



**Roll Call Number**

**Agenda Item Number**

21-1339

30

**Date** August 23, 2021

ACCEPTING PROPOSAL OF M.A. ARCHITECTURE, INC. FOR CONSULTANT SERVICES FOR THE GRUBB COMMUNITY RECREATION CENTER PROGRAMMING AND PLANNING, APPROVING AGREEMENT FOR SAME, AND AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT

WHEREAS, the Parks and Recreation Department desires to establish a program and conceptual design for the Grubb Community Recreation Center and to develop a comprehensive vision for the project site, including adjacent Brian Melton Field; and

WHEREAS, on April 5, 2021, the Procurement Division issued a Request for Proposals (N21-95) for Consulting Services for the Grubb Community Recreation Center Programming and Planning to nineteen (19) potential consultants and made publicly available via the Engineering website and received seven (7) proposals in response; and

WHEREAS, the Evaluation and Selection Committee has reviewed the proposals and has recommended that the proposal submitted by M.A. Architecture, Inc., an Iowa corporation, 900 Keosauqua Way, Studio 431, Des Moines, IA 50309, for a fee of \$137,800.00 including reimbursable expenses be accepted, with optional services that may be provided at the City's sole discretion of \$25,000 for website services and \$10,000 for statistical survey tool services for a total of \$172,800; and

WHEREAS, Facilities Division and Parks and Recreation Department staff have negotiated an agreement for such services, a copy of which is in the City Clerk's Office.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the proposal submitted by M.A. Architecture, Inc. is approved and accepted and that the City Manager is Authorized to execute an agreement with M.A. Architecture, Inc. on behalf of the City for the above described consultant services for a fee of \$137,800.00 including reimbursable expenses, with optional services that may be provided at the sole option and discretion of the City in the amount of \$25,000 for website services and \$10,000 for statistical survey tool services for a total of \$172,800.

(Council Communication No. 21-316)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Kathleen Vanderpool  
Kathleen Vanderpool  
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED			APPROVED	

**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.

J. M. Franklin Cownie  
Mayor

P. Kay Cmelik  
City Clerk

**AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES, IOWA,  
AND MA ARCHITECTURE, INC. FOR CONSULTANT SERVICES FOR  
GRUBB COMMUNITY RECREATION CENTER  
PROGRAMMING AND PLANNING**

**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 MA Architecture, Inc., Melinda Aust, AIA, LEED AP, President and Principal, 900 Keosauqua Way, Studio 431, Des Moines, Iowa 50309 herein after 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 Program Report for the Grubb Community Recreation Center (CRC) (“the Project”); and

**WHEREAS**, on April 5, 2021, the Procurement Division issued a Request for Proposals (N21-95) for Consulting Services for Grubb Community Recreation Center Programming and Planning (RFP) to nineteen (19) potential consultants and made publicly available via the Engineering website, and received seven (7) proposals in response; and

**WHEREAS**, on August 23, 2021, by Roll Call No. 21-~~1339~~, the City Council accepted the proposal submitted by Consultant for a fixed fee of \$132,000, and reimbursable expenses not to exceed \$5,800, plus additional optional services for website services in the amount of \$25,000 and \$10,000 for statistical survey tool services at the sole option and discretion of the City (“the Proposal”) for a total of \$172,800; 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**

- A. Base Services. 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 Proposed Project Work Plan and Performance of Services sections of the Proposal, pages 27 through 33 and in the RFP, Sections 2.C-F as shown on pages 7 through 10 with the modifications detailed below. Consultant shall not begin work until receiving a Notice to Proceed for the base services.
- B. Optional Services. Consultant agrees to provide the following additional optional services, at the City’s sole option and discretion. If the City elects to have Consultant provide such services, it will authorize Consultant to provide one or both services by issuing a separate Notice to Proceed for the optional services. Consultant is not

authorized to proceed with the Optional Services unless and until given a written Notice to Proceed by the City as to the optional services.

