and payment shall be paid by the Client for such work to SWA within thirty (30) days of SWA's invoice to the Client for those services rendered.

If the Project is suspended or not active for more than six (6) months, SWA may, at its discretion, re-negotiate with the Client its compensation hereunder.

If the Project is suspended or not active for more than nine (9) months, this Agreement will be terminated without notice.

REVOCATION

This proposal shall be considered revoked if acceptance is not received within sixty (60) days of the date hereof. If SWA does not receive a signed copy within this period, SWA reserves the right to revise the fees.

ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

END

EXHIBIT A



EXHIBIT B
CERTIFICATES OF INSURANCE

**DRAFT PROFESSIONAL SERVICES
AGREEMENT
SWA LAGUNA BEACH**

THIS AGREEMENT is made and entered into this ____ day of _____ 2022, by and between the CITY OF WHITTIER, a municipal corporation (CITY), and SWA LAGUNA BEACH, (CONSULTANT).

RECITALS

A. CITY proposes to utilize the services of CONSULTANT as an independent contractor to perform concept design services for the Parnell Park Renovation and Improvement Project, as more fully described herein.

B. CONSULTANT represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103 and holds all necessary licenses to practice and perform the services herein contemplated.

C. CITY and CONSULTANT desire to contract for the specific services described in Exhibit A (Project) and desire to set forth the rights, duties, and liabilities in connection with the services to be performed.

D. No official or employee of CITY has a financial interest, within the provisions of California Government Code Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. CONSULTANT shall provide the professional services described in the CONSULTANT's Proposal (Proposal), attached hereto as Exhibit A, and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by CONSULTANT pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. CONSULTANT also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise CITY of any changes in any laws that may affect CONSULTANT's performance of this Agreement. CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this section.

1.3. Performance to Satisfaction of City. CONSULTANT agrees to perform all the work to the complete satisfaction of the CITY and within the hereinafter specified. Evaluations of the work will be done by the Director of Parks, Recreation and Community Services or designee. If the quality of work is not satisfactory, CITY in its discretion has the right to:

- (a) Meet with CONSULTANT to review the quality of the work and resolve the matters of concern;
- (b) Require CONSULTANT to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. CONSULTANT warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State, and local laws and ordinances applicable to the services required under this Agreement. CONSULTANT shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITY for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of CONSULTANT's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, CONSULTANT shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

CONSULTANT shall, in all solicitations and advertisements for employees placed by, or on behalf of CONSULTANT shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. CONSULTANT shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. CONSULTANT acknowledges that CITY may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITY. CONSULTANT may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at CONSULTANT's sole cost and expense.

1.8. Confidentiality. Employees of CONSULTANT in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of CITY. CONSULTANT covenants that all data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without written authorization by CITY. CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to CITY upon the termination of this Agreement. CONSULTANT's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. CONSULTANT shall be paid in accordance with the fee schedule set forth in Exhibit A. CONSULTANT's total compensation shall not exceed _____ (\$ _____), unless CITY has given specific advance approval in writing.

2.2. Additional Services. CONSULTANT shall not receive compensation for any services provided outside the scope of services specified in the CONSULTANT's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the CITY or the Project Manager for this Project, prior to CONSULTANT performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the CITY request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the CONSULTANT's standard hourly rates shall be paid to the CONSULTANT for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or \$25,000 whichever is more. The CITY MANAGER is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. CONSULTANT may submit invoices to the CITY for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all CONSULTANT's services which have been completed to CITY's sole satisfaction. CITY shall pay CONSULTANT's invoice within forty-five (45) days from the date CITY receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of CONSULTANT's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within thirty (30) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by CITY as set forth in Exhibit A.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of

performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the CONSULTANT is encountered, a time extension may be mutually agreed upon in writing by the CITY and the CONSULTANT. The CONSULTANT shall present documentation satisfactory to the CITY to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of one year, ending on _____, _____, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The CITY reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to CONSULTANT. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by the CITY. If the CITY suspends, terminates, or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the CONSULTANT defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time, the CITY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

CITY shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the CONSULTANT, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or

rearrangement of its affairs.

