

## MEMORANDUM OF UNDERSTANDING

### LITTLE MANITOWOC RIVER COASTAL WETLAND RESTORATION PROJECT DESIGN AND CONSTRUCTION

#### I. THE PARTIES

- 1.01 The City of Manitowoc, a Wisconsin municipal corporation, doing business at 900 Quay Street, Manitowoc, Wisconsin, 54220. ("City").
- 1.02 Lakeshore Natural Resource Partnership, Inc., a Wisconsin non-profit association ("LNRP"), with a mailing address of P.O. Box 358, Cleveland, WI 53015.

#### II. THE RECITALS

##### *WHEREAS,*

- 2.01 The City owns portions of the natural land and waterway in and abutting the Little Manitowoc River as shown on the map labeled as Exhibit "A".
- 2.02 The LNRP has identified the need for the restoration of this estuary due to the large rainfall events and severe flooding that took place in June of 2008.
- 2.03 The City's Parks & Recreation Committee endorsed this project at their meeting on May 26, 2015 and requested staff and LNRP to continue moving forward with the project.
- 2.04 The LNRP has received grant funding from the Fund for Lake Michigan, USFWS, the West Foundation, and the Sustain our Great Lakes to finance all aspects of the construction of the Little Manitowoc River Estuary Restoration Project.
- 2.05 LNRP anticipates completing the Little Manitowoc River Estuary Restoration Project in 2018. At the time of this Agreement, the total construction cost is estimated to \$420,000.
- 2.06 LNRP and the City acknowledge that there will be future maintenance costs and accordingly, sufficient funds will need to be raised to create and support a long-term maintenance fund.
- 2.06 LNRP and the City acknowledge that there will be future maintenance costs and accordingly, sufficient resources will need to be raised to create and support a long-term maintenance program. LNRP will channel funds and volunteer resources through their local partner, the Friends of the Manitowoc River Watershed.

- 2.07 The City will support LNRP's efforts to design and construct the Little Manitowoc River Estuary Restoration Project subject to LNRP meeting each of the various terms and conditions of this Agreement.

### **III. THE AGREEMENT**

#### ***NOW, THEREFORE,***

- 3.01 The recitals are hereby made a part of the Agreement.
- 3.02 The LNRP shall provide to the City a copy of its grant approval letters.
- 3.03 The LNRP shall be responsible for obtaining all required agency permits for the construction project, including but not limited to DNR and USACOE, and all permit fees.
- 3.04 The City shall allow LNRP access to Waldo Blvd. for the purposes of ingress and egress for materials, equipment, etc.
- 3.05 The LNRP shall provide to the City, on at least a quarterly basis, reports of the LNRP's progress, including but not limited to, minutes of Board meetings and updated accountings of their grant funds.
- 3.06 LNRP shall submit, for approval by the City, a detailed project plan that includes, but is not necessarily limited to, proposed designs for the project, project specifications and material, labor, administrative costs. Additionally, LNRP shall also submit a long-term maintenance plan detailing scheduled maintenance. This long-term plan shall account for estimated costs for routine and scheduled maintenance. The City reserves the right to request supplemental information, supporting documentation or any other information it deems necessary to evaluate these plans.
- 3.06.1 LNRP shall provide the City with copies of all costs, invoices, as-built drawings, labor costs, contract documents and specifications, inspection and design documentation and all contract administration supporting documentation and an itemized list of all expenses and any estimates for the value of in-kind services for the design and construction of the Little Manitowoc River Coastal Wetland Restoration Project within thirty (30) days of completion.
- 3.07 Sufficient funding for the entire project shall be on deposit in the Account prior to beginning any construction. For purposes hereof, "sufficient funding" shall be an amount equal to the total cost of the project and all associated amenities contained in the final proposal submitted to the LNRP by a general contractor that has an approved current "Bidders Proof of Responsibility" on file with the City Clerk and with the approval of the City of Manitowoc. The LNRP agrees to provide promptly any and all estimates and proposals received from general contractors to the City.

3.08 LNRP shall provide the City with copies of lien waivers for all contractors, subcontractors and suppliers involved in the construction. Upon completion of construction, and upon being free and clear of all liens, encumbrances and the like, ownership of the facility shall be transferred, in writing, to the City.

3.09 The terms of this Agreement may only be modified, waived or abandoned by written agreement signed by both parties.

#### **IV. SEVERABILITY CLAUSE**

4.01 In the event that any part of this Agreement is found to be illegal, it shall be stricken from the Agreement and the Agreement interpreted as if that clause did not exist.

#### **V. INDEMNIFICATION CLAUSE**

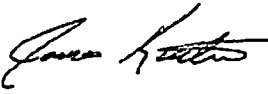
5.01 The LNRP agrees to indemnify, defend and hold harmless the City and its officers, officials, employees and agents from and against any and all liability, loss, damage expense, costs (including attorney fees) arising out of this agreement, caused by the LNRP, its officers, officials, employees, agents or anyone for whose acts they may be liable.

5.02 The City agrees to indemnify, defend and hold harmless the LNRP and its officers, members and agents from and against any and all liability, loss, damage expense, costs (including attorney fees arising out of this Agreement), caused by the City, its officers, officials, employees, agents or anyone for whose acts it may be liable.

