

SMITHGROUP

LETTER FORM PROPOSAL (“AGREEMENT”)

Date: December 13, 2023

Transmitted – (Via Email)

David Biebel
Director of Public Works
City of Sheboygan
2026 New Jersey Ave
Sheboygan, WI 53081

RE: *City of Sheboygan – Deland Park Master Plan*

Dear *David*:

On behalf of SmithGroup, Inc., (“SmithGroup”) we are pleased to submit this proposal for the [Deland Park Master Plan Project](#). The following is our understanding of the services which are to be provided.

UNDERSTANDING OF THE PROJECT

The City seeks a master plan to guide modifications Deland Park, Harbor Centre Marina and the adjacent waterfront that will provide a greater range of recreation opportunities that are more inclusive to local residents, enhance connectivity along the waterfront and to downtown, and explore development opportunities on the former armory site and adjacent parcel. The goal of the master plan is to create to explore opportunities to enhance the quality of life in Sheboygan and increase access and use of the waterfront while creating a phaseable and implementable approach to change.

The current USACE north breakwater is failing and allowing sediment to pass through silting in portions of the marina reducing the area accessible. The building and pool are under-utilized and might be suitable to repurpose and there are opportunities to repurpose a portion of the parking lot area to incorporate alternative uses.

The master plan should consider the greater context of the lakefront, neighborhood, and park, including the former armory site, adjacent waterfront and uses and overall pedestrian mobility and connectivity, but the primary focus should be improvements to Deland Park, the marina facilities and parking.

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It is imperative to engage key stakeholders and residents, to generate interest and excitement, and create broad trust and support for transformative change to the waterfront. The plan should result in an implementation strategy that includes funding and phasing considerations and generate public interest and excitement for the improvements.

The City of Sheboygan will form a Core Leadership Team comprised of city staff to guide decision making for the project. We anticipate engaging additional key stakeholders. It is our understanding that key stakeholders will be invited from the following organizations. We anticipate engagement meetings with key stakeholders will generally be able to occur in smaller group settings.

- Visit Sheboygan
- Chamber of Commerce
- Sheboygan Downtown and Harbor Center BIDs
- Sheboygan County Economic Development
- Kohler Art Foundation
- Ellis neighborhood association
- District 3 and 7 Alders
- YMCA
- Sheboygan Yacht Club
- Sailing and kite surfing community
- Kite flying community
- NOAA | National Marine Sanctuary + Research Component
- Army Corps of Engineers
- WNRD
- Coast Guard

SCOPE OF SERVICES

The proposed scope of work for Deland Park and Marina represents SmithGroup's understanding of project needs. All deliverables identified in the scope will be provided in electronic format unless otherwise provided. For meetings identified in the scope, SmithGroup will provide agendas, facilitate discussions, and prepare summary memoranda.

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The following scope describes a process that leverages engagement and community input to inform design while enabling the Core Leadership Team (CLT) to guide the overall outcome. Three overall tasks inform the design process, first our team will seek to Understand, creating a basis of goals and needs for the plan, as well as understanding influences and restrictions. Second, we will Explore, working closely with the steering committee we will study a range of options that leverage different aspects of the goals, finally we will Resolve, by evaluating the alternatives with the Steering Committee, we will formulate a response that best serves the community, generates excitement, support, interest, and creates an implementable solution.

TASK 1: UNDERSTAND

The first task creates a thorough understanding of the existing site conditions and influences and develops goals, visions, and values with the community to use as a basis for developing design alternatives. As part of this first Task, SmithGroup will provide the following:

Task 1.1 Kickoff Meeting and Data Collection

Attend a virtual meeting with the CLT to confirm work plan, schedule, and process, identify key stakeholders, local and regional influences and review key components and potential considerations. Set up a bi-weekly call to keep the team connected and informed during the process.

During the call we will review the preliminary data sources available and document any initial data that may be required. Based on our previous work we have much of the anticipated data but will review the following to make sure we have the most up to date information.

