



Agenda Report

City Council

Date: February 27, 2024

To: Brian Saeki, City Manager

From: Shannon DeLong, Assistant City Manager
Virginia Santana, Director of Parks, Recreation and Community Services
Erin Hamilton, Community Services Manager

Subject: Professional Service Agreement with SWA for First Avenue Park Concepts

RECOMMENDATION

- 1) Approve and authorize the City Manager to execute a sole-source agreement with SWA, in an amount not to exceed \$40,500 to provide Concept Design Services for the 11280 First Avenue Property; and
- 2) Adopt Resolution No. 2024-12, amending the Fiscal Year 2023-24 budget with a supplemental appropriation for the expenditure of \$40,500 for the Concept Design services for the 11280 First Avenue Property using Assembly Bill 1600 Impact Fees.

BACKGROUND

In May and June of 2021, the property owners of the 2.14-acre property located at 11280 First Avenue, adjacent to the Greenway Trail East Extension between First Avenue and Heathfield Drive, reached out to staff to offer the property for sale to the City, proposing that it may be a better used as a park than a new private development.

On June 23, 2022, a Letter of Intent to purchase Real Property was executed by the City. The Property owners signed a Letter of Intent agreeing to the sale price of \$2,323,575.

On December 13, 2022, City Council authorized the City Manager to execute the agreement for the acquisition of real property located at 11280 First Avenue for additional park space along the Greenway Trail East Extension.

DISCUSSION

With the completion of the Greenway Trail East Extension and the finalized purchase of the property at First Avenue, Staff recommends exploring the possibilities for the park space utilizing the newly approved Park Master Plan and the professional Services of SWA for Concept design. SWA is a multi-disciplined design firm providing architectural, planning, engineering, and interior design services which has previously assisted the city on the Parnell Park and Streetscape/Greenleaf Promenade projects. SWA has proposed providing conceptual design services to include:

- Site Constraints
- Opportunities analysis

Agenda Item No. 12.Q.

- Project visioning
- Two (2) design concepts
- Topographic site survey
- Base mapping
- Preliminary Title Report
- Conceptual grading to verify the feasibility of two (2) design concepts
- Conceptual opinion of probable cost
- A digital 3D Model
- Up to six (6) conceptual renderings in Lumion format

The firm's prior experience with City projects gives them an awareness of the City's historical context, architectural styles and community needs, as well as an understanding of the City's design approvals and construction process. Thus, a sole-source Professional Service Agreement (Attachment A) is recommended for the firm to provide design concept services for the First Avenue Property for an amount not to exceed \$40,500.

FISCAL IMPACT

Adoption of Resolution No. 2024-12 (Attachment B) will appropriate \$40,500 from the Park Impact Fees reserve account (100-245021) to the Parks CIP Fund's First Ave Park account (635-22-981-922 852280) to fund this agreement.

STRATEGIC PLANNING GOAL

Goal 3: Maintain & Enhance Quality of Life

ATTACHMENTS

- A. Professional Services Agreement
- B. Resolution No. 2024-12

**PROFESSIONAL SERVICES AGREEMENT
WITH
SWA**

THIS AGREEMENT is made and entered into this 27th day of February, 2024 (“Effective Date”), by and between the CITY OF WHITTIER, a municipal corporation (“CITY”), and SWA, 570 Glenneyre St., Laguna Beach CA (“CONSULTANT”).

WITNESSETH:

A. CITY proposes to utilize the services of CONSULTANT as an independent contractor to provide professional design services for a proposed 1st Avenue Greenway Park, as more fully described herein.

B. CONSULTANT represents that it is “design professional” as that term is defined by California Civil Code Section 2782.8 and it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated.

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

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

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

1.0. SERVICES PROVIDED BY CONSULTANT

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

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

1.3. Performance to Satisfaction of City. CONSULTANT agrees to perform all the work to the complete satisfaction of the CITY and within the hereinafter specified. Evaluations

of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, CITY in its discretion has the right to:

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

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

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

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

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

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. CONSULTANT shall be paid in accordance with the fee schedule set forth in Exhibit "A". CONSULTANT's total annual compensation shall not exceed Forty-Seven Thousand Five Hundred Dollars (\$40,500.00), unless CITY has given specific advance approval in writing.

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

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

2.4. Records and Audits. Records of CONSULTANT's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY or its Project Manager for inspection and/or audit at mutually convenient times for a period of five (5) years from the Effective Date.

