

★ Roll Call Number
20-1127

Agenda Item Number
43

Date July 13, 2020

ACCEPTING PROPOSAL OF SMITHGROUP, INC. FOR CONSULTING SERVICES FOR THE DEVELOPMENT OF BIRDLAND PARK AND MARINA MASTER PLAN AND AUTHORIZING CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENT FOR SAME

WHEREAS, the Parks and Recreation Department desires to develop a master plan for Birdland Park and Birdland Marina; and

WHEREAS, on April 13, 2020, the Procurement Division issued a Request for Proposals (N20-176) for Consulting Services for the Birdland Park and Marina Master Plan (RFP) to twenty-two (22) potential consultants and received eight (8) proposals in response; and

WHEREAS, the Evaluation and Selection Committee has reviewed the proposals and has recommended that the proposal submitted by SmithGroup, Inc., a Michigan corporation, John Kretschman, Director of Operations, 44 E. Mifflin, Suite 500, Madison Wisconsin 53703, for a fee of \$180,835.00 be accepted.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the proposal submitted by SmithGroup, Inc. is approved and accepted and that the City Manager is authorized to negotiate and execute an agreement with SmithGroup, Inc. for the above described consultant services for a fee of \$180,835.00 on behalf of the City, subject to approval as to form by the Legal Department, and the City Clerk is authorized to attest to the City Manager's signature.

(Council Communication No. 20- 318) Moved by Gatto to adopt.

APPROVED AS TO FORM:

Ann DiDonato
 Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN				✓
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			1

MOTION CARRIED APPROVED
J. M. Franklin Cownie Mayor

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik City Clerk

**AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES, IOWA,
AND SMITH GROUP, INC. FOR CONSULTANT SERVICES FOR BIRDLAND PARK
AND MARINA MASTER PLAN**

THIS AGREEMENT for Consultant Services (“Agreement”) is made by and between the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, hereinafter referred to as the "City" and SMITH GROUP, a Michigan corporation located at 44 E. Miffin Street, Suite 500, Madison, WI 53703 referred to as the "Consultant". This Agreement is not valid until signed by the City representative set out below.

WHEREAS, the City desires to procure consulting services to prepare a master plan report for the Birdland Park and Marina study corridor including Birdland Drive (“the Project”); and

WHEREAS, on April 13, 2020, the Procurement Division issued a Request for Proposals (N20-176) for Consulting Services for the Birdland Park and Marina Master Plan (RFP) to twenty-two (22) potential consultants and received eight (8) proposals in response; and

WHEREAS, on July 13, 2020, by Roll Call No. 20- 1127, the City Council accepted the proposal submitted by Consultant for a fee of \$180,835.00 (“the Proposal”); and

WHEREAS, this Agreement is intended to formalize and implement the provisions of the RFP and of the Proposal, both of which are made a part of this Agreement by this reference.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1: SCOPE OF SERVICES TO BE RENDERED

Consultant agrees during the term of this Agreement to provide to the CITY, under the terms and conditions set forth in this Agreement, the Services and Deliverables which are described in the Scope section of the Proposal, pages 36 through 44, and in the RFP Sections 2.C-F as shown on pages 4 through 6 with the modifications detailed below:

Proposal addition #1 | Page 36 | Task 1.1 - Under “Anticipated information to review”, add Central Iowa Water Trails concepts for improvements within the project study corridor shown on page 27 of the RFP.

Proposal addition #2 | Page 39 | Task 2.2 - Under “Alternative development will include the following:” paragraph/bullet number four add the following sentence to the end of the paragraph. “Architectural concepts for Guzman Building or replacement structure developed by Central Iowa Water Trails will be considered.”

Proposal addition #3 | Page 43 | Task 3 Deliverables - Under “Master plan drawings of key structures”, delete “Guzman Building Modifications” and replace with “Refined Guzman Building Modifications based upon the Central Iowa Water Trails concepts or replacement structure if deemed appropriate.”

Proposal addition #4 | Page 43 | Task 3 Deliverables - Under “Master plan drawings of key structures”, delete “Modifications to the Existing Marina building” and replace with “Modifications to the Existing Marina building or replacement structure if deemed appropriate.”