- Base Data, including but not limited to topography, planimetric data including structures and paving, parcel boundaries and ownership, vegetation, easements, Rights of Way and Utilities
- Digital ortho photography
- Wetland inventory maps and delineations (if present)
- Site soil mapping including geotechnical analysis (if available)
- DNR or city correspondence regarding use, drainage, natural resources, restoration, regulatory needs or restrictions within or adjacent to the property
- Historic information including available historic photography
- Original document(s) regarding navigable waters and lakebed under the public trust doctrine
- Information regarding expected infrastructure improvement location in or adjacent to the site
- Previous or current planning studies such as Comprehensive Outdoor Recreation Plans, bike and pedestrian plan or comprehensive plans
- Any previously completed engineering, utility or brownfield evaluations of the area
- Known anticipated commercial development or planning adjacent to project site or downtown
- Past vehicle/pedestrian traffic studies/analysis adjacent to project site
- Past benchmarking or market research pertinent to the plans

Our team will assemble a basemap and with the data provided and provide a qualitative and quantitative site analysis memorandum of the existing conditions, codes and process.

Task 1.2 Stakeholder Interviews and Community Workshop 1

Over the course of a multi-day visit, we will conduct a site tour to review existing conditions and verify the desktop analyses performed, meet with the CLT and key stakeholders over a series of small group sessions. We anticipate four (4) ninety minute meetings with the stakeholders. We will conduct a goal-setting session and need assessment with the CLT and lead a public meeting and workshop in the evening that will include a presentation of our site analysis, and group work sessions to gather public input.

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Task 1.3 Project Website

Following the public Input meeting, we will set up a project website that can be used during the master plan to host content. The goal of the website will be to provide the public with a landing page updating the master planning process. This may include online surveys, meeting announcements, opportunities to provide input, and concept images. It is anticipated the website will be maintained by SmithGroup during the master plan process and will be transferred to the City following the approval of the plan.

Task 1.4 Online Survey

SmithGroup will prepare an online survey to gather additional input from city residents and parklands uses to expand outreach beyond the public meeting attendees. The survey will focus on gathering input on existing and potential uses, needs and goals. It will utilize an interface that mimics the public input experience, utilizing imagery and graphics with an opportunity for open-ended input. We anticipate the survey being live for three weeks following the public input meeting.

Task 1.4 Goals and Vision Summary

Following the public input period from the survey, we will summarize the public feedback and goals and develop a preliminary draft of principles, goals, and metrics and with diagrams and supporting imagery to demonstrate potential programming ideas and key relationships. Our team will review them with the CLT in a virtual presentation and incorporate committee input.

The site analysis, public input and project goals and vision will be summarized in a memo to be incorporated as part of the master plan document.

Task 1 Meetings

- Kickoff call
- Trip 1 (1.5 to 2 days)
 - Core Leadership Team Meeting
 - Stakeholder Interviews (4)
 - Community Workshop
 - Recap Meeting with Key City Staff
- Summary Call
- (2-3) City Staff coordination calls

Task 1 Deliverables

- Detailed work plan
- Meeting Notes for the kickoff and public meeting
- Community Workshop Presentation and on-line survey to be posted to the City Website.
- Site Inventory and Analysis report with codes, regulations and permits including.
 - Circulation
 - Existing structures and amenities
 - Marina facilities review
 - Summary of regulatory considerations
 - Lake Bed
 - Stormwater
 - Site programming and opportunity diagrams
 - Summary of Stakeholder, Steering Committee and public input
 - Visual preference survey results

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TASK 2: EXPLORE

Based on the goals and vision outlined in task 1, SmithGroup will conduct a charrette to explore alternative concepts and test design strategies with real time feedback from the CLT, Key Stakeholders and the Public. Over three and a half to four days, SmithGroup will conduct multi-disciplinary work session with urban designers, architects and landscape architects, civil and coastal engineers in Sheboygan. As part of this Task, SmithGroup will provide the following:

2.1 Charrette Preparation

SmithGroup will attend two virtual preparatory calls with the CLT to confirm the goals and outcomes of Task 1, refine the process and schedule for the days onsite, and review preliminary materials for the charrette.

2.2 Charrette

SmithGroup will conduct an on-site charrette with the project steering committee and key stakeholders, with an opportunity for ongoing public input. During the charrette, we will meet with the CLT and key stakeholders, share precedent and benchmarking examples, develop and present alternatives for feedback, create and present a preferred plan. The charrette will be open to the public, with a structured format that includes an alternatives presentation to solicit feedback and an open house to share a preliminary master plan. We envision a rough outline as follows and will work with the CLT to refine within the time allotted.

