

1st Reading 1/23/2024  
2nd Reading 1/23/2024

BILL NO. 23-73

ORDINANCE NO. 5427

AN ORDINANCE APPROVING AN AGREEMENT WITH SWT DESIGN FOR CONSULTANT SERVICES FOR PHASE THREE OF THE WHITECLIFF PARK QUARRY ENHANCEMENT PROJECT PHASE 3, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ALL NECESSARY DOCUMENTS IN CONNECTION WITH THE SAME ON BEHALF OF THE CITY

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WHEREAS, the City of Crestwood, Missouri (the “City”) issued a Request for Proposals on November 16, 2023, for consultant services for Phase 3 of the Whitecliff Park Quarry Enhancement Project (the “Project”); and

WHEREAS, the City received four proposals, which City staff evaluated and ranked on December 1, 2023; and

WHEREAS, City staff recommends SWT Design for the Project as the most responsive proposal; and

WHEREAS, the Project is being primarily funded through the Municipal Parks Grant; and

WHEREAS, the Board of Aldermen finds the cost of the Project to be reasonable due to the continual increase in labor and material costs, and that an agreement with SWT Design as the most responsive proposal is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CRESTWOOD, MISSOURI, AS FOLLOWS:

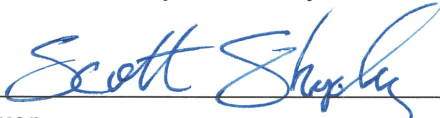
SECTION 1: An agreement with SWT Design for consulting services for Phase 3 of the Whitecliff Park Quarry Enhancement Project in an amount not to exceed \$69,750.00 is hereby approved, in substantially the form as attached as Exhibit A and made a part hereof.

SECTION 2: The City Administrator, or his designated representative, is hereby authorized to approve reimbursable expenses at rates set forth in SWT Design's proposal and to approve and execute change orders in the event of contingencies or additional work related to the Agreement pursuant to the City's Purchasing Policy.

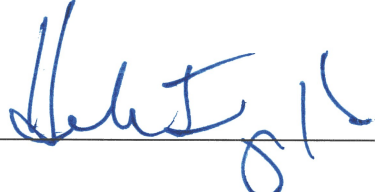
SECTION 3: The Mayor and the City Clerk are hereby authorized and directed to execute the Agreement with SWT Design on behalf of the City, and to take such further action as may be reasonably necessary to carry out the intent and purposes of this Ordinance.

SECTION 4: This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and its approval by the Mayor.

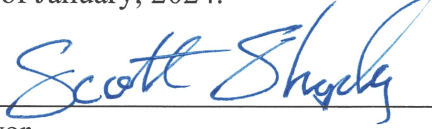
PASSED AND SIGNED THIS 23<sup>rd</sup> day of January, 2024.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED this 23<sup>rd</sup> day of January, 2024.

  
\_\_\_\_\_  
Mayor

**EXHIBIT A**

**AGREEMENT**

THIS AGREEMENT is made and entered into as of this 23<sup>rd</sup> day of January , 2024, by, and between the City of Crestwood, Missouri (“City”), One Detjen Drive, Crestwood, Missouri, and SWT Design Inc. (“Consultant”), with offices at 7722 Big Bend Blvd, St. Louis, MO 63119

WITNESSETH THAT:

WHEREAS, the City issued a Request for Proposals dated November 16, 2023, for proposals for a Consultant for Phase 3 of the Whitecliff Park Quarry Enhancements Project (“RFP”); and

WHEREAS, Consultant submitted a proposal in response to the City’s RFP on December 1, 2023 (“Proposal”); and

WHEREAS, the City has selected the Consultant to provide consulting services for Phase 3 of the Whitecliff Park Quarry Enhancements Project in accordance with the terms of the RFP and the Proposal; and

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements herein contained, the parties do hereby agree as follows:

1. Consultant Selection. City does hereby employ Consultant for the purpose of performing the services and work set out herein and per the scope as set forth in the RFP and in the Proposal, and Consultant agrees to perform such services (hereafter the “Work”).
2. Work and Project. The Work to be performed includes all the includes the furnishing of all necessary professional, technical, and other services as described in Exhibit A attached hereto (“Project”). Consultant shall perform all of the Work described in this Agreement, in the RFP, and in the Proposal, in accordance with the terms and conditions hereof (the “Contract Documents”). In the event of any conflict or discrepancy between the terms of this

Agreement and the RFP and Consultant's Proposal, the terms and provisions of this Agreement shall govern.

