

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made and entered into as of January 15, 2025, by and between the CITY OF IRVINE, a municipal corporation ("City"), and WARE MALCOMB, a California corporation ("Consultant").

PART I

FUNDAMENTAL TERMS

- A. Location of Project:** The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.
- B. Description of Services/Goods to be Provided:** Interior Architectural Design and Engineering Services for Multi-Use Indoor Gymnasium Facility and Recreation Center Space on Red Hill in accordance with PART IV, Scope of Services, included herein.
- C. Term:** Unless terminated earlier as set forth in this Agreement, the services shall commence on January 16, 2025 ("Commencement Date") and shall continue through December 31, 2025.
- D. Party Representatives:**

D.1. The City designates the following person/officer to act on City's behalf:

Bobby Ghaemi, email: bghaemi@cityofirvine.org

D.2. The Consultant designates the following person to act on Consultant's behalf:

Tobin Sloane, email: tsloane@waremalcomb.com

Consultant Information

Address for Notices and Payments:

10 Edelman
Irvine, CA 92618

Attn: Tobin Sloane

Telephone: 949-660-9128

Email: tsloane@waremalcomb.com

- E. Notices:** Consultant shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Consultant at the address set forth above.
- F. Attachments:** This Agreement incorporates by reference the following Attachments to this Agreement:
- F.1. Part I: Fundamental Terms
- F.2. Part II: General Provisions
- F.3. Part III: Special Provisions

F.4. Part IV: Scope of Services

F.5. Part V: Budget

- G. Integration:** This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

{Signatures follow on next page}

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

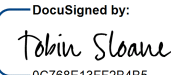
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Sean Crumby

Its: Director of Public Works & Sustainability

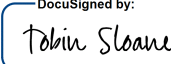
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Oliver C. Chi

Its: City Manager

WARE MALCOMB

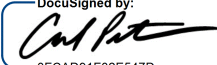
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Tobin Sloane

Its: Vice President

By: 
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Tobin Sloane

Its: Chief Financial Officer

Attest:

By: 
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Carl Petersen

Its: City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: 
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Jeffrey Melching

PART II

GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Consultant, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. City approval and/or payment for work claimed by Consultant as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Consultant without additional consideration due. It is expressly understood by Consultant that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.3 Standard of Performance. Consultant agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of City. Notwithstanding any other provision herein, Consultant agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Consultant to review the quality of the work and resolve matters of concern; (ii) requiring Consultant to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Consultant for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from City. In the performance of this Agreement, Consultant shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

1.6 Familiarity with Work. By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the 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 hereunder. Should the Consultant discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact in writing and shall not proceed except at Consultant's risk until written instructions are received from the City's Representative.

1.7 Identity of Persons Performing Work.

- A. Consultant represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Any personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law.
- B. Consultant represents that the tasks and services required hereunder will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Consultant will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.
- C. This Agreement contemplates the personal services of Consultant and Consultant's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Consultant. Neither this Agreement nor any interest therein may be assigned by Consultant, except upon written consent of City.

1.8 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Consultant of any liability hereunder without the express written consent of City.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1 Insurance. Without limiting Consultant's indemnification obligations, Consultant shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees, and/or subconsultants. In the event that Consultant subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Consultant and such subconsultant shall require the subconsultant to maintain the same policies of insurance that the consultant is required to maintain pursuant to this Section 2.1.

2.1.1 Insurance Coverage Required. The Insurance obligations under this agreement shall be (1) all the Insurance coverage and/or limits carried by or available to the Consultant; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Consultant under this agreement.

The policies and minimum amounts of insurance required hereunder shall be as follows:

A. Comprehensive General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Consultant's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Consultant's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Consultant's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

- C. Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of the Consultant providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

(1) Waive the insurer's right of Subrogation against the City and City Personnel.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

In the performance of the work under this Agreement, if Consultant does not employ any person in any manner so as to become subject to the workers' compensation laws of California, Consultant agrees to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Consultants failure to provide such worker's compensation insurance. Consultant agrees that, if firm should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, firm shall forthwith comply with those provisions, immediately furnish insurance certificates evidencing such coverage as set forth herein, and notify the City of the change in status.

- D. Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

If the consultant maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the consultant.

- E. Evidence of Insurance:** Consultant shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided. The City project title or description MUST be included in the "Description of Operations" box on the certificate.

