Council Meeting of
December 18, 2012

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

**SUBJECT: Appropriate funds and approve agreement for landscape design services for Pueblo Park Renovation Project. Expenditure: $14,931.**

## RECOMMENDATION

Recommendation of the Community Services Director that City Council appropriate $14,931 from the Parks and Recreation Open Space fund to the Pueblo Park Renovation Project (FEAP #810) and approve an agreement in the amount of $14,931 with Land Concern Inc. of Anaheim, CA for landscape design services.

### Funding

Funding for the project is available in the Parks and Recreation Open Space Fund.

## BACKGROUND

Pueblo Park is a ½ acre neighborhood park that consists of two separate park areas. The eastern park area located at 2252 Del Amo Blvd has the community center which hosts year round drop in park program and community meetings. The western area located at 2314 Del Amo Blvd. is an active play space that contains the basketball court, play equipment, and picnic shelter. This area also borders an empty lot that has been designated for improvements.

On November 20, 2012, the Torrance City Council approved the creation of FEAP 810 which approves the renovation of the park space, appropriated grant funds, and authorized a contract for the installation of play equipment.

## ANALYSIS

On June 13, 2012, the Parks and Recreation Commission recommended that up to $20,000 in available Open Space funding be allocated for a landscape design firm to design the park improvements for the western section of the park at 2314 Del Amo Blvd. procurement (Attachment A). The Commission also designated Pueblo Park as a special project and confirmed that completing this project was a priority to the residents of Torrance.

In regards to procuring design services for Pueblo Park, the Community Services Department will be using Request for Proposal information collected over the summer of 2012 for the vacant property at 555 Maple. Six proposals were received for the 555 Maple Community Playing Fields Project with two being deemed most appropriate given the resources potentially available; of the two proposals Land Concern Inc. of Anaheim met the City's needs the best. Given that the projects are similar in nature, though Pueblo Park is obviously smaller in scope, the Community Services Department wishes to retain Land Concern Inc. to design the new park amenities for the empty lot at Pueblo Park.

Both Community Services and General Services Departments have reviewed Land Concern's proposal for Pueblo Park and feel that it is appropriate for this size of project. The amount is projected to be approximately $14,931 which is well under the $20,000 anticipated by the Parks and Recreation Commission. Design services will include developing plans and specifications for the western side of the park to include a grass playing field, a walkway around the grass area, fencing options, security lighting, park frontage ideas, and landscaping options. It is anticipated that once plans and specs have been developed, staff can continue the dialog with Exxon Mobil concerning their participation with the project.

Community Services Department staff have used Land Concern Inc. in the past on Seaside Heroes Park and are confident that this firm will provide quality designs for Pueblo Park. It is being requested that City Council approve a contract for service with Land Concern Inc. for an amount not to exceed $14,931. This is a fixed fee contract with no contingency. The City Attorney's office has reviewed and approved the agreement with Land Concern Inc. as to form.

Respectfully submitted,

JOHN JONES
Community Services Director

CONCUR:

LeROY J. JACKSON
City Manager

Attachments: A) Parks and Recreation Commission Item June 13, 2012
B) Agreement with Land Concern Inc.

**ATTACHMENT A**

FOR COMMISSION MEETING

June 13, 2012

**TO:** **PARKS AND RECREATION COMMISSION**

**FROM:** **JOHN JONES, COMMUNITY SERVICES DIRECTOR**

**SUBJECT:** **PUEBLO PARK SPECIAL FUNDING**

## BACKGROUND

The City of Torrance's Capital Budget is funded from a variety of sources. One source of funding available for parks and recreation opportunities is the Open Space and Facilities funds which come from building fees paid by developers. These fees are directly connected to the level of residential building activity in the City.

As stewards of the City's park system, the Parks and Recreation Commission makes recommendations to City Council as to how to allocate Open Space and Facilities funds. On August 10, 2011, the Commission approved a variety of capital projects totaling $2,019,000 and authorized the Community Services Department to use the balance ($147,243) for special or emergency projects. Item 7B from the August 10, 2011 meeting and subsequent meeting minutes are available for review as handouts at tonight's meeting.