3.0. TIME OF PERFORMANCE

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

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such

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

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of 15 months, ending on June 30, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

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

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

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

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

5.0. INSURANCE

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

- (a) Broad-form commercial general liability, with coverage at least as broad as the most current version of ISO Commercial General Liability coverage form CG 00 01,, and shall include insurance for premises and operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury and personal and advertising injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), per occurrence and \$4,000,000 aggregate. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for all owned, hired, and non-owned vehicles at least as broad as the most current version of ISO Business Auto Coverage Form CA 00 01, with a policy limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident. CONSULTANT agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed

by CONSULTANT for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the CITY, the CONSULTANT shall file with the Human Resources/Risk Management Director the following signed certification:

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

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

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00) per claim/occurrence, and not less than Three Million Dollars (\$3,000,000) annual aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

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

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

- (a) Additional insureds: "The CITY and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the CONSULTANT pursuant to its contract with the CITY; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; automobiles owned, leased, hired, or borrowed by the CONSULTANT."
- (b) Notice: "Said policies shall not terminate, nor shall they be cancelled or coverage reduced, until thirty (30) days after written notice is given to the City."

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

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

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

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

6.0. GENERAL PROVISIONS

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

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

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

6.3. Project Managers. CITY shall designate a Project Manager to work directly with CONSULTANT in the performance of this Agreement. It shall be the CONSULTANT's

responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision, which must be made by CITY, to the Project Manager. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Project Manager.

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

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

IF TO CONSULTANT:

SWA Group
570 Glenneyre Street
Laguna Beach, CA 92654
Tel: 949-497-5471
Attn: Sean O'Malley
Email: somalley@swagroup.com

IF TO CITY:

City of Whittier
13230 Penn Street
Whittier, CA 90602
Tel: 562-567-9301

Email:
sdelong@cityofwhittier.org

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

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

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

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

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

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

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

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

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

6.13. Public Records Act Disclosure. CONSULTANT has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by CONSULTANT, or any of its subcontractors, pursuant to this Agreement and provided to the CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 7920.000 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 7924.510(f) and of which CONSULTANT informs the CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The CITY shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

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

conflict of interest statute.

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

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

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

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

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

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

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

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

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

continuing waiver.

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

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

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

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

SWA Group

Sean O'Malley, Contracting Agent

Date: _____

CITY OF WHITTIER
A municipal corporation

BRIAN SAEKI, City Manager

Date: _____

ATTEST:

RIGOBERTO GARCIA JR., City Clerk

Date: _____

APPROVED AS TO FORM

KEITH F. COLLINS, City Attorney

Date: _____

EXHIBIT A
PROPOSAL

SWA Laguna Beach

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

Sean O'Malley
Xiao Zheng
Dhaval Barbhaya
Stephen Rydzon
Gerdo P Aquino
Thomas Balsley
Kinder Baumgardner
Matt Baumgarten
Natalia Beard
René Bihan
Shuyi Chang
Richard Crockett
Ning Deng
Marco Esposito
Leah Hales
Ying-Yu Hung
Bill Hynes
Jeremy Klemic
Hui-Li Lee
James Lee
Margaret Leonard
Chih-Wei Lin
Ye Luo
Scott McCready
Charles S McDaniel
Timothy Peterson
Haifeng Ren
Rhett Rentrop
Michael Robinson
R Joseph Runco
Raymond Siu
David P Thompson
James Vick
John L Wong
Jack Wu
Shuntaro Yahiro
Ji Hyun Yoo
Peiwen Yu
Yang Zhang

February 14, 2024
Revised February 22

City of Whittier
13230 Penn Street
Whittier, CA 90602

Attn: Shannon DeLong, Assistant City Manager
Re: 1st Avenue Greenway Park Concept Design
Whittier, Los Angeles County, California

Dear Shannon:

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

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

SWA shall provide professional services on the project referenced above, the extent of which is indicated on the attached drawing entitled Exhibit A, which may be generally described as the vacant lot adjacent the City's Greenway Trail East of 1st Avenue. SWA has teamed with TAIT & Associates, Inc. (TAIT), and will update the concept studies previously provided to be in alignment with programming recommended by the City's Parks Masterplan.

BASIC PROFESSIONAL SERVICES

A. Concept Design

1. SWA will provide:
 - a. Site constraints and opportunities analysis.
 - b. Project visioning and programming.
 - c. Two (2) design concepts, each with the following:
 - i. Concept plan.
 - ii. Conceptual location and character of site furnishings, amenities, and signage, as applicable per project vision and programming.
 - iii. Reference imagery.
 - iv. One (1) round of revisions per Client comments.
 - v. Conceptual Opinion of Probable Cost.
 - vi. Concept design presentation slides for Client's presentation purposes, in digital format.
2. Additional revisions will be considered Additional Services.



B. TAIT will provide:

1. Review of topographic site survey, base mapping and Preliminary Title Report provided by the Client.
2. Conceptual grading to verify feasibility of two (2) design concepts.
3. Conceptual opinion of probable cost.