The City's insurance certificate tracking services provider, Exigis, LLC, will send Consultant an email message providing instructions for submitting insurance certificates and endorsements.

Certificate Holder: City of Irvine, California
c/o: Exigis LLC
PO Box 4668 ECM #35050

New York, NY 10168-4668

- F. Endorsements:** A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements **shall not:**

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Consultant
4. Contain any other exclusion contrary to the Agreement.

- G. Any Deductible in Excess of \$100,000 and/or Self-Insured Retentions** must be approved in writing by the City.

- H. Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

- I. Insurance of Subconsultants.** Consultant shall be responsible for causing Subconsultants to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subconsultant's policies.

2.2 Indemnification. Consultant shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Consultant, its employees, agents, representatives or subconsultants which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

2.2.1 Consultant shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

2.2.2 Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

2.2.3 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel

in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

These Indemnification provisions are independent of, and shall not in any way be limited by, the Insurance Requirements of this Agreement. City approval of the insurance contracts required by this Agreement does not in any way relieve the Consultant from liability under this section.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Compliance with Laws. Consultant shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Consultant. When applicable, Consultant shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.2 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

3.3 Covenant against Discrimination. Consultant covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, in the performance of this Agreement. Consultant further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

3.4 Nondiscrimination in City Contracts. Any business that enters into a contract for goods or services with the City of Irvine or any of its boards, agencies, or departments shall:

- (a) Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment-related decision or benefit on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (b) Not discriminate in the performance of the contract on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (c) Incorporate the foregoing provisions in all subcontracts hereunder.

3.5 Independent Consultant. Consultant shall perform all services required herein as an independent consultant of City and shall remain at all times as to City a wholly independent consultant. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Consultant. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Consultant nor any of Consultant's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Consultant nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Consultant's compensation. Neither Consultant nor any of Consultant's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

3.6 Covenant against Contingent Fees. Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3.7 Use of Patented Materials. Consultant shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Consultant under this Agreement. Consultant shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

3.8 Proprietary Information. All proprietary information developed specifically for City by Consultant in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Consultant's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Consultant agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Consultant's services under this Agreement. Consultant further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Consultant under this Agreement shall be made to City, and that Consultant shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

3.9 Retention of Funds. Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which 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, errors, or omissions, or willful misconduct, in performing or failing to perform Consultant's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Consultant, without liability for interest, an

amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Consultant's obligation to pay City any sums Consultant owes City.

3.10 Termination by City. City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Consultant. Upon receipt of any notice of termination from City, Consultant shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Consultant shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement consultant and similar expenses, exceeds the Budget.

3.11 Right to Stop Work; Termination by Consultant. Consultant shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Consultant shall provide City thirty (30) day prior written notice of such claimed payment owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Consultant shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Consultant shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Consultant terminates this Agreement because of an error, omission, or a fault of Consultant, or Consultant's willful misconduct, the terms of Section 3.10 relating to City's right to take over and finish the work and Consultant's liability shall apply.

3.12 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party with respect to any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. A waiver by either party of any default must be in writing.

3.13 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Consultant agrees to submit to the personal jurisdiction of such court.

3.14 Rights and Remedies are Cumulative. Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

3.15 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

3.16 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Consultant, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Consultant is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Consultant's sole remedy shall be extension of this Agreement pursuant to this Section 3.14.

3.17 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

3.18 Conflicts of Interest.

- A.** No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any federal, state or city statute, ordinance or regulation. Consultant shall not employ, contract for, or receive consulting services from any such person, whether for compensation or not, while this Agreement is in effect.
- B.** Consultant represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement. Consultant further agrees that while this Agreement is in effect, Consultant shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Consultant's obligations and responsibilities under this Agreement.
- C.** Consultant acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Consultant to be a "Consultant" as that term is defined by the Act. In the event City makes such a determination, Consultant agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Consultant further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

3.19 Consultant Ethics. Consultant represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Consultant shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this

Agreement other than the compensation to be paid to Consultant as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Consultant shall not possess or maintain any business relationship with the applicant or any other person or entity which Consultant knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Consultant shall not advocate either for or against said project and/or application, and (iii) Consultant shall immediately notify City in the event Consultant determines that Consultant has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Consultant's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

3.20 Compliance with California Unemployment Insurance Code Section 1088.8.

If Consultant is a Sole Proprietor, then prior to signing the Agreement, Consultant shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Consultant understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

3.21 CalPERS Annuitants. If Consultant is a California Public Employees' Retirement System ("CalPERS") annuitant, Consultant must provide the City with written notification of such fact a minimum of 14 calendar days prior to commencement of services under this Agreement. Failure to provide such notification may result in termination of the Agreement, and any penalties or other costs relating thereto shall be borne by Consultant. If this Agreement remains in place, Consultant shall execute any amendment(s) to this Agreement requested by the City in order to comply with all laws and regulations applicable to CalPERS annuitants.