Proposal addition #5 | General note | Digital files shall be made available in portable document file (PDF) format.

The project will be under the leadership of the City of Des Moines, with an Advisory Committee including primary stakeholders providing additional guidance. The Advisory Committee will include 23 individuals representing the 18 groups identified below.

1. City of Des Moines Parks and Recreation Department
2. City of Des Moines City Manager’s Office
3. City of Des Moines Engineering Department
4. City of Des Moines Facilities Department
5. City of Des Moines Public Works Department
6. City of Des Moines Finance Department
7. City of Des Moines Civil and Human Rights Department
8. City of Des Moines Community Development Department
9. City of Des Moines City Council
10. Polk County Board of Supervisors
11. Park and Recreation Board
12. Friends of Des Moines Parks
13. Union Park Neighborhood Association
14. Captain Roy’s
15. Birdland Marina Tenants
16. Des Moines Rowing Club
17. Des Moines Powerboat Club
18. Central Iowa Water Trails

The Consultant agrees to perform this Scope of Services for the CITY, and to do so in a timely and satisfactory manner.

SECTION 2: CONTRACT ADMINISTRATION

The Director of Parks and Recreation of the City of Des Moines, Iowa (Director), or their designee, shall be the liaison between Consultant and the City for the purpose of administration of the services to be performed under this Agreement. The services to be performed by Consultant shall at all times be subject to the general supervision of the Director, or their designee.

SECTION 3: TERM OF CONTRACT

Consultant shall complete all services outlined in this Contract on or before February 26, 2021, providing no unforeseen delays are experienced beyond the control of the Consultant. A later date may be mutually agreed to by the parties.

The Consultant shall complete Task 1, Task 2, and Task 3 as identified in the Proposal per the Proposed Project Work Plan shown on pages 30 and 31 of the proposal with the work period initiating on August 3, 2020.

SECTION 4: PRICES AND PAYMENT

CONSULTANT's fee for all work performed under this Agreement (Scope of Services) shall be \$180,835.00, which includes all travel and charges for reimbursable costs. Payments to CONSULTANT shall be made on a monthly basis for the work performed based on the percentage of work completed to the date of the invoice, and not based on hourly rates, and reimbursable costs incurred during each month following receipt of properly detailed and City approved invoices. Final payment shall be made upon delivery and acceptance by the City of the final written report and following Consultant's presentations to the City Council and Parks and Recreation Board.

SECTION 5: CONTRACT DOCUMENTS

This Agreement shall include and be composed of: (1) this Agreement, (2) the Proposal, and (3) the RFP. In the event of any conflict or inconsistency between this Agreement and the other documents comprising the Agreement, the hierarchy of precedent shall be as listed above. This Agreement may be amended by execution of a written amendment executed by both parties.

SECTION 6: MEETINGS

At the request of the Director, or their designee, meetings shall be every other week as the performance of this Agreement progresses on a digital meeting format or at a mutually convenient location when possible. Consultant shall prepare and present such information as may be pertinent or necessary to enable the Director to pass critical judgment on the features and progress of services under this Agreement.

SECTION 7: PROGRESS REPORTS AND INFORMATION

Consultant shall furnish the City with a progress report submitted every other Wednesday by 5:00 pm beginning on August 12, 2020, which shall indicate the progress on each Task completed on the Project to the date of the report, together with a description of the status of services in progress during Consultant's performance under this Agreement. Consultant shall also, upon request of the Director, or his designee, furnish the necessary documentation to verify the reported progress in the performance of said services.

SECTION 8: ACCESS TO CONSULTANT'S RECORDS

Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred in performing work covered by this contract. The City or any of its duly authorized representatives upon no less than thirty (30) days prior written notice shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying (each at the City's sole cost and expense) during normal business

hours. All such books, records, and documents shall be retained by Consultant for three (3) years from the date of final payment under this Agreement and the City may only exercise its rights under this Section 8 one (1) time during any twelve (12) month period.