The amount of funding that was available and approved is listed in the table below:

| **2011 Open Space and Facilities Funds** | |
|---|---|
| Funding Source | Available Funding |
| Open Space Funds | $1,462,714 |
| Facilities Funds | $703,529 |
| Total Available | $2,166,243 |
| | |
| Funding Approved | $2,019,000 |
| Unallocated Funds | $147,243 |

## ANALYSIS

As mentioned in Item 8A on tonight's agenda regarding new Play Equipment, Pueblo Park is in the process of being upgraded using a variety of funds: an LA County Grant

(4th Supervisorial District Excess Funds) $150,000, FEAP 772—Tennis and Basketball Court Resurfacing, and potential funding and resources from Exxon/Mobil.

Staff feel that even though the various park improvements are in the process of being implemented and have been effectively priced out based on market values, there are still too many elements of the project that might drive up the overall cost of the upgrades. It is anticipated that there might be engineering, soil, or ADA/access issues that City staff are not qualified to evaluate.

At this time, staff would like to request that the Commission consider allocating $20,000 from available Open Space and Facilities funds so that a Landscape Design Firm can be hired to draft a park development plan for the western section of the park at 2314 Del Amo Blvd. It is not anticipated that the entire amount would be spent on the design, but any unspent funds would return to the Open Space/Facilities funds for future allocation. After the park plan has been developed and all costs identified, staff will be bringing back a budget for the overall project and identify any funding shortfalls beyond current assets and any potential funding contributions from Exxon/Mobil.

It is the recommendation of the Community Services Director that the Parks and Recreation Commission designate the Pueblo Park Design Plan a special project and approve the use of Open Space and Facilities funds in the amount $20,000 to develop the Pueblo Park Design Plan.

Respectfully submitted,

John Jones,
Community Services Director

JJ:epv:commissions/p&r/commission items/2012/pueblo park special funding\06-13-12

**ATTACHMENT B**

# CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of December 19, 2012 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Land Concern, Ltd., a California Corporation ("CONSULTANT").

**RECITALS:**

A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to develop park plans and specifications for the open lot at Pueblo Park. .

B. CONSULTANT represents that it is qualified to perform those services.

**AGREEMENT:**

**1. SERVICES TO BE PERFORMED BY CONSULTANT**

CONSULTANT will provide the services listed in the Proposal attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

**2. TERM**

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through June 30, 2013.

**3. COMPENSATION**

A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Proposal, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of $14,931 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Proposal. Payment will be due within 30 days after the date of the monthly invoice.

## 4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:

   a. cease operations as directed by CITY in the notice;
   b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
   c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

**5. FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

**6. RETENTION OF FUNDS**

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of

CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

**7. CITY REPRESENTATIVE**

Andrew Orpe is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

**8. CONSULTANT REPRESENTATIVE(S)**

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Michael T. Imlay

**9. INDEPENDENT CONTRACTOR**

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

**10. BUSINESS LICENSE**

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

**11. OTHER LICENSES AND PERMITS**

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

**12. FAMILIARITY WITH WORK**

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

**13. CARE OF WORK**

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

**14. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

**15. INDEMNIFICATION**

CONSULTANT will indemnify, defend, and hold harmless CITY, the Successor Agency to the former Redevelopment Agency of the City of Torrance, the City Council, each member thereof, present and future, members of boards and commissions, its officers, agents, employees and volunteers from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, including, without limitation those arising from the breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless will apply to the extent of CONSULTANT's contributing negligence, recklessness, or willful misconduct even in the event of concurrent negligence on the part of CITY, the City council, each member thereof, present and future, or its officers, agents and employees. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the concurrent negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONSULTANT will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the CITY's share of responsibility. CONSULTANT will be entitled in the event of a determination of CITY's responsibility to reimbursement of defense cots including but not limited to attorney's fees, expert fees and costs of litigation reflecting the CITY's proportionate share of such expenses.

**16. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

**17. INSURANCE**

A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

   a. Primary Bodily Injury with limits of at least $500,000 per person, $1,000,000 per occurrence; and

   b. Primary Property Damage of at least $250,000 per occurrence; or

   c. Combined single limits of $1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

3. Professional liability insurance with limits of at least $1,000,000 per occurrence.

4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least $1,000,000.