1. Website: Create and manage a separate project page for the City's website to be able to communicate the project information to the public and generate excitement. The separate project page content updates and page analytics will be provided at milestones specified or agreed to by the City throughout the project. Project feedback will be solicited from the public to coincide with public meetings to allow for both in person and virtual feedback loops. The separate project page will be created in coordination and in accordance with any requirements of the City of Des Moines Information Technology (IT) Department. The project page, including all content and design, will be owned by the City of Des Moines in accordance with Section 9 herein.
  2. Statistical Survey: Perform online/web survey and guide the development of survey questionnaires and provide sampling expertise. Provide response tracking during data collection and analyze quantitative data and other types of analysis. The survey will be embedded into the separate project page. All information and data collected will be owned by the City in accordance with Section 9 herein.
- C. Schedule: Upon City's written Notice to Proceed for the base services set forth in A above, Consultant shall submit a revised schedule for completion of Phases and Tasks based on the Project start date, the City's requirements for report draft completion no later than February 1, 2022 and formal presentation to City Council and final report submitted to Parks and Recreation no later than April 2022. The Consultant agrees to perform this Scope of Services for the City, and to do so in a timely and satisfactory manner. If the City elects one or both of the optional services described in B above, the Consultant will provide a schedule and timeline for completion acceptable to the City for those services.
- D. Subconsultants: The Consultant agrees to include in and make a part of all subagreements all portions of this Agreement which relate to the Subconsultants' work including the Nondiscrimination portions of this Agreement. Consultant agrees to include in all subagreements that the City is an intended beneficiary of the subagreement. The following listed Subconsultants shall be deemed to be approved when this Agreement is executed: Latent Design, Genus Landscape Architects, C-Wise Design and Consultant, IMEG, and The Sports Facilities Companies.

## **SECTION 2: AGREEMENT ADMINISTRATION**

The City Architect, or her 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 City Architect, or her designee.

### **SECTION 3: TERM OF AGREEMENT**

Consultant shall complete all services outlined in this Contract on or before April 30, 2022, providing no unforeseen delays are experienced beyond the control of the Consultant. A later date may be mutually agreed to by the parties.

### **SECTION 4: PRICES AND PAYMENT**

- A. FEE: Consultant's fee for all work performed under this Agreement (Scope of Services) for the base services shall be \$132,000 and not to exceed \$5,800 for reimbursable expenses for a total of \$137,800. Reimbursable expenses mean the direct non-salary expenses incurred by the Consultant which are directly attributable and properly allocable to the project. Such costs are not included in the overhead expense pool and may include travel and subsistence, reproductions, computer charges, materials, and supplies. 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.
- B. OPTIONAL SERVICES AT CITY'S SOLE DISCRETION: The City may elect at its sole option and discretion, upon a separate written Notice to Proceed for the optional services, to have Consultant provide the optional services included in Consultant's Proposal for website services in the amount of \$25,000 and/or statistical survey tool services in the amount of \$10,000. Consultant is not authorized to proceed or to provide either service unless the City provides a separate written Notice to Proceed to Consultant to provide the optional services. If a separate written Notice to Proceed is given by the City for the optional services, Consultant's fee for all work performed for the website services shall be \$25,000 and Consultant's fee for all work performed for the statistical survey tool shall be \$10,000, which fees include all reimbursable expenses.

### **SECTION 5: AGREEMENT DOCUMENTS**

This Agreement shall include and be composed of: (1) this Agreement, (2) the Proposal submitted by Consultant on May 3, 2021, and the July 20, 2021 Revised Project Costs, 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. NOTE: usually 2 and 3 are reversed in order, but this is OK if Facilities wants this. The Exceptions/Deviations or other Agreements section of Section 5 of the Proposal are not included in this Agreement.

This Agreement may be amended by execution of a written amendment executed by both parties.

## **SECTION 6: MEETINGS**

At the request of the City Architect, 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 City Facility Manager to pass critical judgment on the features and progress of services under this Agreement. Consultant shall prepare minutes of all such meetings and provide them to the City within 2 business days of such meeting.

## **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 Agreement. 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 rights, 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 Agreement 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:**

Ann Sobiech Munson  
City Architect  
City of Des Moines  
1551 East MLK Jr. Parkway  
Des Moines, Iowa 50317  
[ASMunson@dmgov.org](mailto:ASMunson@dmgov.org)

**CONSULTANT:**

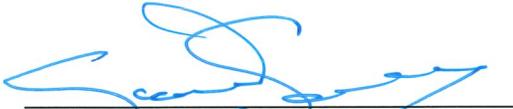
Melinda Aust  
Principal  
MA Architecture  
900 Keosauqua Way, Studio 431  
Des Moines, IA 50309  
[mindy@architecturema.com](mailto:mindy@architecturema.com)

**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.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by their duly authorized representatives.

**CITY OF DES MOINES, IOWA**

  
\_\_\_\_\_  
Scott Sanders  
City Manager

**MA ARCHITECTURE, INC.**

  
\_\_\_\_\_  
Melinda Aust  
Principal and President

**FORM APPROVED:**

  
\_\_\_\_\_  
Kathleen Vanderpool  
Deputy City Attorney

**ATTEST:**

  
\_\_\_\_\_  
P. Kay Cmellek  
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.