3.22 Levine Act. California Government Code section 84308, commonly referred to as the Levine Act, precludes an Irvine City Councilmember from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Councilmember, or received by the officer on behalf of any other Councilmember, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires a Councilmember that has received such a contribution to disclose the contribution on the record of the proceeding. Review California Government Code section 84308 for more information.

SECTION FOUR: MISCELLANEOUS PROVISIONS

4.1 Records and Reports. The City Manager of the City of Irvine or his/her designee reserves the right to perform such audits, performance reviews, and other evaluations (collectively 'audit') that relate to or concern this Agreement at any time. Consultant agrees to participate and cooperate in up to five (5) hours of meetings and interviews (at no additional cost to City), if the same are requested by the City in connection with such an audit. Further, provided that the City pays Consultant's commercially reasonable hourly rate for services, Consultant agrees to participate and cooperate in such additional meetings and interviews (in excess of five (5) hours), if the same are requested by the City in connection with such an audit. Upon request by City, Consultant shall prepare and submit to City any reports concerning Consultant's performance of the services rendered under this Agreement. City shall have access, with 72 hours advance written

notice delivered to Consultant, to the books and records of Consultant related to Consultant's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Consultant in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) shall not be made available to any individual or entity without prior written approval of City. The obligations of this Section 4.1 shall survive the expiration (or earlier termination) of this Agreement for a period of three (3) years. During said three (3) year period, Consultant shall keep and maintain all records and reports related to this Agreement, and City shall have access to such records in the event any audit is required.

4.2 Notices. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To City: City of Irvine
One Civic Center Plaza (92606) (Hand Deliveries)
P. O. Box 19575
Irvine, CA 92623-9575

Notices to Consultant shall be delivered to the address set forth below Consultant's signature on Part I of this Agreement, to the attention of Consultant's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

4.3 Construction and Amendment. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

4.4 Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

4.5 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party 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 said party is bound.

4.6 Special Provisions. Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget") of this Agreement, the order of precedence shall be as follows:

Part III

Part II

Part IV

Part V

Part I

PART III

SPECIAL PROVISIONS

1. **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.

2. **PART II GENERAL PROVISIONS, SECTION ONE: SERVICES OF CONSULTANT**, is modified as follows:

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide the services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property. To avoid any misunderstanding, Consultant will not provide any goods.

1.3 Standard of Performance. Consultant agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry.

1.6 Familiarity with Work. By executing this Agreement, Consultant states that Consultant (i) has thoroughly visually investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Consultant agrees that Consultant has or will investigate the site and is or will be acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact in writing and shall not proceed except at Consultant's risk until written instructions are received from the City's Representative.

1.7 Identity of Persons Performing Work.

B. Consultant represents that the tasks and services required hereunder will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Consultant will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.

3. **PART II GENERAL PROVISIONS, SECTION TWO: INSURANCE AND INDEMNIFICATION**, is modified as follows:

2.1.1 Insurance Coverage Required.

I. Insurance of Subconsultants. Consultant shall be responsible for causing Subconsultants to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subconsultant's policies, except the professional liability and workers compensation policies.

2.2 Indemnification: Consultant shall, to the fullest extent permitted by law (including without limitation California Civil Code Sections 2782 et seq.), defend, indemnify and hold free and harmless the City and City Personnel (collectively, the "Indemnitees") from and against any and all third party claims, losses, costs, damages, injuries (including without limitation injury to or death of Consultant or Consultant's officers, employees, representatives) (collectively, the "Consultant Entities"), reasonable expenses and liabilities (including without limitation reasonable court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, but only to the extent of, the negligence, recklessness or willful misconduct of Consultant, any of the Consultant Entities, or anyone directly or indirectly employed by any of them (collectively, "claims or liabilities").

2.2.1 Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such claims or liabilities are caused in part by the negligence, active negligence or willful misconduct of such Indemnitee.