3. Assignment-Subcontracting. No part of the Work to be performed by Consultant hereunder shall be assigned or subcontracted without the prior written consent of City. The consent of City shall in no way relieve the Consultant of its responsibility for the quality and performance of the Work. Consultant shall include in any such consented to subcontract all of the terms and conditions of this Agreement and make any subcontractor(s) subject thereto.
4. Providing of Information. Upon reasonable request by Consultant, City will provide to Consultant such relevant information of record as is available to City. It is understood that City has no responsibility for the accuracy of any such information provided.
5. Consultant Responsibilities. Consultant shall be responsible for:
  - (a) Performance of all Work in accordance with the instructions issued by City, and the terms and provisions of this Agreement.
  - (b) The professional quality, technical accuracy and coordination of all Work and, without additional compensation, the correction of any errors or deficiencies in the Work.
  - (c) Consultant and any subcontractors shall maintain all records pertaining to costs incurred and make such records available for inspection by City at all reasonable times during the performance of the Work and for a period of three (3) years from the date of final payment hereunder. Copies of any such records shall be furnished to City, if requested by City.
6. Term and Time of Completion. The term of this Agreement shall commence as of the date hereof and continue until the Project is complete and accepted by the City, unless terminated sooner by the City as provided herein. Consultant shall perform its services to meet the schedule as expeditiously as is consistent with the exercise of professional skill and care and the orderly progress of the Project. Should the Consultant, or in case of default, the surety, fail to complete the Work and the Project within the completion date specified the City is

entitled to withhold payment until the Work is complete. Notwithstanding the foregoing, in no event will Consultant be responsible for damages or deductions due to delays beyond Consultant's reasonable control.

7. Agreement Changes. The City may make changes to this Agreement, provided that no changes shall be made to the scope of the Work, time of performance, compensation or any provision which may affect the cost of the Work, without a written amendment to this Agreement executed by both parties. Any amendments to this Agreement mutually agreed to shall be in writing and signed by the City and the Consultant.
8. Document Forms. Documents to be prepared by Consultant hereunder are to be on forms provided by the City, to the extent practicable and relevant.
9. Consultant Insurance. Consultant shall procure and maintain during the period of this Agreement insurance, as follows:

(a) Workers' Compensation as required by law and employer's liability coverage in an amount not less than \$2,000,000.

(b) Commercial general liability which provides combined single limit coverage, including property damage and bodily injury, including:

Death	\$2,000,000 each person \$2,000,000 each occurrence
Property Damage	\$2,000,000 each occurrence \$2,000,000 general aggregate

(c) Automobile liability, which provides combined single limit coverage, including:

Death	\$2,000,000 each person \$2,000,000 each occurrence
Property Damage	\$2,000,000 each accident

(d) Professional liability \$2,000,000 each occurrence  
\$2,000,000 general aggregate

The commercial general liability policy shall be endorsed to cover the liability of Consultant hereunder. City shall be named as an additional insured on the commercial general liability and automobile liability policies and such insurance shall be primary and non-contributory with respect to any insurance maintained by the City. Each such policy shall be written by a company or companies licensed to do business in the state of Missouri and acceptable to the City. Certificates of insurance shall be furnished to City prior to the commencement of the Work. Each such policy shall provide that it shall not be canceled or altered, without 15 days prior written notice to City. **The certificate of insurance must state "the City of Crestwood is an additional insured on a primary and non-contributory basis."**

10. Consultant Indemnity. Consultant shall indemnify and hold harmless the City, its board of aldermen, officers, representatives, agents and employees, from and against any and all liabilities, demands, losses, claims or suits, including costs and reasonable attorneys' fees, for and on account of any kind of injury, loss or damage, or any other circumstances, sustained by the City, its board of aldermen, officers, representatives, agents and employees, arising from the breach of this Agreement or resulting from the negligent acts, errors or omissions of Consultant, any subcontractor, and each of their respective agents, employees or contractors arising out of the Work.
11. Performance of the Work. Consultant's completion of the Work and the Project in accordance with the time limits set forth in Article 6, Term and Time of Completion, is an essential condition of this Agreement.
12. Delays Beyond Consultant's Control. (a) If the Consultant fails to complete the Work and the Project in accordance with Article 6 solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Consultant's control, the Consultant shall not be required to pay damages to the City pursuant to this Article 12 hereof. If, as a result of any such cause beyond the Consultant's control, then the time of completion shall be extended. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefore is made in writing by the Consultant to the City, and no extension of time shall be granted if the Consultant could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

(c) Weather shall not constitute a cause for granting an extension of time.

(d) In the event a delay is caused by the City, the Consultant's sole remedy shall consist of its rights under this Article 12.

13. City Representative. The City representative shall be the Director of Parks and Recreation, provided that the City Administrator may, at his sole discretion, designate another City representative from time to time. In such event, City shall notify Consultant of such change in writing.

