CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: November 30, 2015

ITEM: Resolution – Order Preparation of Plans and Specifications – 39th Street and E.P.True Parkway Park

FINANCIAL IMPACT: Expense not to exceed $35,700.00 including reimbursables to be paid from GO Bond funds budgeted in FY 15-16 in the 39th Street Site C.I.P. account (6561.75.840.6.7920). There is a total proposed budget of $350,000 for this project.

BACKGROUND: The Council is asked to approve an agreement with Genus Landscape Architects of Des Moines, Iowa for design services for the 39th Street and E.P.True Parkway Park project. The project involves grading and seeding of the site, construction of a parking lot to serve as a trailhead and overflow parking for rugby, installation of community gardens, and utilities. There will also be an open field area to provide practice space for sports groups.

The scope of services includes a site survey, design development, neighborhood meetings, site plan preparation, construction documents, assistance with bidding, and construction administration. Further details on the scope can be found in Attachment 1 from Genus Landscape Architects dated November 23, 2015 that is included with the City's standard agreement.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the Council approve the Resolution.

Lead Staff Member: Sally Ortgies

STAFF REVIEWS

Department Director	for Gary Scott
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed			
Recommendation	Yes	No	Split

Resolution Directing Preparation of Plans and Specifications, Form of Contract, and Estimate of Cost

WHEREAS, the FY 2015-16 City Budget request includes funding for the following described public improvement:

39th Street and E.P.True Parkway Park

and,

WHEREAS, to complete said project Plans, Specifications, Form of Contract, and Estimate of Cost need to be prepared; and,

WHEREAS, Parks and Recreation Department staff have recommended Plans, Specifications, Form of Contract, and Estimate of Cost be prepared by Genus Landscape Architects of Des Moines, Iowa;

Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that Genus Landscape Architects is hereby directed to prepare Plans, Specifications, Form of Contract, and Estimate of Cost for the above named public improvement project.

PASSED AND APPROVED this 30th day of November, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 30th day of November, 2015, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Genus Landscape Architects, (Fed. I.D. #_____), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

1. SCOPE OF SERVICES

   Services provided under this Agreement shall be as further described in Attachment 1, Scope of Services.

2. SCHEDULE

   The schedule of the professional services to be performed shall conform to the Schedule set forth in Attachment 2. Any deviations from the Schedule shall be approved by the authorized City representative. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

3. COMPENSATION

   A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment 3.

      I. Basic Services of the Consultant $35,700.00

   B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.

   C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services to the satisfaction of the City by performing the professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

4. INSURANCE

   A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant' representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.

B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least $1,000,000 each personal injury accident and/or death; $1,000,000 general aggregate personal injury and/or death; and $1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least $1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of $1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.

E. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines
Attn: Ryan T. Jacobson, City Clerk
Address: 4200 Mills Civic Parkway
City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

Name: Genus Landscape Architects
Attn: Brett Douglas
Address: 325 East 5th Street
City, State: Des Moines, IA 50309

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.

B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement ("Work Product") shall become the property of the City; and reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the

Consultant. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project.

15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

17. SOLICITATION AND PERFORMANCE

A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.

B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

18. SUSPENSION AND TERMINATION OF AGREEMENT

A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.

B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.

C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.

D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.

E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any sub-consultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

CONSULTANT	CITY OF WEST DES MOINES
BY:_____	BY:_____ Ryan T. Jacobson, City Clerk

ATTACHMENT 1

SCOPE OF SERVICES

Included with cover letter dated November 23, 2015

Noted as "Basic Services"

ATTACHMENT 2

PROJECT SCHEDULE

Site Survey	December, 2015
Design Development	January - February, 2016
Construction Documentation & City Approvals	February - March, 2016
Bidding	April, 2016
Construction Administration	July - September, 2016

ATTACHMENT 3

SCHEDULE OF FEES

Included with cover letter dated November 23, 2015

Additional Field Survey, Input Process, Construction Documentation, Bidding, and Construction Administration	$35,200.00
Estimated Reimbursable Expenses	$ 500.00
TOTAL	$35,700.00

gēnus
[landscape architects]

DRAFT

November 23, 2015

Mr. David Sadler
Parks & Recreation
City of West Des Moines
4200 Mills Civic Parkway, 1B
West Des Moines, IA 50265

RE: 39th + EP True Park
Professional Services Proposal
gēnus #15036

Dear Mr. Sadler:
The professional consulting firm of gēnus is pleased to submit the following professional services proposal to the City of West Des Moines for preparing design and engineering documents to facilitate public bidding, as well as construction administration services for a new park at 39th and EP True Parkway.