Day 1:

12:00-1-30: Design team CLT working lunch: Goals, opportunities, issues, guiding principles program

2:00 -6:00: Site walk with city staff and finalize workshop presentation

6:30 – 8:00: Community Meeting: Programming Workshop

Smaller groups – get a more detailed level of what we want to see

Team Dinner/Debrief

Day 2: Develop alternatives

7:00 -8:00 Team Breakfast

8:00-9:00 Team coordination meeting

9:00 – 11:30 Develop alternative concepts

11:30 – 1:00 CLT Review

1:00 – 5:00 Split Group (alternatives + technical review/stakeholder meetings)

6:30 – 8:00 Community Meeting 2: Open house/working session

Day 3:

8:00-9:00 Team Breakfast and debrief with CLT

9:00 – 5:00: Preferred Alternative

6:30 – 8:00 Community Meeting 3: Open House

Studio Breakdown

Day 4:

9:00 – 11:00 AM Debrief with CLT

Following the charrette, our team will Post Content online for three weeks to share the process with the public and solicit additional feedback.

Task 2.3 Council Presentation

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Following the charrette and online input session, our team will summarize feedback, and package the charrette materials along with recommendations for refinements. We will review the presentation with the CLT in a Virtual Meeting, incorporate minor feedback and then attend a City Council Presentation to review the process, feedback and preferred alternative and with proposed refinements for the master plan.

Task 2 Meetings

- Charrette Prep (2) virtual calls
- Trip 2: Charrette
- Summary review call
- In Person Council presentation

Task 2 Deliverables

- Charrette presentations and Summary
- Virtual Survey
- Council Presentation

TASK 3: REALIZE

The master plan will be developed based on the preferred alternative. As part of this task, we will refine the details of the plan, develop costs and implementation strategy. SmithGroup will provide the following:

Task 3.1 Preferred Alternative

Based on the direction of the CLT and feedback from the Council, we will refine the preferred charrette alternative plans by incorporating comments from the summary and review in a call. We will review markups and sketches with the CLT and establish a preferred direction that will be refined as the master plan.

Task 3.2: Master Plan

SmithGroup will develop the draft master plan graphics and summary report. The documents will include plans renderings and diagrams to convey overall intent and demonstrate the overall layout, form, and character of the proposed improvements at a master plan level. We will summarize how the plan meets the goals, metrics and priorities established for the site.

A rough 3d model will be prepared, with more detail at Deland Park and less detail in other areas, to convey the size and scale of proposed improvements relative to existing context.

The Master Plan will include a preliminary opinion of probable costs for park and marina improvements along with potential funding and phasing considerations, including a first phase with City Funding of approximately \$6M.

Task 3.2 Steering Committee Review and Open House (Trip 3)

We will review the draft master plan documents with the CLT, key stakeholders, and the general public to gain feedback on the proposed improvements. A final survey will be posted for additional community input.

Task 3.3 Master Plan Document

We will meet with city staff and the steering committee to review stakeholder and public input along with comments and markups on the draft master plan. We will work with City Staff to finalize a master plan and report and attend a presentation to city council for approval.

Task 3.4 Master Plan Presentation

Present plan at City Council for adoption

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Task 3 Meetings

- Preferred Alternative Review
- Trip 3
 - Steering Committee Presentation
 - Open House
- Final Master Plan Document Review
- In Person Council Presentation
- (4-5) City Staff coordination calls

Task 3 Deliverables

- Meeting Minutes for Steering Committee and public meetings
- Draft and Final Master Plan presentations
- Online Input of the master plan materials
- Final Master Plan Report (PDF)
 - Executive Summary
 - An overall plan with key features
 - 3D Model
 - Circulation and Parking Strategy
 - Master Plan drawings of key structures (size and general massing)
 - Conceptual Building Massing and rough square footages
 - Opinion of Probable Costs
 - Phasing Plan
 - Funding Considerations
 - Summary of process including meeting minutes, task 1 and 2 deliverables and public input

ASSUMPTIONS

The preceding scope of work was developed with the following assumptions:

- Base information will be compiled by the Client and provided to SmithGroup. If additional information is required we will work with the Client to identify the outside data sources required to perform the necessary work (i.e. surveys, etc.) for an additional cost.
- The Client will print, publish and/or mail any necessary meeting invitations or notices, reserve meeting space including tables and chairs and establish a list of project stakeholders.
- Meetings will be virtual unless otherwise specified
- The Client will set up venues for team meeting and presentations.