SECTION 9: OWNERSHIP OF DOCUMENTS

Except as otherwise provided below, Consultant agrees that the City shall become the sole and exclusive owner of all reports, studies, designs, design plans, images, drawings, photographs, models, survey notes, reports, specifications, studies, records and other data and documents, in whatever form, prepared under this Agreement, including without limitation, those prepared by Consultant's subcontractors or subconsultant's ("the Works") upon completion or termination of the services of Consultant. Consultant hereby irrevocably assigns, transfers and conveys to the City all right, title and interest in and to the Works created under this Agreement, and all intellectual property rights and proprietary rights arising out of such Works, including copyrights, patents, trademarks, and derivative works and interests. Consultant warrants to the City that the Works will be free from any claims or encumbrance of intellectual property or proprietary rights of Consultant or any third party, including any employee, agent, contractor, sub-consultant, subcontractor, subsidiary or affiliate of Consultant. Upon completion or termination of this Agreement and payment of all fees due and owing to Consultant, Consultant will immediately turn over to City all Works not previously delivered to City.

To the extent any of Consultant's rights in the Works are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Consultant hereby irrevocably and unconditionally waives such rights and enforcement thereof and agrees not to challenge the City's right in and to the Works.

SECTION 10: TERMINATION

If the City determines in its discretion that Consultant is not satisfactorily performing in accordance with the terms and conditions of this Agreement, or that further performance by Consultant under this Agreement is no longer beneficial to the City, the City may terminate Consultant's services under this Agreement by giving Consultant written notice of such termination upon no less than thirty (30) days prior written notice. In said event, the City shall promptly pay Consultant for all satisfactory services rendered by Consultant prior to notice of such termination.

SECTION 11: INSURANCE AND INDEMNIFICATION

Consultant shall defend, pay on behalf of, indemnify and hold harmless the City as provided for in Section 4 of the RFP- Insurance and Indemnity/Endorsements, shown in Attachment 1 to this Agreement. Consultant shall obtain and maintain in continuous effect during the term of this Agreement with the City and while any of its obligations remain unsatisfied, the insurance coverages, limits, waivers and endorsements set forth in Section 4 of the RFP, shown in Attachment 1 to this Agreement, and shall provide the City with a certificate of insurance showing such coverages prior to execution of this Agreement.

SECTION 12. NON-DISCRIMINATION

Consultant shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, gender identity, disability or familial status and shall furnish evidence of compliance with this provision when so requested by the City.

SECTION 13: CHOICE OF LAW

This Agreement will be governed by and interpreted and construed in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall be brought in the Iowa District Court in Polk County, Iowa or the United States District Court for the Southern District of Iowa. If any provision of this Agreement is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

SECTION 14: FORCE MAJEURE

Except for any payment obligations, neither party hereto will be liable for any failure or delay in performing under this Contract where such failure or delay is due to causes beyond its reasonable control, including natural catastrophes, governmental acts or omissions, laws or regulations, war, terrorism, labor strikes or difficulties, communications systems breakdowns, hardware or software failures, transportation stoppages or slowdowns or the inability to procure supplies or materials.

SECTION 15: NOTICES, PAYMENTS AND INVOICES

All notices which the parties are authorized or required to give one another pursuant to this Agreement, and all reports, payments and invoices, shall be in writing and may be personally delivered, sent by ordinary mail, or sent with a nationally recognized overnight carrier to the addresses hereafter provided. Mailed notices, reports, payments or invoices shall be deemed to be received by the party to whom directed five (5) business days after being deposited into the United States mail. Such notices, reports, payments and invoices shall be delivered or mailed to the following persons at the addresses listed:

CITY:

Benjamin R. Page
Director of Parks and Recreation
City of Des Moines
1551 East MLK Jr. Parkway
Des Moines, Iowa 50317
prpage@dmgov.org

CONSULTANT:

John Kretschman
Director of Operations
SmithGroup, Inc.
44 E. Miffin Street, Suite 500
Madison, WI 53703
john.kretschman@smithgroup.com

SECTION 16: MISCELLANEOUS

Cooperation. The City shall cooperate with Consultant in connection with the performance of its services hereunder, including providing Consultant with reasonable and timely access to the City's information, data, and personnel.

