

SMITHGROUP

LETTER FORM PROPOSAL ("AGREEMENT")

Date: November 1, 2022

Transmitted via email to: Tom.Molbeck@cityofracine.org

Tom Molbeck
Director PRCS
City of Racine – Parks, Recreation and Cultural Service Department
1420 13th Street
Racine, WI 53403

RE: Racine Coastal Resiliency and Improvements
Zoo Beach Access and Shoreline Protection Construction Assistance

Dear Matt:

On behalf of SmithGroup, Inc., ("SmithGroup") I am pleased to submit this proposal for the Zoo Beach Access and Shoreline Protection Contract Administration and Assistance project. The following is our understanding of the services we are to provide.

UNDERSTANDING OF THE PROJECT

The City of Racine (City or Owner) has requested SmithGroup provide the City with Contract Administration services during construction of the Zoo Beach Access and Shoreline Protection projects.

SCOPE OF SERVICES

Contract Administration Services for Zoo Beach Access and Shoreline Protection

SmithGroup will support the City of Racine (Client) by performing Contract Administration Services during the construction phase of the Zoo Beach Access and Shoreline Protection projects:

- Lead an on-site pre-construction meeting with the Contractor(s) to review project requirements, processes, and milestones;
- Review submittals and shop drawings;
- Review and respond to RFIs and assist the Client with any field orders or contract modifications;
 - Provide weekly on-site observation for the duration of construction process for up to 20 hrs per week. Prepare site observation reports. These will include:
 - Record progress of work;
 - Compliance with the drawings and specifications; and
 - Documentation of any unusual events.
- Review Contractor pay requests and provide recommendations to the City based on Contractor progress;
- Submit necessary Final Completion documents to applicable regulatory agencies upon completion of construction;
- Prepare punch lists, conduct a final walk through, review Contract closeout documentation and recommend Final

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- Payment to close out the Construction Contract; and
- Provide the Client with record drawings and an electronic disk in AutoCAD and Adobe Acrobat format of the record drawings. SG will not be re-surveying or taking field measurements of the constructed improvements and will be using Contractor supplied information along with submittal documents.

Deliverables

- RFI Responses
- Pay Request Reviews
- Field Orders and/or Contract Modifications
- Site Observation Reports (numbered per site visit to correlate to contracted visits)
- Documentation pertaining to shop drawing review records, calculations, change-orders, pay estimates, punch-lists, record drawings and electronic files, and substantial completion certificate.

Meetings

- 1 Onsite pre-construction meeting
- Weekly construction progress meetings (assume 12 weeks for construction)
- Site visits
 - Site visits will occur during times the contractor is completing work associated with:
 - Construction
 - Review of test sections and mockups
- 1 Punch-List Visit
- 1 Final Inspection

ASSUMPTIONS & OWNER RESPONSIBILITIES

- SmithGroup will serve as Resident Engineer and administer the Contract on behalf of The Client for the duration of construction activities.
- The Client will designate a single representative to act on its behalf for the duration of the project. The Client's representative shall review documents submitted by SmithGroup and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of SmithGroup's services.
- For the purposes of this work order it is assumed that construction will take 12 weeks to complete and will be completed by July 31, 2023. If additional construction time is required labor and expenses will be billed in accordance with the rates in the original contract.
- The total cost of this amendment includes all expenses.

PREPARATION OF DIGITAL DATA

In the event SmithGroup is requested to prepare digital data for transmission to the Owner's consultants, contractors or other Owner authorized recipients ("Digital Data"), the Owner acknowledges that due to the limitations of the digital data software, not all elements of SmithGroup's services may be represented in the Digital Data, this being in the sole discretion of SmithGroup. Accordingly, although SmithGroup will endeavor to represent all material elements of SmithGroup's services in the Digital Data, any use shall not relieve the Owner's consultants, contractors, or other Owner authorized recipients or their respective obligations. The Owner agrees that it will include this provision in any agreements with its consultants, contractors, or other Owner authorized recipients, in which Digital Data is provided.