2.2.2 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such claims or liabilities arising out of or in connection with the work being performed or services being provided under this Agreement, Consultant shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

2.2.3 Consultant shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

4. PART II GENERAL PROVISIONS, SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES, is modified as follows:

3.1 Compliance with Laws. Consultant shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Consultant shall at all times observe and perform its services in accordance with all such applicable laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Consultant. When applicable, Consultant shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.8 Proprietary Information. Provided Consultant has received payment for its related services, all proprietary information developed specifically for City by Consultant in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual

material, or software programs, but not including Consultant's underlying standard details, notes, design components, materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Consultant agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Consultant's services under this Agreement. Consultant further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Consultant under this Agreement shall be made to City, and that Consultant shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City. If City uses or modifies or allows the use or modification of the drawings or specifications without Consultant's further involvement or consent, or uses the drawings or specifications for any project for which they were not prepared, City agrees to release and indemnify Consultant and its affiliated entities and individuals to the fullest extent allowed by law, and even in situations involving any indemnitee's actual or alleged active negligence or design defects, from and against any and all claims, costs, losses and/or liabilities arising out of or resulting in whole or in part from such use or reuse.

3.15 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs in an aggregate amount of twenty-five thousand dollars. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement to the extent of such party's negligence or fault.

3.16 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Consultant, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Consultant is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Consultant's sole remedy shall be extension of this Agreement pursuant to this Section 3.14.

3.23 Limitation of Liability. Notwithstanding anything in the contrary to this Agreement, in light of the limited ability of the Consultant to affect the risks inherent in the Project and of the disparity between Consultant's fee and the potential liability for problems or

alleged problems with the Project, and in consideration of Consultant's undertaking of the obligations imposed by the Agreement, City agrees to limit the total aggregate liability concerning or related to the Project of Consultant and its affiliated entities and individuals, on any and all legal or equitable theories and concerning any and all kinds of causes of loss, to the fullest extent allowed by law as to City and all third parties, to the amount of the Consultant's per claim/occurrence insurance limit required to be carried by Consultant under this Agreement and applicable to the claim.

3.24 Corporate Protection. City and Consultant both acknowledge that each is a business entity, and that neither intends that either's involved individuals should be subjected to personal exposure for the risks attendant to the Project; and therefore any and all remedies with either party and its affiliated entities and individuals have or might have concerning the Project and/or this Agreement shall be sought against only the other's business entity or affiliated business entities and waived as to the affiliated individuals, and in no event shall damages or indemnification concerning this Agreement and/or the Project ever be sought against either party's affiliated individuals.

3.25 Waiver of Consequential Damages. Consultant and City waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

PART IV

SCOPE OF SERVICES

Services shall be performed as set forth below in accordance with ATTACHMENT I.

PART V

BUDGET

Pricing shall be as set forth below and in accordance with ATTACHMENT II.

Included in the total compensation are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement. The total compensation for the Scope of Services set forth herein **shall not exceed \$178,050.00**, including all amounts payable to Contractor for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

No work shall be performed in connection with this Agreement until the receipt of a signed City of Irvine Purchase Order; and no work shall be performed with a value in excess of the Purchase Order amount as the City has not authorized nor is it obligated to pay Consultant any such excess amount.

In the event Consultant anticipates the potential need to perform services beyond those set forth herein where additional funding may be needed, Consultant shall notify City in writing allowing sufficient time for City to consider further action.

Payment for services will be made monthly on invoices deemed satisfactory to the City, with payment terms of net 30 days upon receipt of invoice. Consultant shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Consultant shall provide invoices with sufficient detail to ensure compliance with pricing as set forth in this Agreement. The information required may include: date(s) of work, hours of work, hourly rate(s), and material costs.

The Purchase Order number must be included on all invoices, along with the City Representative's name. Failure to include this information on the invoice shall result in the return of the unpaid invoice.

Consultants should submit invoices electronically to: **isubmittal@cityofirvine.org**

Payment by City under this Agreement shall not be deemed as a waiver of the City's right to claim at a later point that such payment was not due under the terms of this Agreement.