C. OPTIONAL SERVICES

1. If elected by the Client, for one (1) concept design selected by the Client, SWA will provide:
 - a. A digital 3d model.
 - b. Up to six (6) conceptual renderings in Lumion format,
 - c. These services will be provided for an additional fixed sum of Eight Thousand (\$8,000) Dollars.

D. Limitations of SWA Scope of Work

1. The contribution of SWA to the project shall be limited to areas of design and aesthetics and SWA does not assume responsibility for the work of others in the production of construction documents or the sufficiency thereof necessary to the execution of the work.
2. Design of Scope Items shall not include structural provisions for support of such items in the structure of the building; penetrations of the structure of the building for structural, mechanical, electrical or plumbing connections; actual connection to structural, mechanical, electrical and plumbing systems of the building; waterproofing of the structure or protective covering of that waterproofing; or waterproofing of penetrations of the structure.

E. Meetings

1. Attend one (1) virtual kickoff meeting with the Client to discuss project goals.
2. Visit the site to verify and obtain additional documentation of existing conditions.
3. Attend up to two (2) virtual meetings with the Client for progress review.
4. Attend one (1) in-person meeting with the City Council, if needed.
5. Additional meetings or presentations, if requested by the Client, shall be provided as Additional Services for an amount to be agreed upon between the parties in writing prior to commencing work.

F. The duration to complete these services will not exceed five (5) weeks.

DESIGN APPROVAL

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

EXCLUSIONS TO SCOPE OF SERVICES

Items not specifically identified in the scope of services sections of this proposal are excluded from this work effort and if requested by the Client shall be considered Additional Services. The Client shall provide the following information or services as required for performance of the work. SWA assumes no responsibility for the accuracy of such information or services

and shall not be liable for error or omissions therein. Should SWA be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

1. Topographic site survey.
2. Base mapping.
3. Finish grading provided by the Client's Civil Engineer.
4. WQMP/SWPPP.
5. Traffic Engineering / Traffic Control.
6. Striping and signage plans.
7. Engineering other than that provided within the Scope of Services.
8. BIM or Revit drawings.
9. Site environmental studies and documentation.
10. Irrigation.
11. Waterproofing design.
12. Filing or permit fees.
13. Responses to agency reviews.
14. Expediting, code, zoning consultant.
15. Graphic design, wayfinding.
16. Professional renderings.
17. Any item not specifically addressed in this proposal.

FEES FOR PROFESSIONAL SERVICES

Services outlined under the Basic Professional Services shall be provided for the fixed sum of Thirty-Two Thousand Five Hundred (\$32,500) Dollars, not including Optional or those Excluded Services above. If the Client elects to include Optional Services, the fee will be increased to Forty Thousand Five Hundred (\$40,500) Dollars.

ADDITIONAL SERVICES

Additional Services are services other than those listed under Basic Professional Services. Provided SWA has been paid per this Agreement, Additional Services will be provided for an amount to be agreed upon between the parties in writing. The following is a list of principals committed to this project:

Principal(s)	Rate / Hour
O'Malley	\$341
Rydzon	\$225

Other principals, if used on this project, have rates ranging from \$220 to \$352 an hour. These rates may be increased subsequently without written notice. Current staff rates range between \$115 and \$180.

Cost of models, professional renderings, special process printing, special equipment, special printed reports or publications, maps and documents requested by the Client are subject to an additional fee to be agreed upon between the parties in writing prior to commencement.

OTHER TERMS AND CONDITIONS

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

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

SWA shall have the right to suspend services on this project, without penalty, if (a) the Client fails to make payments when due or otherwise is in breach of this agreement; or (b) the parties have not executed a written contract for SWA's services and unpaid invoices have been rendered with an aggregate balance exceeding \$5,000.

This Agreement binds SWA and the Client and their successors, assigns and partners. Neither party shall assign or transfer, his interests, rights or obligations in this Agreement without the written consent of the other party hereto.

There are no understandings or agreements except as herein expressly stated with respect to the subject matter herein. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of the Agreement are declared to be severable. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

It is understood that these services may be terminated upon ten (10) days written notice for good reason by either party. In this event, SWA shall be compensated for all work performed prior to date of termination at the rates set forth above. This proposal shall be considered revoked if acceptance is not received within sixty (60) days of the date hereof.

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

If this proposal meets with your approval, please issue a formal agreement, or sign below and return one copy for our files so we may commence with work.

Sincerely yours,

SWA Group



Sean O'Malley

Contracting Agent

Landscape Architect, CA License #3286

Landscape Architects are licensed by the State of California.

SOM/LK/SR/dp

Proposal copyright ©2024 by SWA Group. No portion of this proposal may be copied or distributed to without the written permission of SWA Group.