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SCHEDULE

The specific schedule will be determined through consultation with the Client based on the contract approval timelines and goals with respect to project construction timing. It is the intention of the Client to have the project constructed within the 2023 Construction season.

CONSULTANTS

SmithGroup does not anticipate using consultants for this project.

COMPENSATION or PROFESSIONAL SERVICES FEE

The City of Racine shall compensate SmithGroup for the scope of services outlined above for a fixed lump sum fee of \$80,000, inclusive of all expenses.

ADDITIONAL SERVICES

Requests for additional services or staff will be documented by SmithGroup (if given verbally), and the work will commence upon City of Racine approval of an estimated fee for that effort or, if not agreed otherwise, City of Racine shall reimburse SmithGroup on an hourly basis of SmithGroup's project staff actively engaged for all personnel hours worked on the project.

PAYMENTS

Invoices will be prepared monthly based on percentage of completion.

All payments due to SmithGroup shall be made monthly upon presentation of the statement of services rendered. All payments due SmithGroup under this Agreement shall bear interest at one-and one-half (1½%) percent per month commencing thirty (30) days after the date of billing.

INTELLECTUAL PROPERTY

In rendering its Services, SmithGroup may create and provide to City of Racine documents which include (i) City of Racine internal data, analyses, recommendations, and similar items (collectively, "Client Data"), and (ii) data and/or recommendations that have been created by SmithGroup for the benefit of City of Racine as part of the Services (collectively, "SmithGroup Data"). In the development of SmithGroup Data, SmithGroup may use algorithms, software systems, plans, processes, tracking tools, contract assessment/ modeling tools, formulas, or data from third-party vendors, and other intellectual property owned by SmithGroup or which SmithGroup has the right to use as of or after the date hereof (including, without limitation, the format of SmithGroup's reports and any improvements or knowledge SmithGroup develops, whether alone or with others, in the performance of the Services) (collectively, "SmithGroup Tools"). City of Racine shall own, solely and exclusively, the Client Data delivered pursuant to this Agreement. City of Racine agrees that SmithGroup shall own, solely and exclusively, all SmithGroup Tools and all intellectual property rights therein whether or not registerable (including without limitation patents and inventions, trademarks, service marks, logos and domain names and all associated goodwill, copyrights and copyrightable works and rights in data

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and databases, and trade secrets, know-how and other confidential information). City of Racine acknowledges and agrees that SmithGroup may, and reserves the right to, use the Client Data and any information and data generated by the SmithGroup Tools solely in an aggregated, non-personally identifiable manner in order to create and improve the compilations, statistical analyses, or benchmarks provided by SmithGroup in any services (collectively, "Aggregate Data") as long as the resulting information does not identify City of Racine and City of Racine hereby grants to SmithGroup a perpetual, irrevocable, royalty-free license to use the Client Data, solely as described herein. All right, title and interest in and to the Aggregate Data shall inure to the sole and exclusive benefit of SmithGroup. With respect to any SmithGroup Data that is contained in any documents delivered by SmithGroup to City of Racine, SmithGroup grants City of Racine a royalty free, paid up, non-exclusive, perpetual license to use the SmithGroup Data solely in connection with City of Racine's internal use of the documents and for no other purpose. City of Racine acknowledges and agrees that all SmithGroup Data (including any advice, recommendations, information, or work product incorporated into the SmithGroup Data) provided to City of Racine by SmithGroup in connection with this Agreement is for the sole internal use of City of Racine, including all subsidiaries of City of Racine, and may not be used or relied upon by any third party; provided that City of Racine may incorporate into documents that City of Racine intends to disclose externally SmithGroup summaries, calculations or tables based on City of Racine information contained in Client Data, but not SmithGroup's recommendations or findings. SmithGroup retains all rights not expressly granted to City of Racine hereunder.