4.3. Compensation. In the event of termination, CITY shall pay CONSULTANT for reasonable costs incurred and professional services satisfactorily performed up to and including the date of CITY's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the CITY or in the possession of the CONSULTANT. CITY shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by CONSULTANT in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps, and reports, shall be delivered to the CITY within ten (10) days of delivery of termination notice to CONSULTANT, at no cost to CITY. Any use of uncompleted documents without specific written authorization from CONSULTANT shall be at CITY's sole risk and without liability or legal expense to CONSULTANT.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. CONSULTANT shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by CITY:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by CONSULTANT for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation

insurance policies.

Before execution of this Agreement by the CITY, the CONSULTANT shall file with the Parks, Recreation and Community Services Director the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The CONSULTANT shall also comply with Section 3800 of the Labor Code by securing, paying for, and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Parks, Recreation and Community Services Director before execution of this Agreement by the CITY. CITY, its officers, and employees shall not be responsible for any claims in law or equity occasioned by failure of the CONSULTANT to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. CONSULTANT shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither CITY nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by CONSULTANT under this Agreement are adequate to protect CONSULTANT. If CONSULTANT believes that any such insurance coverage is insufficient, CONSULTANT shall provide, at its own expense, such additional insurance as CONSULTANT deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The CITY and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the CONSULTANT pursuant to its contract with the CITY; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; automobiles owned, leased, hired, or borrowed by the CONSULTANT."
- (b) Notice: "CONSULTANT shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONSULTANT shall forthwith obtain

and submit proof of substitute insurance. Should CONSULTANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at CONSULTANT's sole cost and expense."

- (c) Other insurance: "The CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the CITY shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to CITY, its officers, officials, agents, employees, and volunteers.
- (e) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. CONSULTANT shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Director of Parks, Recreation and Community Services or designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives, and agreements on behalf of CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

CONSULTANT shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives, and agreements on behalf of

CONSULTANT called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. CITY shall designate a Project Manager to work directly with CONSULTANT in the performance of this Agreement. It shall be the CONSULTANT's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision, which must be made by CITY, to the Project Manager. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Project Manager.

CONSULTANT shall designate a Project Manager who shall represent it and be its agent in all consultations with CITY during the term of this Agreement and who shall not be changed by CONSULTANT without the express written approval by the CITY. CONSULTANT or its Project Manager shall attend and assist in all coordination meetings called by CITY.

6.4. Notices. Any notices, documents, correspondence, or other communications concerning this Agreement, or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

SWA LAGUNA BEACH
570 Glenneyre Street,
Laguna Beach, CA 92651
Tel: 1-949-497-5471
Email: _____
Attn: _____

IF TO CITY:

City of Whittier
13230 Penn Street
Whittier, CA 90602
Tel: 562-567-9405
Email: vsantana@cityofwhittier.org
Attn: Virginia Santana, PRCS Director

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California. CONSULTANT agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. CONSULTANT shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of CONSULTANT's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall

release CONSULTANT of CONSULTANT's obligation to perform all other obligations to be performed by CONSULTANT hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. CONSULTANT agrees to defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers, agents and employees, at CONSULTANT's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the CITY, their respective elected and appointed officials, officers, agents and employees arising out of the performance of the CONSULTANT, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CONSULTANT, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CONSULTANT, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, their respective elected and appointed officials, officers, agents and employees based upon the work performed by the CONSULTANT, its employees, and/or authorized subcontractors under this Agreement, whether or not the CONSULTANT, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONSULTANT shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of CITY. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONSULTANT's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. CONSULTANT is and shall be acting at all times as an independent contractor and not as an employee of CITY or the CITY. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or the CITY or otherwise act on behalf of CITY or the CITY as an agent. Neither CITY or the CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as set forth in this Agreement. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of CITY. CONSULTANT shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CONSULTANT and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CONSULTANT shall indemnify and hold CITY harmless from any and all taxes, assessments, penalties, fines, and interest asserted against CITY and any legal fee incurred by the City by reason of any challenge/claim made against CITY regarding the independent contractor relationship created by this Agreement. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with the applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its

employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against CITY relating to CONSULTANT's performance or services rendered under this Agreement, CONSULTANT shall render any reasonable assistance and cooperation which CITY might require.