This proposal outlines the process, deliverables and fees associated with the project. Site survey and civil engineering services shall be provided by Bishop Engineering. The scope of services and methodology are based on our current understanding of the project requirements.

We look forward to working closely with you on the creation of this new park for the City of West Des Moines.

Respectfully submitted,

Brett Douglas, ASLA, PLA
Principal

325 EAST 5th STREET
DES MOINES, IA 50309

T 515 284 1010

WWW.GENUS-LA.COM

PART I

The firm of **gēnus**, hereinafter referred to as the Consultant, subject to the approval and acceptance of this Proposal by the City of West Des Moines, hereinafter referred to as the Client, agrees to provide Professional Services to the Client as set forth below:

I. PROJECT NAME + LOCATION
39th and EP True Park, [the Project].
West Des Moines, Iowa

II. PROJECT BUDGET: $311,765 [professional services + construction]

III. PROJECT DESCRIPTION
Design and engineering services for park improvements, including but not limited to: rugby practice field, paved parking lot for up to 40 in phase one and 40 future, as well as associated curb drops and connection to 39th Street, community gardens, shelter, and associated infrastructure. Where feasible and within budget, integration of green infrastructure and sustainable design measures will be explored for Client consideration.

IV. BASIC SERVICES
The Consultant shall coordinate the work and ongoing communication with the Client throughout the timeline of the Project to provide the following basic services.

A. SITE SURVEY

1. Complete a topographic survey at 1' contour intervals and spot elevations of features, as well as notation for all landscape elements – including size and species.
2. Public utilities will be located and identified. Private utilities will need to be located by the Client for the surveyor to include within the survey file.
3. Utility depths are not part of the basic services.
4. Easements shown on the recorded plat will be identified. Additional research on easements is not part of the basic services survey scope.
5. Survey will take approximately 1 month to complete, depending on weather and date of authorization.

B. DESIGN DEVELOPMENT

1. Kickoff Meeting [Meeting #1]
   Facilitate a programming meeting with the Client to review project goals and programming.
2. Prepare design drawings to define design intent of the project based on schematic plans provided by the Client.

3. Neighborhood Meeting [Meeting #2]
   Coordinate initial mailing or announcement to adjacent property owners with the Client. The Client shall define and provide the list of stakeholders to be notified for participation. The objective of this meeting is to introduce the project to stakeholders and solicit input on initial design plan option(s). Input will be considered and utilized to create a refined plan that will be shared with stakeholders at a second neighborhood meeting.

4. Design Progress Meeting [Meeting #3]
   Review plan options that integrate neighborhood input and green infrastructure strategies. The core goal of this meeting is to gain Client feedback and establish direction for creation of the final design development plan.

5. Coordinate design documents with consultant team,
   Design Development documents shall include:
   - Site Preparation Plan
   - Site Materials and Layout Plan
   - Site Grading Plan
   - Site Planting Plan
   - Sections [as warranted]
   - Utility Plans
   - Details to convey design intent

6. Prepare design development phase opinion of probable cost.

7. Submit cost opinion and design plans to Client for review and comment.

8. Design Progress Meeting [Meeting #4]
   Discuss design plans and cost opinion. Consultant to refine plan based on comments.

9. Neighborhood Meeting [Meeting #5]
   Present design development plan and project timeline to stakeholders.

C. CONSTRUCTION DOCUMENTS + CITY APPROVALS

1. Develop the Client-approved Design Development Documents into a set of construction drawings and specifications which will serve as the Contract Documents. These documents will include:
   - Site Preparation Plans
   - Site Layout and Materials Plans
   - Site Grading + Utility Plans
   - Site Plantings Plan
   - Site Sections [as warranted]
   - Site Details
   - SWPP Plan
   - Construction Specifications

2. City Site Plan Review + Park Board
   Prepare drawings and exhibits as necessary to fulfill the City review process. The Consultant shall present the project to City review boards as required.

3. Construction Document Submittals to Client
   - 90% Review Set with Probable Cost Opinion
   - 100% Bid Set with Probable Cost Opinion

D. BIDDING PHASE

1. Assist the Client with presentation to Council, establishment of bid phase schedule, public notice and, as required. This phase includes, but is not limited to the following:

   - Release bid set to bidders.
   - Attend pre-bid conference.
   - Prepare and release addenda
   - Attend bid opening.
   - Assist Client with bid tabulation and, if requested, make recommendations.