DELIVERY OF CADD GRAPHIC FILES

Any electronic/data/digital files (Files) from SmithGroup shall be deemed Instruments of Service, and/or Work Product, as the case may be, for the Project identified above. City of Racine covenants and agrees that: 1) the Files are Instruments of Service of SmithGroup, the author, and/or Work Product of SmithGroup, as the case may be; 2) in providing the Files, SmithGroup does not transfer common law, statutory law, or other rights, including copyrights; 3) the Files are not Contract Documents, in whole or in part; and 4) the Files are not As-Built files. City of Racine agrees to report any defects in the Files to SmithGroup, within 45 days of the initial Files transmittal date (Acceptance Period). It is understood that SmithGroup will correct such defects, in a timely manner, and retransmit the Files. City of Racine further agrees to compensate SmithGroup, as Additional Services, for the cost of correcting defects reported to SmithGroup after the Acceptance Period. City of Racine understands that the Files have been prepared to SmithGroup's criteria and may not conform to City of Racine's drafting or other documentation standards. City of Racine understands that, due to the translation process of certain CADD formats, and the transmission of such Files to City of Racine that SmithGroup does not guarantee the accuracy, completeness or integrity of the data, and that the City of Racine will hold SmithGroup harmless for any data or file clean-up required to make these Files usable. City of Racine understands that even though SmithGroup may have computer virus scanning software to detect the presence of computer viruses, there is no guarantee that computer viruses are not present in the Files, and that City of Racine will hold SmithGroup harmless for such viruses and their consequences, as well as any and all liability or damage caused by the presence of a computer virus in the Files. City of Racine agrees, to the fullest extent permitted by law, to indemnify and hold SmithGroup harmless from any and all damage, liability, or cost (including protection from loss due to attorney's fees and costs of defense), arising from or in any way connected with and changes made to the Files by City of Racine.

Under no circumstances shall transfer of Files to City of Racine be deemed a sale by SmithGroup. SmithGroup makes no warranties, express or implied, of merchantability or fitness for any particular purpose.

LIMITATION OF LIABILITY

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NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY LAW, The City of Racine AGREES THAT THE TOTAL LIABILITY OF SMITHGROUP IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OR OTHERWISE, SHALL NOT EXCEED AND SHALL BE LIMITED TO THE TOTAL COMPENSATION RECEIVED BY SMITHGROUP UNDER THIS AGREEMENT.

MISCELLANEOUS PROVISIONS

SmithGroup will use reasonable professional efforts and judgment in responding in the design to applicable federal, state and local laws, rules, codes, ordinances and regulations. The City of Racine acknowledges that certain state and local laws, rules, codes, ordinances and regulations may reference standards that are outdated and/or contrary with today's industry requirements. SmithGroup cannot and does not warrant or guarantee that the Project will comply with all such outdated and/or contrary federal, state and local laws, rules, codes, ordinances and regulations

Notwithstanding anything to the contrary, nothing contained herein shall be construed: i) to constitute a guarantee, warranty or assurance, either express or implied, that the SmithGroup's Services will yield or accomplish a perfect outcome for this Project; or ii) to obligate the SmithGroup to exercise professional skill or judgment greater than the standard of care exercised by other similarly situated design professionals currently practicing in the same locale as this Project, under the same requirements of this Agreement; or iii) as an assumption by the SmithGroup of liability of any other party.

SmithGroup will use reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as applicable to this Project. The City of Racine acknowledges that requirements of ADA, as well as other federal, state and local laws, rules, codes, ordinances and regulations, will be subject to various and possibly contradictory interpretations. SmithGroup cannot and does not warrant or guarantee that the Project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations

Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that there may be delays in the performance of this Agreement for the period that such delay is due to causes beyond a Party's reasonable control, including but not limited to Acts of God, government regulations, orders or controls (including, but not limited to, shelter-in-place orders and construction moratoriums), quarantine, epidemic or pandemic. Both parties shall make reasonable efforts to notify the other Party if a force majeure event will delay performance. In the event of such delay, neither Party shall be liable to the other Party for delay or damage caused. SmithGroup's fees for the remaining services and the time schedules shall be equitably adjusted as mutually agreed between the Parties before services are resumed.

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This document will serve as an agreement between us, and you may indicate your acceptance by signing in the space provided below and returning one (1) signed copy for our files.

SmithGroup (*Signature*)

Owner (*Signature*)

(*Printed name and title*)

(*Printed name and title*)

Date

Date

Attachment 'A'