B. The insurance provided by CONSULTANT will be primary and non-contributory.

C. CITY ("City of Torrance"), the Successor Agency to the former Redevelopment Agency of the City of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

**18. SUFFICIENCY OF INSURERS AND SURETIES**

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that

the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

**19. CONFLICT OF INTEREST**

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

**20. NOTICE**

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt.

Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

| | |
|---|---|
| CONSULTANT: | Land Concern, Ltd.<br>1750 E. Deere Ave,<br>Santa Ana, CA 92705<br><br>Fax: 949 752-2469 |
| CITY: | City Clerk<br>City of Torrance<br>3031 Torrance Boulevard<br>Torrance, CA 90509-2970<br>Fax: (310) 618-2931 |

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

**22. INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

**23. INTERPRETATION**

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

**24. SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

**25. TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

**26. GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

**27. COMPLIANCE WITH STATUTES AND REGULATIONS**

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

**28. WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

**29. ATTORNEY'S FEES**

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

**30. EXHIBITS**

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

**31. CONSULTANT'S AUTHORITY TO EXECUTE**

The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement;

and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE,
a Municipal Corporation

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By:_____

Land Concern, Ltd.
a California Corporation

By:_____
Michael T. Imlay
Vice President

Attachments: Exhibit A Proposal

Revised: 10/29/2008

**EXHIBIT A**

**PROPOSAL**

LAND CONCERN

LANDSCAPE ARCHITECTURE

**SCOPE AND FEE PROPOSAL**

LAND CONCERN, LTD., a California corporation ("Landscape Architect" / L.A.) proposes to provide landscape architectural services as outlined below for the fees indicated to City of Torrance ("Client").

**1.0 The Basis of the Proposal**

This Proposal is based on the understanding that the Project's landscape architectural program is as follows:

- Schematic Phase Studies and Graphics.
- Preliminary Phase Graphics and Cost Estimate.
- Construction Documents to City of Torrance standards of plan check, bidding process, and construction .

**2.0 The Landscape Architect's Services and Responsibilities**

**2.1 Basic Services**

The following services are to be considered Basic Services within the Basic Services Fees set forth in Section 3.0.

*2.1.1 Schematic & Preliminary Phase Services*

Based upon the Project information provided by Client prior to entering into this Agreement, Landscape Architect will prepare schematic and preliminary graphics which outlines the component parts of the landscape design and reflects the Project's aesthetic concepts.

- Sketches and Exhibits (in color) for review by the Client delineating the basic character and theme of the Project as to landscaping, walls, fencing, circulation patterns, land forms, materials, and other elements essential in describing proposed design.

*2.1.2 Construction Document Phase Services*

Upon Client's approval of the Preliminary Phase Exhibit, Landscape Architect will prepare a package of working drawings and specifications setting forth in Landscape Architect's customary format and level of quality and detail the requirements of the construction of the involved improvements ("the Construction Documents"). The Construction Documents will cover all areas under the scope of Phase II. at 1"=10' scale on 24"x36" sheets with information received from a property measurement company, a sub-consultant. Included in the package will be the following:

- *Demolition Plans*
- *Grading Study*
- *Construction Plan*
- *Irrigation Plan*
- *Planting Plan*
- *Related Construction Details*
- *Related Irrigation Details and Specifications*
- *Specifications*

1750 EAST DEERE AVENUE • SANTA ANA, CA 92705 • 949.250.4822 • F 949.752.2469 • LANDCONCERN.COM

ROBERT M. SAWYER
*California Registration No. 1283*
*Arizona Registration No. 16010*
*Nevada Registration No. 273*

MICHAEL T. IMLAY
*California Registration No. 1494*
*Arizona Registration No. 16009*
*Texas Registration No. 2010*

ANDREW C.N. BOWDEN
*California Registration No. 1801*

MICHAEL J. SWEENEY
*California Registration No. 2144*

The Construction Documents will be consistent in Landscape Architect's professional judgment with the Project's governmental and quasi-governmental requirements including applicable accessibility and statutory functionality standards, and sufficient to enable Client to obtain a building permit and for a knowledgeable and experienced general contractor familiar with Building Codes, accessibility requirements and California statutory functionality standards, with established industry practices and with projects similar to the Project to bid and to complete construction with only routine inquiries, corrections and clarifications. These Documents will include specifications and general notes containing performance specifications addressing specific functionality requirements and, where appropriate, design/build components such as water features or retaining walls. They will not direct or require specific materials, products or details of construction except where specifically noted or required by governmental authorities; and unless so noted, the responsibility for the selection, fabrication and installation of any particular material, product or assemblage will not lie with Landscape Architect, but rather with those who make and implement these decisions.

