

P.I.
2-20-17

17-0175

CONTRACT

This contract is made and entered into this _____ day of _____, 2017, by and between the Friends of the Manitowoc River Watershed, a division of Lakeshore Natural Resources Partnership, Inc., a Wisconsin corporation, and the City of Manitowoc, a Wisconsin municipal corporation located at 900 Quay Street, Manitowoc, WI 54220.

RECITALS

WHEREAS, the kayak launch located within Lower Schuette Park, a City of Manitowoc facility, attracts citizens and tourists every summer for aquatic recreational activity; and,

WHEREAS, the Friends of the Manitowoc River Watershed (hereinafter "Friends") wish to construct an approach to the kayak launch, benches, and a kayak storage rack to donate to the City of Manitowoc to improve the recreational opportunities available at Lower Schuette Park using donated labor; and,

WHEREAS, the Friends received 50% matching funds in Council document 16-0948 at the October 2016 Council meeting.

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 Friends agrees to pay the contractors and subcontractors for their work when not donated, and to obtain lien waivers for both the Friends and the City. The City shall bear no responsibility for the contractor's payments.
3. **Release of Funds.** The City shall release funds not to exceed \$8,271.86, a 50% match of the cost of the project, to the Friends pursuant to the 50% match authorized in Council document 16-0948. The Friends shall use such funds towards the cost of construction of the kayak launch approach, benches, and kayak rack. The Friends shall submit an itemized accounting of the costs of the project to the City no later than September 1, 2017. If the cost was less than \$16,543, the Friends shall return any excess funds to the City by October 1, 2017. If the cost exceeds \$16,543, the Friends may retain all funds from the City but shall not be entitled to seek additional reimbursement from the City.
4. **Schedule.** The Friends will coordinate the work at Lower Schuette Park with the City's employees to minimize delay and disruption of the normal activities and prevent damage to existing City facilities. No contractors shall begin work without the approval of Director of Public Infrastructure Daniel Koski or his designee, Chad Scheinoha. Work shall be completed by August 1, 2017.
5. **Insurance and Bonding.** Prior to commencing work hereunder, the Friends and all contractors hired on behalf of the Friends 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 Friends and the City of Manitowoc as an additional insured. The Friends will forward all insurance certificates and endorsements to the City prior to any contractors commencing work.

6. **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.
7. **Indemnification.** The Friends 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.
8. **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 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 30 day period, provided that the defaulting party has commenced to cure within the 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.
9. **Permits.** The Friends shall require all contractors to obtain required building permits.
10. **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.
11. **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:

Friends:
Jim Kettler, Executive Director
P.O. Box 358
Cleveland, WI 53015

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.

12. **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.

13. **Amendments.** This Contract can only be amended or modified in writing and signed by the parties involved.
14. **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.
15. **Survival of Provisions.** All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
16. **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.
17. **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.
18. **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.
19. **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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