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ATTACHMENT I

07/24/2024, REV 09/13/2024, REV 09/26/2024, **REV 11/03/2024**

Chris Slama
Director, Community Services Department
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

Proposal for Interior Architectural Design and Engineering Services

Irvine Recreation Center
17300 Redhill
Irvine, CA

I. Project Description:

Our proposal is based upon the Request for Proposal dated 07/18/2024, and outlines Interior Architecture & Design and Engineering services for the City of Irvine’s project located in Irvine, CA. Ware Malcomb understands the scope of work to include 110,000 SF of multi-use indoor gymnasium facility and recreation center space, including:

- 1. Basketball/volleyball courts
- 2. Badminton/pickleball courts
- 3. Office space
- 4. Storage
- 5. Flexible court space for various recreational activities
- 6. Commercial Kitchen**
- 7. Multipurpose Room**

A. The following disciplines are to be included under Ware Malcomb’s scope and responsibility:

- | | | |
|-----------|---|--------------------|
| 1. | Interior Architectural Design | Ware Malcomb |
| 2. | Kitchen Consultant | Cini-Little |
| 3. | Structural Engineering | HSA - Allowance |
| 4. | Electrical, Mechanical and Plumbing Engineering | RTM |

B. The following disciplines are excluded from Ware Malcomb’s scope and responsibility, however they may be required for the project:

- 5. Fire Sprinkler Design & Engineering (Design-Build)
- 6. Fire Alarm Design & Engineering (Design-Build)
- 7. Commissioning Agent
- 8. Environmental Consultant
- 9. Structured Cabling Consultant
- 10. Acoustical Engineer

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- 11. Audio/Visual Consultant
- 12. IT and Security Consultant
- 13. Lighting Consultant

C. The following special considerations and assumptions were made for this proposal:

- 1. Ware Malcomb is authorized to use its own Core and Shell project drawings as backgrounds for the project.
- 2. Project will be based on the conceptual plan provided by Ware Malcomb on 08/06/2024.
- 3. A Conditional Use Permit or Rezoning of the property is not required by the local jurisdiction.
- 4. The scope of work in this proposal will be completed as a single construction phase.
- 5. The City of Irvine will provide the design team with a completed equipment list of all major equipment within the scope of work for the project. Major equipment includes, but is not limited to the following:
 - a. Equipment with excessive heat loads or exhaust requirements.
 - b. Equipment with compressed air or vacuum requirements.
 - c. Equipment with piped gas requirements (N2, CO2, He, etc)
 - d. Equipment weighing over two-hundred (200) pounds or with a height of over forty-eight inches (48")
 - e. Equipment requiring a dedicated electrical circuit.
 - f. Equipment which non-line voltage (110-120V, 60Hz single phase) electrical requirements.
 - g. Equipment which electrical loads of one (1) amp or more.
 - h. Equipment with special environmental requirements, such as sensitivity to vibration or electrical / magnetic fields.
 - i. Information provided to Ware Malcomb to include cut sheets. Base diagrams / drawings will be required for heavy equipment required to be anchored. Ware Malcomb can assist the City of Irvine with completing the equipment list as an additional service (See "Optional Services" below).
 - j. Structural detailing for major equipment to be coordinated within the Core and Shell design and not as part of the scope of this proposal.

Note: This project is being completed in tandem with Ware Malcomb Interior Architectural Design and Engineering project IRV24-6050-01 – Irvine Recreation Center Core & Shell. Deliverables outlined below will be developed in collaboration with and reviewed by both the City of Irvine and Lincoln Property Company, however, final approval of these deliverables will be per the agreement between LPC and the City of Irvine.

II. Interior Design Basic Services:

A. Schematic Design Phase:

Ware Malcomb shall provide the Schematic Design for the areas outlined above through the following:

- 1. Based on the conceptual plan and refined space plan, Ware Malcomb shall provide sketches and loose material selections to communicate concepts and ideas for the space outlined above.

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2. Upon approval, Ware Malcomb shall prepare Preliminary Pricing Plans including additional information for the City of Irvine's General Contractor to provide a preliminary budget price. Preliminary Pricing Plans shall include:
 1. **Partition Plan:** Noting locations of full height walls, if required.
 2. **Power/Signal Plan:** Power and data locations and any (known) specialty power requirements.
 3. **Reflected Ceiling Plan:** Ceiling Types (i.e. ACT, gypsum board, or open to structure) and light fixture type/quantity. Actual specifications will remain as "to be determined" at this stage.
 4. **Finish Plan (Floor & Wall):** If already determined by the tenant/owner, finishes (by generic type) will be hatched / noted on the plan for location and provided with a budgetary material cost/allowance per SF.
3. Ware Malcomb shall review the budget pricing prepared by a designated Contractor and present costs to the City of Irvine for review.
4. Ware Malcomb shall provide two (2) loose finish palettes/concepts.
5. Ware Malcomb shall attend up to three (3) one-hour meetings for design and review.
6. It is anticipated that this phase will be three (3) weeks.