*2.1.3 Construction Phase Services*

During the Project's construction Landscape Architect will:

2.1.3.1 Remain reasonably available to assist as necessary in resolving the questions and problems which will inevitably arise during the implementation of the Construction Documents.

2.1.3.2 Review contractor submittals pursuant to the industry-standard protocol set forth in AIA Document A201-1997 for conformance with aesthetic design concepts, and such other aspects as the parties may expressly agree.

2.1.3.3 Observe the overall work for general conformance with the Project's aesthetic concepts.

2.1.3.4 Observe the overall construction at substantial completion for general conformance with the Construction Documents including, if requested, irrigation system functioning and the preparation of a "punch list."

The Landscape Architect shall coordinate with the City of Torrance as to the frequency of these specific services to remain within the estimated not-to-exceed cost. Any authorization to increase the not-to-exceed cost will be provided in writing.

**2.2 Additional Services**

At Client's express request, Landscape Architect will provide as hourly fee Additional Services any and all of the following services:

2.2.1 Preparation of colored renderings, theme boards, models, computer modeling or similar presentation materials.

2.2.2 Participation in design review processing as required by governmental or quasi-government entities in addition to that called for in the Basic Services including, for example, homeowner association Landscape Architectural committees and municipal design review boards, or assisting Client in challenging any governmental or quasi-governmental decisions concerning the Project.

2.2.3 Preparation of design and Construction Documents for additional features such as cabanas, trash enclosures, patio trellises, fencing, entry walls and gates, paving graphics and signage.

2.2.4 Process landscape architectural plans through any governmental or quasi-governmental agency with jurisdiction over the project.

2.2.5 Providing the services of a professional agronomist, or testing or analysis of soil characteristics and constituents as they may affect plant performance.

2.2.6 Providing the services of a professional arborist.

2.2.7 Preparation of fuel modification plans and specifications.

2.2.8 Providing whatever additional construction support services Client may reasonably request such as:

2.2.8.1 Observe the rough grading and initial hardscape concrete forming for general conformance with the Construction Documents including the geometric layout of hardscape areas.

2.2.8.2 Observe hardscape installation for general conformance with the Construction Documents.

2.2.8.3 Observe irrigation installation for general conformance with the Construction Documents, or to review irrigation coverage and identify areas in need of additional attention.

2.2.8.4 Provide irrigation mainline pressure testing and/or irrigation and coverage testing.

2.2.8.5 Tag specimen trees at the contractor's preferred wholesale nursery.

2.2.8.6 Provide representative plant spotting to enhance aesthetic effect.

2.2.8.7 Observe planting procedures for general conformance with the Construction Documents.

2.2.8.8 Provide a total plant count.

2.2.8.9 Observe the overall work at the conclusion of the contractor's maintenance period and, based on this observation, recommend whether or not final payment is appropriate.

2.2.8.10 Provide documentation by video and photographs of the Project's completed landscaping.

2.2.9 Preparation of a Project Landscape Maintenance Manual.

2.2.10 Preparation of documents for alternate, fast track, separate or sequential bids, including preparation of documentation for separate permit and plan check submittals for any subsequent phase.

2.2.11 Making revisions to the Construction Documents or other documents when such revisions are: (i) Inconsistent with approvals or instructions previously given by Client, including revisions made necessary by changes in the Project program, budget, scheduling or phasing, or the result of Client's failure to render decisions in a timely manner; (ii) Required by the enactment, amendment or revised interpretation of governmental or quasi-governmental requirements subsequent to the preparation of such documents, or by the discretionary decisions of governmental or quasi-governmental officials inconsistent with prior approvals; or (iii) Necessitated by site conditions that were neither foreseen nor reasonably foreseeable by Landscape Architect at the time the documentation was originally prepared.

**2.3 Service Clarifications and Limitations**

2.3.1 Landscape Architect's services will be performed in a timely manner consistent with good professional practice and the desire that the Project proceed as expeditiously as practical; and Landscape Architect will use its best efforts to meet any reasonable and/or mutually agreed upon schedule, which schedule shall be adjusted only for reasonable cause or by mutual consent.