E. CONSTRUCTION ADMINISTRATION

1. Conduct site visits and issue site observation reports as part of monitoring progress and quality of work. The following visits and meetings are anticipated:

Meeting #1	Pre-construction
Visit #1-2	Site Grading + Drainage
Visit #3-4	Site Utilities
Visit #5-6	Site Paving/Layout
Visit #7	Site Retaining Wall
Visit #8-10	Landscape – seeding, soils and plants
Visit #11	Substantial Completion – prepare certificate.
Visit #12	Final Completion / Closeout

2. Send LASI's and respond to RFI's
3. Review contractor submittals / shop drawings
4. Review and process general contractor pay applications
5. Review testing and inspection reports
6. Review change orders with GC

V. DELIVERABLES

- Design Development Set for Client Review
- Permit and Approval Exhibits as required by City of WDM
- Construction Documents
  90% / 100% complete construction documents in digital format
- Meeting Minutes
- Probable Cost Opinion
- Construction Administration Field Reports

VI. CONSULTING FEE

For Basic Services provided by the Consultant as described in Section IV:

Site Survey	$ 5,100
Design Development	$ 8,700
Construction Documents + City Approvals	$11,000
Bidding Phase	$ 1,700
Construction Administration	$ 8,700
Total Consulting Fee	**$35,200**

VII. REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to compensation for professional services and include expenditures required by the Project or requested by the Client. Printing, plotting, copying, photography, special equipment rental or purchases, long distance telephone calls, shipping and deliveries, survey related materials and products, travel and related expenses shall be billed at cost. The reimbursables for this project shall be limited to the following amount without written authorization from the Client:

Project Reimbursable Expenses $500

VIII. EXCLUSIONS TO BASIC SERVICES

a. Geotechnical,
b. Architectural design for shelter
c. Electrical engineering
d. Irrigation design services
e. Construction testing services.
f. As-built drawings

IX. SCHEDULE

The Consultant shall complete the Scope of Services in a timely manner and shall coordinate scheduling with the Client as necessary to provide responsive service.

X. PAYMENT

All work shall be billed on a lump sum basis not to exceed the maximum amount specified. Fees, including reimbursable expenses, are due and payable in full within 30-days of the invoice date. The Consultant reserves the right to charge a service fee of 18% annum on the account if not paid within this timeframe, or stop work until the account is paid in full.

XI. AGREEMENT

Signatures below by the Client and Consultant shall constitute acknowledgement and acceptance of Part I and Part II of the Agreement. Without signatures, this Proposal expires in 30-days from the date of issue.

Brett Douglas 11.23.15

Genus Landscape Architects, P.C. Date

City of West Des Moines, Iowa Date

PART II

The engagement of Genus Landscape Architects by the Client is under the following terms and conditions and is an integral part of the collective Agreement between the Client and the Consultant.

1. The fee estimate for the proposed Scope of Services is valid for 30 days from the date of Proposal.

2. Payment to the Consultant is the sole responsibility of signatory of this Agreement and is not subject to third party agreements.

3. All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. All retainer amounts will be applied to the last invoice. A RETAINER OF $0.00 IS REQUIRED BEFORE SERVICES CAN COMMENCE UNDER THE AGREEMENT.

4. Requests for Additional Services and any associated fee adjustment must be authorized in writing before Additional Services can begin.

5. Invoices will be rendered monthly and become due upon receipt.

6. Invoice payments must be kept current for services to continue. If the Client fails to pay any invoice due to the Consultant within 30 days of the date of invoice, the Consultant may, without waiving any other claim or right against Client, suspend services under this Agreement until the Consultant has been paid in full all amounts due the Consultant and/or any of its Consultants and Subcontractors. The balance on overdue invoices shall be subject to an interest charge of 1.5% per month or 18% per annum accruing from the due date of the invoice.

7. If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within ten (10) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in the Consultant's favor and shall be calculated on the unpaid balance from the due date of the invoice.

8. The Consultant shall not be responsible for failure to perform or for delays in the performance of services which arise out of causes beyond the control and/or without the fault or negligence of the Consultant.

9. The Consultant's services will be performed on behalf of and solely for the benefit and exclusive use of the Client and Client's agents and designees for the limited purposes set forth in the Agreement.