6.12. Ownership of Documents. All findings, reports, documents, information, and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by CONSULTANT or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. CONSULTANT agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to CONSULTANT. CITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including attorneys' fees, arising out of, or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by CONSULTANT. CONSULTANT shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY. CONSULTANT or CONSULTANT's agents shall execute such documents as may be necessary from time to time to confirm CITY's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. CONSULTANT has been advised and is aware that this Agreement and all reports, documents, information, and data, including, but not limited to, computer tapes, discs or files furnished or prepared by CONSULTANT, or any of its subcontractors, pursuant to this Agreement and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which CONSULTANT informs CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. CITY shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. CONSULTANT and its officers, employees, associates and subconsultants, if any, will comply with all conflict-of-interest statutes of the State of California applicable to CONSULTANT's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, CONSULTANT and its officers, employees, associates and subconsultants shall not, without the prior written approval of the CITY

Representative, perform work for another person or entity for whom CONSULTANT is not currently performing work that would require CONSULTANT or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict-of-interest statute.

6.15. Responsibility for Errors. CONSULTANT shall be responsible for its work and results under this Agreement. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by the CITY's representative, regarding any services rendered under this Agreement at no additional cost to CITY. In the event that an error or omission attributable to CONSULTANT occurs, then CONSULTANT shall, at no cost to CITY, provide all necessary design drawings, estimates and other CONSULTANT professional services necessary to rectify and correct the matter to the sole satisfaction of CITY and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. CONSULTANT will not employ any regular employee of CITY while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and CONSULTANT and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right

this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WHITTIER, A municipal corporation

BRIAN SAEKI, City Manager

Date: _____

CONSULTANT:

CONSULTANT NAME, SWA Laguna Beach

Date: _____

ATTEST:

RIGOBERTO GARCIA JR., City Clerk

APPROVED AS TO FORM:

RICHARD D. JONES, City Attorney

EXHIBIT A

I. SCOPE OF SERVICES

- SWA will provide concept design services, as later described, for the following scope items:
 - Project vision and programming.
 - Conceptual hardscape design.
 - Conceptual planting design.
 - Conceptual location and character of site furnishings, amenities, play features, sports facilities, and signage, as applicable per project vision and programming.
 - Geotechnical evaluations and reports, including infiltration testing.
 - Topographic site survey and base mapping.
 - Conceptual site grading, drainage, and wet utilities.
 - Preliminary WQMP plan and hydrology study.
 - Conceptual Opinion of Probable Cost.

- Consultants Contracted to SWA

At the request of the Client, SWA has retained and will coordinate the services of Tait & Associates, Inc., Civil Engineer, and LGC Geotechnical, Inc., Geotechnical Engineer.

- Limitations of SWA Scope of Work

Design of Scope Items shall not include structural provisions for support of such items in the structure of the building; penetrations of the structure of the building for structural, mechanical, electrical or plumbing connections; actual connection to structural, mechanical, electrical and plumbing systems of the building; waterproofing of the structure or protective covering of that waterproofing; or waterproofing of penetrations of the structure.

II. PROCEDURE

- Existing Conditions Documentation & Analysis
 - Attend one (1) online or Zoom meeting with the Client to discuss project goals and process.
 - Visit the site to obtain documentation of existing conditions.
 - Perform topographical site survey and base mapping.
 - Provide site constraints and opportunities analysis.
 - Attend one (1) online or Zoom meeting with the client for review and discussion.

- Project Vision and Concept Design
 - Based on the Client's direction for park programming, provide the Client with three (3) concept plan sketch alternatives.
 - Upon selection of the Client's preferred option, develop the conceptual design plan and define conceptual material, planting and amenity character.
 - Perform conceptual grading and drainage evaluation to verify concept feasibility.
 - Create a conceptual 3D model in Sketchup or Rhino and Lumion format.
 - Prepare concept presentation including:
 - Vision reference imagery.
 - Site circulation diagram.
 - Site programming diagram.
 - Illustrative site plan.
 - Four (4) 3D renderings.
 - Provide conceptual opinion of probable cost.
 - Attend up to two (2) online or Zoom meetings with the Client, if needed.
 - Presentation to the City Council.
- Refined Concept Design
 - Review feedback from the City Council.
 - Refine the conceptual design plan.
 - Refine concept materials, planting and amenity character.
 - Provide geotechnical field evaluations, infiltration testing, lab testing, and report.

EXHIBIT B
CERTIFICATES OF INSURANCE

FORTHCOMING