2.3.2 Landscape Architect's services will be performed in accordance with generally and currently accepted design professional principles and practices as embodied in Landscape Architect's standard procedures and protocols, and will involve no warranties, either express or implied. In particular, and without limitation, Landscape Architect will use its best professional judgment in interpreting and applying the requirements of all laws applicable to the Project such as accessibility and building code requirements and statutory functionality standards; but compliance with these laws as they may be eventually interpreted by others cannot be guaranteed. In no event will Landscape Architect guarantee cost estimates or schedule projections, or any prognostications as to future events including discretionary decisions of governmental officials. When used in conjunction with the providing of services pursuant to this Agreement, such terms as "certify," "warrant," "verify," "confirm," "insure," "ensure," "assure," or the like do not constitute a guarantee, but rather a representation based on professional opinion or judgment.

2.3.3 Landscape Architect will provide only the design professional services specifically called for by this Agreement; and in particular under no circumstances will Landscape Architect provide any:

2.3.3.1 Hazardous waste or toxic substances engineering or other such services, or otherwise have any liability or responsibility concerning compliance with any federal or state environmental or pollution laws, nor investigate any product for environmental or pollution hazards not identified in the published product promotional literature of the product's manufacturer.

2.3.3.2 Soils engineering or other geotechnical services whatsoever, or otherwise have any liability or responsibility for the Project's soils, subterranean water and/or subsurface conditions.

2.3.3.3 Civil engineering or CASp services whatsoever, or otherwise have any liability or responsibility for the engineering or accessibility designs of the Project's streets, paths of travel, utilities, surface drainage or the like.

2.3.3.4 Surveying services whatsoever, or otherwise have any liability or responsibility for the precise determination of grades, location of hardscape features or the like.

2.3.3.5 Structural engineering services whatsoever, or otherwise have any liability or responsibility for the Project's structural engineering including without limitation the engineering concerning any perimeter and/or retaining walls.

2.3.3.6 Electrical engineering services whatsoever, or otherwise have any liability responsibility for the Project's electrical or lighting design.

2.3.3.7 Contractor functions or services, nor supervise or undertake any responsibility for any contractor performance including construction means, methods, techniques, sequences, quality assurance procedures or safety precautions.

2.3.4 Landscape Architect will undertake legal responsibility for only the design professional services provided pursuant to this Agreement, and will not be legally liable for delays or other matters beyond its reasonable control; for inaccurate or incomplete information provided to it by Client or other reasonably reliable sources or for unverified assumptions directed by Client; for the services of other consultants even if the results of those services are incorporated into Landscape Architect's Instruments of Service for ease of reference or otherwise; for site or soils conditions of which it was not informed; for the specification of products or equipment for purposes consistent with the manufacturer's published literature; for Client's appropriately-advised materials, plant and equipment decisions; or for actions or inaction of others including other consultants, contractors, utility companies and governmental or quasi-governmental agencies.

2.3.5 Landscape Architect will coordinate the services called for by this Agreement, and will participate in the coordination of these services with those provided by Client's other consultants. Client acknowledges, however, that Landscape Architect lacks the training and expertise necessary to perform or critique the services provided by others, and that these services will necessarily be provided on an independent contractor basis by other separately licensed design professionals or contractors, independent of Landscape Architect and beyond the Landscape Architect's reasonable control; and in no event will Landscape Architect have any legal liability for any errors or omissions committed by other consultants, and Landscape Architect's responsibility concerning these consultants will be limited to providing and participating in appropriate coordination.

2.3.6 Design/build designs, if any, shall be reviewed by Landscape Architect only for conformance with the aesthetic aspects of the Project; and other than possibly providing performance specifications, Landscape Architect will have no other responsibility concerning such systems. In this regard Client shall require each design/build contractor to be responsible for (1) preparing all the engineering and other drawings and specifications for the components of its design/build undertaking; (2) complying with the Project's requirements and limitations; (3) coordinating and interfacing with other trades and consultants; (4) obtaining any required or appropriate approvals from authorities having jurisdiction of other Project; and (5) serving as the Professional of Record for its portion of work, responsible directly to Client.