10. To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees and subconsultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant under this Agreement, or the total amount of $50,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

11. The Client further agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and the Consultant's officers, directors, partners, employees and subconsultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant and the Consultant's subconsultants to all those named shall not exceed $50,000, or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising unless otherwise prohibited by law.

12. Per the Construction Administration section of Part I of this Agreement the Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Consultant, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, the Consultant shall keep the Client informed about the progress of the Work and shall endeavor to guard the Client against deficiencies in the Work. If the Client desires more extensive project observation or fulltime project representation, the Client shall request that such services be provided by the Consultant as Additional Services in accordance with the terms of this Agreement. The Consultant shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. The Consultant shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

13. The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification.

14. All documents including Drawings and Specifications prepared by the Consultant pursuant to the Agreement are instruments of service with respect to the Project. They are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse by the Client or a third person or entity authorized by the Client without written verification or adaptation by the Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to the Consultant; and the Client, shall release, indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting there from. Any such verification or adaptation will entitle the Consultant to additional compensation at rates to be agreed upon by the Consultant and the third person or entity seeking to reuse said documents.

15. In entering into this Agreement, the Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations or statements shall be considered a part of this Agreement or a basis upon which the Client relied in entering into this Agreement. No statements, representations, warranties or understandings, unless contained herein, exist between Client and the Consultant.

16. The Consultant agrees to comply with all Federal Equal Opportunity laws, orders and regulations. Without limiting the generality of the foregoing, the Consultant will not discriminate against any employee or applicant for employment by the Consultant because of race, creed, color, age, sex, marital status, national origin or disability. In addition, the Consultant will not discriminate against any employee or applicant for employment by the Consultant because of sexual orientation. The Consultant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, age, sex, marital status, special disabled veteran or Vietnam era veteran status, national origin, disability or sexual orientation. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertisement; (iii) layoff transfer; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

17. The Client agrees to include gēnus as Consultant for the Project, in all construction signage identifying the project, and will make his best effort to include the Consultant in appropriate press releases and promotional information.

18. The Consultant and their subconsultants shall be paid Additional Services for work related to disputes and questions arising out of the General Contractor and/or Subcontractors' disputes arising out of the Bidding and Construction process.

19. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to non-binding mediation unless the parties mutually agree otherwise. Disputes not settled by mediation shall be settled by a court of competent jurisdiction.

20. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, each party shall be responsible for paying their own costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

21. Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

22. In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

    The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.

    Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

    - Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
    - Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
    - Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
    - Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

    In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant for services rendered and reimbursable costs incurred by the Consultant in connection with this Agreement.