B. Design Development Phase:

1. Based on the approved Schematic Design, Ware Malcomb shall provide final Design Development to include plans with fixed dimension, elevations, relevant details, electrical and lighting solutions to provide the City of Irvine a representation of the final design.
2. Present final finish palette that shows all materials, finishes and colors. One (1) revision is included.
3. Provide plans and other design information to Ware Malcomb and the City of Irvine's Consultants as directed by the City of Irvine.
4. Provide progress prints of plans and other design information for preliminary pricing by a General Contractor and for review by the City of Irvine.
5. Assist the City of Irvine in evaluating preliminary pricing and other project information.
6. Ware Malcomb shall attend up to four (4) one-hour meetings for design and review.
7. It is anticipated that this phase will be four (4) weeks.

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C. Construction Documents Phase:

Prepare Construction Documents based on the approved Design Development documents or as authorized by the City of Irvine. The documents shall set forth in detail the requirements for construction of the project. The scope of work shall include the following:

1. Prepare Interior Architectural Construction Documents of the project. A Project Manual is not included but may be provided as an additional service. Sheet specifications will be provided as part of the base scope of services.
2. Provide Mechanical, Electrical, Plumbing and Structural Construction Documents.
3. Ware Malcomb shall provide general coordination between documents prepared by its engineers and consultants, and with the City of Irvine consultants, contractors, engineers and vendors.
4. Ware Malcomb shall submit the Construction Documents to the Building Department, Building Landlord, Health Department (if applicable), and Fire Department for Plan Check Review. Submittals to special jurisdictions such as City Planning, Airport Authority, etc. is not included but may be included as an additional service upon request. Ware Malcomb is not responsible for plan check review times. Revisions to the Construction Documents related to code compliance / plan check corrections are included in the base scope of services.
5. Ware Malcomb shall review and update a Project Schedule with the City of Irvine Team.
6. Ware Malcomb shall review with the City of Irvine Team the updated cost estimate prepared by a designated Consultant or Contractor.
7. Ware Malcomb shall attend up to four (4) one-hour meetings. One of the meetings shall be a Page-Turn meeting and/or "Sign-off" of Construction Documents, prior to submitting for Permit, or issuing for Bid.
8. It is anticipated that this phase will be five (5) weeks, excluding plan check duration.

D. Contract Administration:

1. Ware Malcomb will visit the site approximately eight (8) times for approximately one (1) hour per visit during the anticipated project duration of sixteen (16) weeks. During this time, Ware Malcomb will attend weekly OAC meetings virtually. Construction duration has been estimated, and will need to be confirmed by the awarded General Contractor. If significantly longer than the anticipated duration, additional services may be required.
2. Visits are to become generally familiar with, and inform the Client, regarding the progress and quality of the portions of the work completed. Ware Malcomb will determine in general if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract Documents. Continuous on-site inspections are excluded.

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3. Issue clarification sketches in a timely manner, based on receipt of written RFI's prepared by the General Contractor.
4. Review Contractor submittals and take appropriate action for the limited purpose of checking conformance with the design concept conveyed in documents prepared by Ware Malcomb.
5. Have the authority to reject work that does not conform to the Contract Documents. However, neither this authority nor the decision in good faith whether to exercise it shall give rise to a responsibility or duty of Ware Malcomb, subcontractors or others performing portions of the work.
6. Coordinate with Contractor in its responsibility to prepare a punch list and comply with closeout procedures and submittals. Ware Malcomb shall perform one (1) punch walk and one (1) follow-up job walk within the scope of Basic Services.
7. Review Contractor's applications for payment, based on Ware Malcomb's best knowledge, information and belief, subject to any subsequently discovered information.
8. Maintain our own Submittal, RFI and other logs and records, and will receive and distribute information using our project management software. Ware Malcomb will not administer the project through another party's construction management software. We will accept documentation from other parties sent via their software provided it includes email notification of receipt.
9. Ware Malcomb can prepare a Letter of Substantial Completion, when applicable.