14. Notice. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to have been delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; or (c) one business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed to the parties as follows (or to such other addressee or address as shall be set forth in a notice given in the same manner):

City: Director of Parks and Recreation  
City of Crestwood  
9245 Whitecliff Park Lane  
Crestwood, MO 63126

Consultant: SWT Design  
Attn: Jay Wohlschlaeger

15. Conflict-Discrepancy. In the event of any conflict or discrepancy between the terms of this Agreement and the RFP and Consultant's Proposal, the terms and provisions of this Agreement shall govern.

16. Severability. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed severable. In such event, this Agreement shall be enforced as if such invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision.
17. City Decisions. The City will determine whether the documents to be furnished hereunder are in compliance with the requirements of this Agreement and will decide all questions which may arise concerning the proper performance of this Agreement. The City's decisions in these respects shall be final and conclusive.
18. Consultant Warranties. Consultant warrants and represents that it has the experience, skill, expertise, personnel and equipment necessary in order to perform and to complete the Work and the Project and that it will perform all of such Work in accordance with the terms hereof and in accordance with the highest standards of competency, in a professional and workmanlike manner.
19. Compensation and Payment. City shall pay Consultant for the Work and Project, the total not to exceed amount of \$69,750.00 plus reimbursable expenses, as approved in advance by the City in writing, to be charged at the rates set forth in the Proposal. That amount shall be payable in accordance with the provisions of Exhibit B attached hereto and incorporated herein by reference. City shall have the right, upon reasonable prior notice, to examine all of the pertinent records of Consultant.
20. Ownership Rights. The City shall own all right, title and interest, including without limitation, all copyrights and intellectual property rights, to all documents and work product of Consultant created in performance of or relating to this Agreement.
21. Immunity Retention. By execution and performance of this Agreement, the City does not intend to, nor shall it be deemed to have waived or relinquished any immunity or defense on



behalf of the City, and the City's board members, officers, directors, servants, employees, agents, successors or assigns.

22. Legal Compliance. Consultant and its employees, agents and representatives shall comply with the City's policies and procedures and all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, codes and ordinances required of Consultant in performing the services pursuant to this Agreement.
23. Independent Contractor. Consultant shall perform all services as an independent contractor and not as an employee of the City. The City shall not assume any liability for the direct payment of any salary, wage, workers compensation, income tax withholding, or any other type of compensation to Consultant for the services. Consultant shall obtain as necessary and pay for all permits, fees, licenses and taxes applicable to Consultant and the services for the project.
24. Waiver. No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
25. Binding Effect. This Agreement shall become effective immediately upon the execution of same by the duly authorized representatives of the City and Consultant.
26. Termination. City shall have the right to terminate this Agreement at any time and for any reason upon ten (10) days advance written notice. In the event of such termination, Consultant shall be compensated in accordance with the terms of the Agreement for all services performed to the effective date of such termination, plus any approved costs. All drawings and documents prepared by Consultant shall become the property of City.
27. FWAP Documentation. Consultant has provided to the City, or will provide to the City, no later than the execution of this Agreement, all documentation and required affidavits that

Consultant has enrolled in, and participates in, a Federal Work Authorization Program, as required by Section 285.530 Missouri Revised Statutes with respect to the employees working in connection with the contracted services. Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

28. Governing Law-Jurisdiction. This Agreement shall be governed, construed and interpreted under Missouri law, and shall be deemed to be executed and performed in the County of St. Louis, Missouri. Any legal action arising out of, or relating to this Agreement shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive exercise of jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Louis, Missouri, or federal court located in the City of St. Louis, Missouri.
29. Consultant Representations. Consultant acknowledges and represents that (i) Consultant is legally authorized to transact business in the State of Missouri and to provide the services required hereunder, (ii) the entering into this Agreement has been duly approved by the Consultant, and (iii) the undersigned is duly authorized to execute this Agreement on behalf of Consultant and to bind Consultant to the terms hereof.
30. Headings. All paragraph headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF CRESTWOOD, MISSOURI

By: Scott Shuck  
Mayor

ATTEST:

Lucy D  
City Clerk

CONSULTANT:

By: Jay Walsh  
its: PARTNER

ATTEST:

Bonnie C. Roy

**EXHIBIT A**

**SCOPE OF SERVICES**

1. The City's Request for Proposals for a consultant for Phase 3 of the Whitecliff Park Quarry Enhancements Project; and also,
2. The Consultant's Proposal.

**EXHIBIT B**

**PAYMENT**

During the Work Consultant will invoice periodically as proposed and agreed to by the City. City will make payment as agreed to in the Scope of Services.

Upon completion of the Work and the Project, Consultant shall submit to the City a final application or request for payment.

Upon receipt and approval of the application or request for payment and the related supporting documentation, the City shall make payment in full to the Consultant within thirty (30) days