Meeting Date: 07/27/2010

ACTION	TYPE OF ITEM
☐ Approved Recommendation	Info/Consent
☐ Ord. No(s). _____	■ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Ralph Alamillo RA Agenda Item No. O-2

Reviewed By: City Manager MMH City Attorney Holmberg SMF Finance JC Other NA

DATE: July 19, 2010

TO: City Council

FROM: Michael Henderson, General Services Superintendent MH
City Manager's Office

SUBJECT: **Agreement with RJM Design Group, Inc. for Design Services for GS09-21 Campus Park Development**

RECOMMENDATION

That City Council approves and authorizes the Mayor to execute Agreement No. 5103-10-CM with RJM Design Group, Inc., Landscape Architects in the amount of $826,835.00 for the design of the Campus Park Facility located at 937 West Fifth Street.

DISCUSSION

The City issued a Request for Proposal (RFP) for design services and selected RJM Design Group, Inc., Landscape Architects to design the Campus Park Development that will provide the City of Oxnard a new park. The new park will contain fields for soccer, baseball and track and field; a skate park, basketball courts, playgrounds, exercise area, walking track, restroom, snack bar, lighting and parking lots.

FINANCIAL IMPACT

Funding for this cost is contingent upon the approval of funding from Measure O.

MH/ra

Attachment #1 - Agreement No. 5103-10-CM

AGREEMENT FOR PROFESSIONAL SERVICES FOR LANDSCAPE ARCHITECTURAL SERVICES

This Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 1st day of June, 2010, by and between the City of Oxnard, a municipal corporation ("City"), and RJM Design Group, Inc. ("Consultant").

WHEREAS, City desires to hire Consultant to perform certain professional services specified herein as landscape architectural services; and

WHEREAS, Consultant represents that Consultant and/or Consultant's personnel have the qualifications and experience to properly perform such services:

NOW, THEREFORE, City and Consultant hereby agree as follows:

1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in Exhibit A attached hereto and incorporated by this reference in full herein.

2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the services described herein.

3. Standard of Performance

Consultant agrees to undertake and complete these services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with services to be performed for the City.

5. Coordination of Services

All services are to be coordinated with Project Manager subject to the direction of the City Manager or Department Manager.

6. Place of Work

Consultant shall perform the services provided for in this Agreement at any place or location and at such times as the Consultant shall determine.

7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of Consultant's services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

8. Time for Performance

All services performed under this Agreement shall be completed pursuant to the schedule provided in Exhibit B attached hereto and incorporated by this reference in full herein. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

9. ~~Principal in Charge~~ Project Manager

Consultant hereby designates George Gentner as its ~~principal-in-charge~~ Project Manager and person responsible for necessary coordination with Manager.

10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City business license.

11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform its services. Manager agrees to provide direction to Consultant as requested regarding particular project requirements.

12. Term of Agreement

This Agreement shall begin on June 1, 2010, and expire on June 30, 2013.

13. Termination

a. This Agreement may be terminated by City if Manager notifies Consultant, in writing, of Manager's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

(b) This Agreement may be terminated by Consultant if Consultant notifies Manager, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

14. Compensation

(a) City agrees to pay Consultant in an amount not to exceed $826,835.00 for services provided under this Agreement at rates provided in Exhibit C attached hereto and incorporated by this reference in full herein.

(b) The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services.

(c) Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the services performed by Consultant, its employees, subcontractors, agents and subconsultants.

(d) Consultant shall provide Manager with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

(e) If any sales tax is due for services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

15. Method of Payment

(a) City agrees to pay Consultant monthly upon satisfactory completion of the services and upon submission by Consultant of an invoice delineating the services performed, in a form satisfactory to Manager. The invoice shall identify services by project as specified by Manager.

(b) Consultant agrees to maintain current monthly records, books, documents, papers, accounts and other evidence pertaining to the services performed and costs incurred. Such items shall be adequate to reflect the time involved and cost of performing the services. Consultant shall provide Manager with copies of payroll distribution, receipted bills and other documents requested for justification of the invoice.

16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion,

general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Consultant in the performance of such services.

17. Non-Appropriation of Funds

Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs expressly required to be prepared by Consultant as part of the scope of services ("documents and materials") shall be the property of City and shall, upon completion of the services or termination of this Agreement, be delivered to Manager.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to Manager within ten days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving all services to which City is entitled under this Agreement or for other purposes relating to the Agreement. Consultant shall maintain and preserve all such records for a period of at least three years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the Manager.

21. Indemnity

Consultant agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly out of, pertain to, or relate to the negligence, recklessness, or willful misconduct from any acts or omissions of Consultant related to this Agreement as performed by Consultant or its agents, employees, subconsultants, subcontractors, consultants and other persons acting on Consultant's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, or passive negligence.

22. Insurance

a. Consultant shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-C, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-C. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-C.

c. Maintenance of proper insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

23. Independent Contractor

a. City and Consultant agree that in the performance of the services, Consultant shall be, and is, an independent contractor, and that Consultant and its employees are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its agents, employees, subcontractors and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

25. Conflict of Interest

Consultant shall promptly inform Manager of any contract, agreement, arrangement, or interest that Consultant may enter into or have during the performance of this Agreement that may conflict with City's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the services performed under this Agreement and Consultant's or Consultant's clients' interest in land that might be affected by the services. Consultant shall take such measures as are necessary in the performance of this Agreement to prevent actual or appearances of conflicts of interest.

26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express written consent of Manager, which consent may be withheld for any reason.

27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not

discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by Manager, provide copies to Manager of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or federal law.

29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of California.

33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Consultant pursuant to this Agreement.

34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Consultant's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

39. Authority to Execute

a. City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

b. Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

40. Notices

a. Any notices to Consultant may be delivered personally or by mail addressed to:
RJM Design Group, Inc.
31591 Camino Capistrano
San Juan Capistrano, CA 92675
Attention: George Gentner

b. Any notices to City may be delivered personally or by mail addressed to:
City of Oxnard,
1060 Pacific Ave., Bldg. 3
Oxnard, California 93030
Attention: Ralph Alamillo

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed upon to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

Dr. Thomas E. Holden, Mayor

CONSULTANT

RJM Design Group, Inc.
Larry R. Ryan, Principal

APPROVED AS TO FORM:

Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:

James Cameron, Risk Manager

APPROVED AS TO CONTENT:

Michael Henderson, Superintendent/
Purchasing Agent, General Services

ATTEST:

Daniel Martinez, CityClerk

ATTACHMENT NO. 1
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