E. [OPTIONAL] Furniture Coordination – Limited Scope:

1. Ware Malcomb shall assist in the selection of new furniture for the City of Irvine. Selection process shall include the following:
 - a. Provide a digital 'Look Book' of two vendors for the open and enclosed office areas, conference rooms and miscellaneous furniture.
 - b. Coordinate with one selected vendor within their line.
 - c. Once a final selection made, Ware Malcomb shall assist in the specification of the furniture. The final specifications shall be provided by the selected dealer. Ware Malcomb shall review the final specifications for conformance to the original design intent.
 - d. Ware Malcomb shall provide coordination with designated furniture manufacturers and dealers, equipment suppliers and vendors and/or installers to establish critical dimensions (to accommodate furniture layouts) and ascertain other appropriate information. Installation documents for furniture and equipment will be the responsibility of the selected furniture vendor.

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III. Excluded Services:

Ware Malcomb will not provide the services listed below:

- A. Soils engineering or reports.
- B. Site surveys, services or reports.
- C. Fire suppression or alarm systems (design-build).
- D. Special studies such as Traffic, Noise, Utility, Acoustical or Environmental studies.
- E. Off-Site Improvements.
- F. Hazardous materials identification, storage, or abatement.
- G. Roofing or waterproofing Inspection.
- H. Confirmation and/or verification of the accuracy and/or completeness of documents or information received from others.
- I. Storage or Racking design.

IV. Supplemental Services:

The following items are not contemplated or included within Ware Malcomb's Scope or Fee. Ware Malcomb may perform certain services among the list below as an additional service and for an additional fee.

- A. Add any services listed as [OPTIONAL] here
- B. Workplace Strategy
- C. Change Management / Communications
- D. Existing Furniture inventories
- E. Furniture selection / coordination
- F. Furniture installation plans of final specifications.
- G. Record drawings
- H. Perspective or 3D Renderings, Virtual Reality, Panoramic Images, or Animation fly throughs
- I. Branding services such as Identity/Logo, Stationery System, Branding, Marketing Materials/Leasing Brochures, Website, Multi-Media Presentations, and Environmental Graphics
- J. Changes to the Program or building area
- K. Specialty Retail or Salon Fixture Displays / Millwork
- L. Payment of Permits or Agency fees
- M. Changes or revisions subsequent to completion of Design Development Phase including contractor Value Engineering, except for those required for refinement or code compliance
- N. Design of Signage or Public Art selection
- O. Landscape Design or Documents
- P. Preparation of meeting minutes during construction
- Q. Contract Administration more than 15 days beyond date of substantial completion
- R. Multiple bid processes or negotiations with General Contractors
- S. Contractor submittal reviews beyond the initial review and one backcheck
- T. Cost Estimating Services.
- U. Retaining wall design
- V. Design of non-standard structural systems due to sub-grade seismic or soils conditions
- W. BOMA Calculations

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- X. Lighting design, audio visual or communication consultants
- Y. Acoustical design
- Z. Material Handling Coordination
- AA. Equipment As-Builts
- BB. Racking coordination
- CC. Emergency generator and fuel system design or storage tanks
- DD. Parcel maps, lot line adjustments, zone changes or environmental clearances
- EE. Variances or Entitlements, Legal Descriptions, or Special Planning Processes
- FF. Solar Coordination, if required

V. Compensation:

Compensation for Basic Services shall be a fixed fee plus reimbursable expenses. All payments shall be due upon receipt of invoice. Billings shall be based on a percentage of completion on a phase basis. Invoicing shall be in accordance with the following breakdown:

<u>INTERIOR ARCHITECTURE & DESIGN</u>	
Schematic Design	\$ 8,950.00
(3) Interior 3D Renderings	\$ 7,000.00
Design Development	\$ 13,450.00
Contract Documents	\$ 20,500.00
Contract Administration	\$ 13,800.00
Sub-Total Fee for Interior Architectural Services	\$ 63,700.00

<u>ENGINEERING & DESIGN CONSULTANTS</u>	
Mechanical, Plumbing, and Electrical Engineering*	\$ 58,530.00
Structural Engineering*	\$ 8,200.00
Sub-Total Fee for Consultant Engineering Services	\$ 66,730.00

<u>KITCHEN INTERIOR ARCHITECTURE & DESIGN</u>	
Schematic Design	\$4,845.00
Design Development	\$4,280.00
Contract Documents	\$4,760.00
Contract Administration	\$2,550.00
Sub-Total Fee for Kitchen Design Services	\$16,435.00