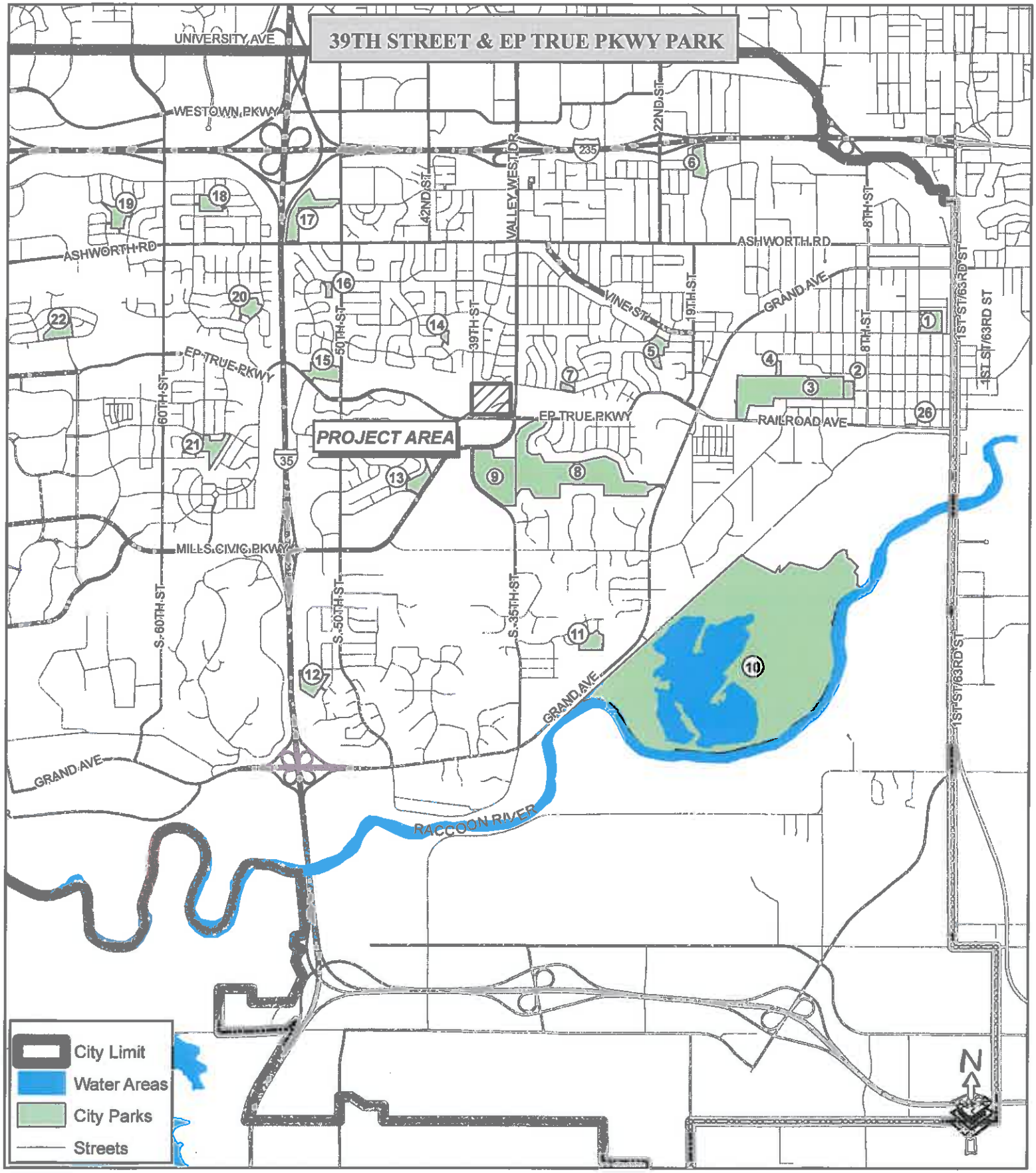
23. The Americans with Disabilities Act (ADA) regulations provide that it is a violation of these regulations to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can demonstrate that it is structurally impractical to meet the requirements. The Client understands that the requirements of ADA will be subject to various and possibly contradictory interpretations. The Consultant therefore will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other state, local, and federal regulations as they apply to the project. The Consultant however can not and does not warrant or guarantee that the Client's project will comply with all interpretations of ADA requirements and/or requirements of other federal, state, and local laws, rules, codes, ordinances and regulations as they apply to this project.

24. Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations. As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

25. The Client understands and agrees that products or materials that are permissible under current codes and ordinances may, at some future date, be banned or limited in use in the construction industry because of presently unknown hazardous and/or defective characteristics. The Client agrees that if any such product or material specified for this Project by the Consultant shall, at any future date be suspected or discovered to be defective or a health or safety hazard, then the Client shall waive all claims as a result thereof against the Consultant. The Client further agrees that if the Client directs the Consultant to specify any product or material after the Consultant has informed the Client that such product or material may not be suitable or may embody characteristics that are suspected of causing or may cause the product or material to be considered a hazardous substance in the future, the Client waives all claims as a result thereof against the Consultant and the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities or costs including reasonable attorneys' fees and defense costs, arising in any way from the specification or use of any products or materials which, at any future date, become know or suspected health and safety hazards.

26. Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the Client, the Consultant and the Consultant's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.

27. The Agreement, including these Terms and Conditions, represents the complete and integrated agreement between the parties; supersedes all prior agreements; may be amended only in writing; in binding upon the parties, their successors, assigns, and legal representatives; and shall be interpreted and governed in accordance with the laws of the State of Iowa.



1. Legion Park
2. Wilson Park
3. Holiday Park
4. Florer Park
5. Fairmeadows Park
6. Pearson Park
7. Kiwanis Park
8. East Jordan Creek Park
9. Southwoods Park
10. Raccoon River Park
11. Scenic Valley Park
12. Quail Cove Park
13. Ashawa Park
14. Western Hills Park
15. Jordan Creek Park
16. Knolls Park
17. CrossRoads Park
18. Jaycee Park
19. Peony Park
20. Meadowview Park
21. Willow Springs Park
22. Wild Rose Park
23. Brookview Park
24. Valley View Park
25. Maple Grove Park
26. Railroad Park
27. Huston Ridge Park
28. Woodland Hills Park

THE CITY OF WEST DES MOINES