

Parkside Rec
6-2-14

14-1189

CONTRACT

This contract is made and entered into this _____ day of _____, 2014, by and between the Friends of the Manitowoc Aquatic Center, Inc., a Wisconsin corporation, and the City of Manitowoc, a Wisconsin municipal corporation located at 900 Quay Street, Manitowoc, WI 54220.

RECITALS

WHEREAS, the Manitowoc Aquatic Center (hereinafter "Aquatic Center"), located within Citizen Park at 930 N 18th Street, Manitowoc, WI, a City of Manitowoc facility, attracts citizens and tourists every summer for aquatic recreational activity; and,

WHEREAS, the Friends of the Manitowoc Aquatic Center, Inc., (hereinafter "Society") wishes to donate a miniature golf course to the City of Manitowoc to improve the recreational opportunities available at Citizen Park; and,

WHEREAS, the Society is working with several contractors of their selection to cause the golf course to be installed.

NOW, THEREFORE, in consideration of the mutual covenants and representations of the parties hereinafter set forth, the undersigned parties hereby agree as follows:

1. Recitals. The above recitals are deemed to be true and correct.
2. Price. The Society agrees to pay the contractors and subcontractors for their performance of renovation work and to obtain lien waivers for both the Society and the City. The City shall bear no responsibility for the contractor's payments.
3. Schedule. The Society will coordinate the work at Citizen Park with the City's employees to minimize delay and disruption of the normal activities and prevent damage to existing City facilities, including the Aquatic Center, Citizen Park Rec Center, and existing baseball and softball diamonds. No contractors shall begin work without the approval of Director of Public Infrastructure Daniel Koski or his designee, Jim Muenzenmeyer.
4. Insurance and Bonding. Prior to commencing work hereunder, the Society and all contractors hired on behalf of the Society shall provide City, for approval by the City Attorney, a Certificate of Insurance showing proof of General Liability Insurance in amounts not less \$1,000,000.00 per person per occurrence, \$2,000,000.00 in the aggregate; property damage limits of not less than \$500,000.00 per occurrence, and shall carry the statutory amounts for worker's compensation insurance. All contractors shall include with the Certificate of Insurance two endorsements, one endorsement naming the Society and the City of Manitowoc as an additional insured, and a second endorsement giving the Society and the City 30 days prior notice of non-renewal, modification or cancellation. The Society will forward all insurance certificates and endorsements to the City prior to any contractors commencing work.
5. Applicable Statutes. Any provisions of the Wisconsin Statutes, Federal Law or local ordinances applicable to the work performed hereunder are deemed to be incorporated by reference and made a part of this contract.

6. Indemnification. The Society shall defend, indemnify and hold harmless the City of Manitowoc, its officials, officers, employees, representatives and agents against any and all liability, claims, costs, demands, losses, damages, expenses and attorney fees of any kind on account of any injury, damage, or death to any person or property that may arise directly or indirectly caused by or resulting from the work performed under this Contract.
7. Default. In the event of default or breach in the performance of any of the obligations, covenants, representations or duties under the terms of this Contract by either party, the non-defaulting party shall forward written notice to the defaulting party outlining such default. The defaulting party shall cure such default within thirty (30) days of receiving written notice from non-defaulting party, except that the cure period may be extended to a reasonable time to cure any default that cannot reasonably be cured with the thirty (30) day period, provided that the defaulting party has commenced to cure within the thirty (30) day period and diligently pursues a cure at all times thereafter until the default is cured. The defaulting party shall be responsible for the payment to the non-defaulting party of any outstanding fees, charges or expenses that were incurred by the non-defaulting party on behalf of the defaulting party.
8. Permits. The Society shall require all contractors to obtain required building permits.
9. Termination. Either party may terminate this Contract prior to the beginning of construction with ten days written notice to the other party. The Society may not terminate this contract once construction has begun.
10. Notice and Demands. A notice, demand or other communication under this Contract by any party to the other party shall be sufficiently given or delivered and deemed delivered as of the date such notice is delivered to the party intended, if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and addressed to or personally delivered to:

SOCIETY:

Friends of the Aquatic Center
1 E Waldo Blvd, Suite 5
Manitowoc, WI 54220

CITY:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Notice and demand given shall be effective only if and when received by the party intended and acknowledged by receipt. The above addresses may be changed at any time by any party by giving written notice in the manner provided above.

11. Severability. If any provision of this Contract is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws.
12. Amendments. This Contract can only be amended or modified in writing and signed by the parties involved.
13. Integration. This Contract represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any

force or effect with respect to matters covered hereunder.

14. Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
15. Choice of Law. This Contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. All actions or proceedings relating directly or indirectly, to this Contract, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Contract hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.
16. Heading. The section titles have been inserted in this Contract primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
17. Remedies Cumulative. All rights and remedies hereunder are cumulative, and not exclusive, and shall be in addition to all other rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy hereunder shall not operate as a waiver thereof, nor excuse future performance. No waiver discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in writing signed by the party so waiving. Any waiver of any breach shall be a waiver of that breach only and not of any other breach, whether prior to subsequent thereto.
18. Construction. All parties have contributed to the drafting of this Contract. In the event of a controversy, dispute or contest over the meaning, interpretation, validity of enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party whatsoever by virtue of that party having drafted the document or any portion thereof.

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