USE OF ANY SPECIALIZED EQUIPMENT

SmithGroup may, on occasion, use laser scanning equipment for data gathering purposes. Use of such equipment is for the limited purpose of assisting SmithGroup in processes associated with the delivery of its services and is not a survey or inspection of existing conditions.

PREPARATION OF DIGITAL DATA

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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.

SCHEDULE

A project schedule of 6-10 months is proposed for the scope of services outlined above. The final schedule will be determined in collaboration with the city to meet the project specific needs and expectations. We understand the city would like to start on a phase 1 design in the fall of 2024 to let for construction in 2025. The anticipated schedule for the master plan in 2024 is as follows:

- January: Project Kickoff
- February/March: Community Workshop 1
- May: Design Charrette
- July/August: Final Presentation

If additional services are required, or project delays outside the control of SmithGroup occur, the schedule and fee may need to be adjusted.

COMPENSATION

The City of Sheboygan shall compensate SmithGroup for the scope of services outlined above a fixed fee lump sum of \$ 245,000, inclusive of all expenses..

ADDITIONAL SERVICES

If requested, SmithGroup would be pleased to provide the following services for an additional fee:

- Attend additional meetings or presentations
- Prepare additional graphics or renderings
- Prepare documentation to support grant/private funding
- Coordinate data gathering, such as survey or bathymetry
- Cost Estimating for structures beyond general budget parameters
- Stormwaters considerations for on site improvements, not beyond site or part of broader stormwater infrastructure
- A pro-forma or business plan may be added for an additional fee if needed as an outcome of the charrette

PAYMENTS

Invoices will be prepared monthly on the basis of percentage of completion.

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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 Sheboygan** documents which include (i) **City of Sheboygan** 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 Sheboygan** 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 Sheboygan** shall own, solely and exclusively, the Client Data delivered pursuant to this Agreement. **City of Sheboygan** 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 and databases, and trade secrets, know-how and other confidential information). **City of Sheboygan** 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 Sheboygan** and **City of Sheboygan** 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 Sheboygan**, SmithGroup grants **City of Sheboygan** a royalty free, paid up, non-exclusive, perpetual license to use the SmithGroup Data solely in connection with **City of Sheboygan's** internal use of the documents and for no other purpose. **City of Sheboygan** acknowledges and agrees that all SmithGroup Data (including any advice, recommendations, information, or work product incorporated into the SmithGroup Data) provided to **City of Sheboygan** by SmithGroup in connection with this Agreement is for the sole internal use of **City of Sheboygan**, including all subsidiaries of **City of Sheboygan**, and may not be used or relied upon by any third party; provided that **City of Sheboygan** may incorporate into documents that **City of Sheboygan** intends to disclose externally SmithGroup summaries, calculations or tables based on **City of Sheboygan** information contained in Client Data, but not SmithGroup's recommendations or findings. SmithGroup retains all rights not expressly granted to **City of Sheboygan** 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 Sheboygan** 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**

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Sheboygan 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 Sheboygan further agrees to compensate SmithGroup, as Additional Services, for the cost of correcting defects reported to SmithGroup after the Acceptance Period. City of Sheboygan understands that the Files have been prepared to SmithGroup's criteria and may not conform to (Client's Name) drafting or other documentation standards. City of Sheboygan understands that, due to the translation process of certain CADD formats, and the transmission of such Files to City of Sheboygan that SmithGroup does not guarantee the accuracy, completeness or integrity of the data, and that the City of Sheboygan will hold SmithGroup harmless for any data or file clean-up required to make these Files usable. City of Sheboygan 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 Sheboygan 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 Sheboygan 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 Sheboygan. Under no circumstances shall transfer of Files to City of Sheboygan be deemed a sale by SmithGroup. SmithGroup makes no warranties, express or implied, of merchantability or fitness for any particular purpose.

LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY LAW, City of Sheboygan 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. City of Sheboygan 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. City of Sheboygan 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

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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.

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'