Consent and Good Faith Dealings. The parties hereby covenant, each to the other, that each will deal with the other equitably, and will take into account the reasonable commercial expectations of the other in the exercise of rights and obligations hereunder.

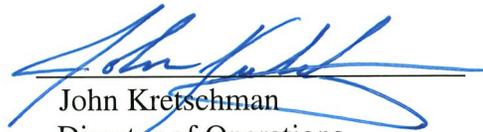
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 12th day of August, 2020 by their duly authorized representatives.

CITY OF DES MOINES, IOWA



Scott Sanders
City Manager

SMITHGROUP, INC.



John Kretschman
Director of Operations

FORM APPROVED:



Ann DiDonato
Assistant City Attorney

ATTEST:



P. Kay Cmelik
City Clerk

ATTACHMENT 1

CITY OF DES MOINES, IOWA PROFESSIONAL SERVICES - GENERAL

INSURANCE & INDEMNIFICATION REQUIREMENTS

(Section 4 of the RFP)

For the purposes of this Attachment and all provisions included herein, the term "CITY" shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The CONSULTANT shall purchase and maintain insurance to protect the CONSULTANT and CITY throughout the duration of the Agreement. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies, except professional liability, shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

- A. COMMERCIAL GENERAL LIABILITY INSURANCE: Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form. ***The CITY shall not be included as an Additional Insured.***

- B. CONTRACTUAL LIABILITY: The Contractual Liability coverage required above shall include the cost of defense and settlement. CONSULTANT agrees to submit to its insurance carrier, on behalf of the CITY, any claim or demand against the CITY for which the CONSULTANT has agreed to defend, indemnify and hold the CITY harmless

in Section 3 Indemnification below, and to do so in a timely manner so required in its insurance policies.

C. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE:
CONTRACTUAL LIABILITY: As required by State of Iowa Workers' Compensation Law, the CONSULTANT shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONSULTANT is not required to purchase Workers' Compensation Insurance, the CONSULTANT shall have a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.***

D. PROFESSIONAL LIABILITY INSURANCE: Professional Errors and Omissions Insurance with limits not less than \$1,000,000 per claim and in the aggregate.

E. CANCELLATION & NONRENEWAL NOTIFICATIONS: The CONSULTANT shall provide the City with no less than ten (10) days notification of cancellation or nonrenewal of General Liability Insurance and Professional Liability Insurance policies required above.

Written notifications shall be sent to: City of Des Moines, Procurement Administrator, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

F. WAIVER OF SUBROGATION: To the fullest extent permitted by law, CONSULTANT hereby releases the CITY from and against any and all liability or responsibility to the CONSULTANT or anyone claiming through or under the CONSULTANT by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The CONSULTANT'S Workers Compensation Insurance and General Liability Insurance policies shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY, including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.

G. PROOF OF INSURANCE: The CONSULTANT shall provide the following proof of insurance to the CITY:

- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of

Operations/Locations/Vehicle/Special Items” and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.

Mail Certificates of Insurance to: City of Des Moines, Procurement Administrator, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

H. AGENTS, SUBCONSULTANTS AND SUBCONTRACTORS: The CONSULTANT shall require all its agents, subconsultants and subcontractors who perform work and/or services on behalf of the CONSULTANT to purchase and maintain the types of insurance customary for the services being provided.

3. INDEMNIFICATION REQUIREMENTS

For other than professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys’ fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONSULTANT’S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY’S employees, consultants, agents or others for whom the CITY is responsible.

For professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys’ fees and court costs and economic damages that may be recovered from or suffered by the CITY that arise out of any negligent act, error or omission of the CONSULTANT, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY’S employees, consultants, agents or others for whom the CITY is responsible.

CONSULTANT’S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers’ compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONSULTANT arising out of or in any way connected or associated with CONSULTANT’S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY or the CITY’S employees, consultants, agents or others for whom the CITY is responsible.

CONSULTANT expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

CONSULTANT shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and CONSULTANT will observe all applicable safety rules.