Accepted: City of Whittier, a municipal corporation

Signed: _____

By: _____

Title: _____

Email: _____

Date: _____

In order to expedite invoicing, please indicate the following:

Billing Address:

Company Name: _____

Address: _____

Attention: _____

Email: _____

Your reference name/number:

Your Purchase Order or Contract Number reference for invoicing:

EXHIBIT A

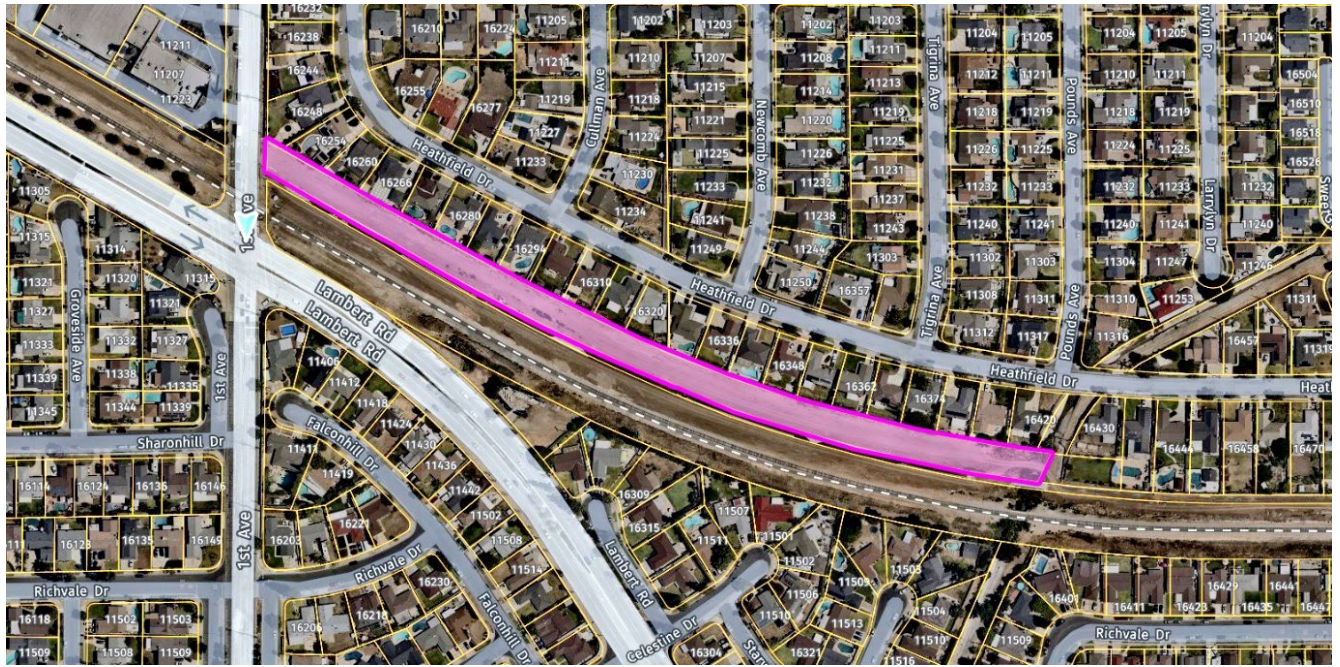


EXHIBIT B
CERTIFICATES OF INSURANCE

Affirmation of Compliance of Labor Code Section 3700

PROFESSIONAL SERVICES AGREEMENT WITH SWA

Agreement Number: _____ (City to Provide)

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

Signature: _____

Name and Title _____

RESOLUTION NO. 2024-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2023-24 BUDGET WITH A SUPPLEMENTAL APPROPRIATION FOR THE EXPENDITURE OF \$40,500 FOR THE CONCEPT DESIGN SERVICES FOR THE 11280 FIRST AVENUE PROPERTY USING ASSEMBLY BILL 1600 IMPACT FEES

RECITALS

- A. The City desires to retain design services for a new park at 11280 First Avenue.
- B. It is necessary to amend the Fiscal Year 2023-24 Budget to allocate the supplemental appropriation for the concept design services.
- C. The Assembly Bill 1600 Impact Fees –DESIGN Park Impact Fees Account is available to supplement the \$40,500 appropriation.

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

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

SECTION 2. The following appropriation shall be reallocated from the reserve account and added to the following account in the City's FY 2023-24 Budget:

Account No.	Account Name	Amount
100 245021	Reserved for Park Impact Fees	(\$40,500)
635-22-981-922 852280	First Ave Park	\$40,500

SECTION 3. The City Clerk shall certify to the passage and adoption hereof.

APPROVED AND ADOPTED this 27th day of February 2024.

JOSEPH A. VINATIERI, Mayor

ATTEST:

RIGOBERTO GARCIA, JR., City Clerk
(seal)