<u>KITCHEN ENGINEERING & DESIGN CONSULTANTS</u>	
Mechanical, Plumbing, and Electrical Engineering*	\$11,000.00
Kitchen Consultant*	\$20,185.00
Sub-Total Fee for Kitchen Consultant Services	\$31,185.00

TOTAL ARCHITECTURE & ENGINEERING SERVICES	\$178,050.00
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[OPTIONAL] Furniture Coordination – Limited Scope	\$ 14,960.00
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WARE MALCOMB

- ARCHITECTURE
PLANNING
INTERIORS
- CIVIL ENGINEERING
BRANDING
BUILDING MEASUREMENT

* Consultants are included under Ware Malcomb’s scope with a mark-up of 10% for administration fees.

Note: Ware Malcomb offers the following additional/integrated/in-house services. We may perform any or all of these services at your request for an additional fee:

- 1. LEED® Coordination & Management
- 2. Branding (including Signage)
- 3. Civil Engineering
- 4. Building Measurement Services

VI. Reimbursable Expenses:

Standard expenses are in addition to our fees. Reimbursable expenses for such things as printing, plotting, renderings requested by Owner, postage and handling, delivery costs, travel, reproductions and facsimiles, are charged at cost. The Client shall be responsible for plan check fees and shall provide payment directly to the Authority having Jurisdiction; plan check fees will not be handled as a reimbursable expense.

Ware Malcomb recommends a reimbursable allowance of \$2,500.00.

VII. Payment to Ware Malcomb:

All payments shall be due upon receipt of invoice, or as mutually agreed via a written contract. Billings shall be based on a percentage of completion on a Phase basis. Fees for all services up to and including Contract Documents and any unpaid billings shall be due and paid prior to submittal for agency plan check.

VIII. Expiration:

The Scope, Basic Services offered, and corresponding fees are valid for ninety (90) days from the date of this Proposal. Should the project be awarded after ninety (90) days from the date of this Proposal, Ware Malcomb reserves the right to revise the durations and fees specified herein.

IX. Acceptance:

As described in the entire proceeding document, I hereby accept this Proposal. I understand that upon acceptance of the proposal, Ware Malcomb will generate a formal Contract, of which this Proposal will become an exhibit. Terms and Conditions of the Contract will supersede any presented within this proposal.

The City of Irvine

Chris Slama, Director, Community Services Department

Date: _____

WARE MALCOMB

ARCHITECTURE	CIVIL ENGINEERING
PLANNING	BRANDING
INTERIORS	BUILDING MEASUREMENT

Thank you for this opportunity and we look forward to working with you.

Best regards,

Ware Malcomb



Analisa Alt Olson
Director, Interior Architecture & Design

AAO

ATTACHMENT II

WARE MALCOMB RED HILL PROPOSAL COMPARE

11/4/2024 10:50

ITEM	PROPOSAL DATED 9.13.24	PROPOSAL DATED 9.26.24	PROPOSAL DATED 11.3.24
SCHEMATIC DESIGN	\$12,000.00	\$12,000.00	\$8,950.00
THREE INTERIOR 3D RENDERINGS	\$7,000.00	\$7,000.00	\$7,000.00
DESIGN DEVELOPMENT	\$18,000.00	\$18,000.00	\$13,450.00
CONTRACT DOCUMENTS	\$27,500.00	\$27,500.00	\$20,500.00
CONSTRUCTION ADMINIDTRATION	\$18,500.00	\$18,500.00	\$13,800.00
SUBTOTAL	\$83,000.00	\$83,000.00	\$63,700.00
MEP	\$78,430.00	\$78,430.00	\$58,530.00
STRUCTURAL	\$11,000.00	\$11,000.00	\$8,200.00
SUBTOTAL	\$89,430.00	\$89,430.00	\$66,730.00
TOTAL	\$172,430.00	\$172,430.00	\$130,430.00
KITCHEN			
SCHEMATIC DESIGN			\$4,845.00
DESIGN DEVELOPMENT			\$4,280.00
CONTRACT DOCUMENTS			\$4,760.00
CONSTRUCTION ADMINIDTRATION			\$2,550.00
SUBTOTAL			\$16,435.00
KITCHEN ENGINEERING			
MEP			\$11,000.00
KITCHEN CONSULTANT			\$20,185.00
SUBTOTAL			\$31,185.00
TOTAL			\$178,050.00