2.3.7 Landscape Architect provides design professional services which include the creation of good quality designs, but does not sell designs as such. Drawings and specifications, as instruments of service, are and shall remain the property of Landscape Architect whether the project for which they are prepared is executed or not; and they are not to be used by Client for other projects or extensions to this Project except by agreement in writing with the appropriate compensation to Landscape Architect. Upon receipt of payment for the related services, however, Client shall have a transferable nonexclusive license to use Landscape Architect's instruments of service and the design embodied therein for any and all purposes consistent with the Project's success.

**2.4 The Client's Anticipated Cooperation**

As a material factor in the determination of the Basic Services fee, Landscape Architect anticipates that Client will make reasonable efforts to cooperate towards the mutual goal of a successful project including:

2.4.1 Designating a single Project Manager with appropriate authority with whom Landscape Architect can deal, and who will provide prompt and final decisions so as to avoid any unreasonable delay in the progress of the Project or of Landscape Architect's services; promptly review Landscape Architect's submittals for appropriateness and general accuracy and inform Landscape Architect of any problems or concerns; respond to Landscape Architect's questions and requests for approval in a timely manner; and provide Project administration and coordination, including appropriate arrangements for retaining and coordinating the services of other reasonably necessary Project consultants such as a civil engineer and a CASp consultant and for the submission of appropriate applications required by any governmental or quasi-governmental authorities.

2.4.2 Providing appropriate information upon which Landscape Architect can rely regarding Project conditions and program requirements, including such specific information as Landscape Architect may reasonably request such as legal descriptions and limitations, land surveys, civil engineering plans and geotechnical reports.

**3.0 Compensation**

**3.1 Payments to Landscape Architect:**

| | | |
|---|---|---|
| 3.1.1 | Schematic Phase (§2.1.1), fixed fee of | $ 2,664.00 |
| 3.1.2 | Preliminary Phase (§2.1.2), fixed fee of: | $ 3,292.00 |
| 3.1.3 | Construction Documents (§2.1.2), fixed fee of: | $ 7,775.00 |
| 3.1.4 | Support Services including the following:<br>• Estimates for cost of construction.<br>• Agency submittals.<br>• Assistance with bidding process.<br><br>Hourly not to exceed | $ 1,200.00 |
| | **GRAND TOTAL:** | **$ 14,931.00** |

3.1.6 Other Services to be Included:

- Reprographics and Delivery Services $ 1,000.00
- (Or can be billed directly to the reprographic provider of Client's choice)

**3.2 Landscape Architect's Hourly Fee Schedule:**

| | |
|---|---|
| Principal | $150.00/hr. |
| Senior Associate | $110.00/hr. |
| Associate | $95.00/hr. |
| Landscape Architect | $90.00/hr. |
| Project Manager | $85.00/hr. |
| Asst. Project Manager | $70.00/hr. |
| Designer/Draftsperson | $60.00/hr. |

These hourly rates are subject to change, with thirty (30) days prior written advance notice to Client.

**3.1 Landscape Architect will be reimbursed for costs actually and reasonably incurred for the Project as follows:**

3.3.1 Expenses of document reproduction and processing, for mileage and other travel expenses and for other costs or expenses authorized by Client at 1.1. times the actual cost.

3.3.2 Fees for outside consultants, if any, at 1.2 times actual cost.

3.3.3 Fees paid as a Client accommodation for securing approval of authorities having jurisdiction over the Project at actual cost.

3.4 The Landscape Architect's fees will be equitably adjusted if:

3.4.1 The scope and/or difficulty of the Landscape Architect's performance of the Basic Services are increased by site conditions or other factors which were not reasonably anticipated by the Landscape Architect at the time this Agreement was entered into, or by significant changes in the Project's scope, sequencing or scheduling.

3.4.2 The Project is delayed for more than six (6) months due to circumstances not within the Landscape Architect's reasonable control.

3.5 Landscape Architect will invoice the Client on a monthly basis. Each invoice shall be due and payable upon receipt, and delinquent 30 days after its date. In the event of delinquency, interest shall accrue at the rate of 1% per month, compounded monthly, or the highest rate allowed by law, whichever is lower, with payments applied first to accrued interest; and Landscape Architect will have the right to suspend its performance and to withhold or withdraw any instruments of services or licenses with no liability for so doing.