[SIGNATURE PAGE TO FOLLOW]

***IN WITNESS WHEREOF***, the parties have caused the foregoing instrument to be executed in three (3) original counterparts on this 28<sup>th</sup> day of August, 2018.

**Lakeshore Natural Resource Partnership**

Attest:   
Printed Name:

By:  
James Kettler  
Executive Director

**City of Manitowoc**

Attest: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Justin M. Nickels, Mayor

Attest: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Deborah Neuser, City Clerk

Provision has been made to pay the liability that will accrue under this contract.

Approved as to form:

\_\_\_\_\_  
Steve Corbeille, Finance Director

\_\_\_\_\_  
Kathleen McDaniel, City Attorney

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## Greg Minikel

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**From:** Jim Kettler <jkettler@lakefield.net>  
**Sent:** Tuesday, November 01, 2016 11:28 AM  
**To:** Greg Minikel  
**Cc:** 'Klein, Richard'; Dan Koski; Gumtow, Jon; Volkening, Aaron  
**Subject:** Re: Little Manitowoc - Proposed MOU for LNRP to do work on City Land  
**Attachments:** Little Manitowoc River Estuary Restoration Project with LNRP - Project MOU Draft 10-2016.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I inserted some comments via tracked changes. Jon... I have a couple of questions for you.

Jim Kettler, Executive Director  
Lakeshore Natural Resource Partnership

Email: [jim@lnrp.org](mailto:jim@lnrp.org)  
Cell Phone: 920-304-1919  
Office Phone: 920-726-2199  
Website: [www.lnrp.org](http://www.lnrp.org)

On Nov 1, 2016, at 11:14 AM, Greg Minikel <[gminikel@manitowoc.org](mailto:gminikel@manitowoc.org)> wrote:

Rich and Jim,

Please see the attached Memorandum of Understanding (MOU). I think that this would be the document we should use for the City to authorize LNRP to do the work on the City's land.

The MOU is based on one that we used for the Miracle League Baseball Field at Dewey St. Park and is now renamed Miracles Park. This project was similar to our current project in that the Miracle League Group did everything on their own, including the construction, project management, etc. The City just took ownership of it after completion. That is pretty much what is happening here other than there is not a facility or building with this project.

I took a shot at the MOU. See what you think. The highlighted areas are where I had issues as to the language and whether or not it applies in this case.

We never talked about any long term maintenance needs or requirements and maybe there are none known at this time. Perhaps, this language just gets eliminated/removed.

We have not run this past our City Attorney yet. We wanted your input first and then give it to her. Once she approves it, we would take it to our PI Committee and the Common Council.

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**From:** Klein, Richard [mailto:Richard.Klein@stantec.com]  
**Sent:** Tuesday, October 18, 2016 5:58 PM  
**To:** Dan Koski; Greg Minikel  
**Cc:** Guntow, Jon; Volkening, Aaron; Jim Kettler  
**Subject:** RE: Little Manitowoc

Dan,

Regarding the FEMA information, we recommend that the text of the letter be put onto City letterhead and then submitted to WDNR and FEMA as notification of the project, per the City's ordinance (attached, with highlighted sections identifying notification requirements).

Regarding bidding, we acknowledge your direction that LNRP be the lead agency. We can work with Jim on the construction management scope and logistics. Please let us know what paperwork needs to be completed providing authorizing for LNRP to conduct this project on City land.

Thank you!

Rich

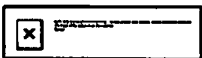
Richard J. Klein, PE, CFM  
Stantec  
office: 262.643.9025  
cell: 414.708.2500

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**From:** Guntow, Jon  
**Sent:** Monday, October 17, 2016 6:58 AM  
**To:** Klein, Richard <Richard.Klein@stantec.com>; Volkening, Aaron <Aaron.Volkening@stantec.com>  
**Subject:** FW: Little Manitowoc

Rich and Aaron, see message below from Dan at the City regarding FEMA and the bidding questions. Rich could you please reply on both topics to Dan and copy Jim and I regarding what the City needs to do with FEMA and if you have any followup questions on the bidding plan that Dan suggests. Thanks. JON

Jon Guntow, PWS, PSS  
Senior Scientist, Project Manager  
Stantec  
Phone: (920) 592-8400  
Cell: (920) 980-2800  
Fax: (920) 592-8444  
Jon.Guntow@stantec.com



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**From:** Jim Kettler [mailto:jkettler@lakefield.net]  
**Sent:** Monday, October 17, 2016 6:17 AM  
**To:** Guntow, Jon  
**Subject:** Fwd: Little Manitowoc

could you give Dan a heads up on what is needed for the FEMA stuff. see below.

I'll be reaching out to landowners this week to get their approval via email on the easements and setting up meetings.

Jim Kettler, Executive Director  
Lakeshore Natural Resource Partnership

Email: [jim@lnrp.org](mailto:jim@lnrp.org)  
Cell Phone: 920-304-1919  
Office Phone: 920-726-2199  
Website: [www.lnrp.org](http://www.lnrp.org)

Begin forwarded message:

**From:** Dan Koski <[dkoski@manitowoc.org](mailto:dkoski@manitowoc.org)>  
**Subject:** RE: Little Manitowoc  
**Date:** October 14, 2016 11:36:56 AM CDT  
**To:** 'Jim Kettler' <[jkettler@lakefield.net](mailto:jkettler@lakefield.net)>, Greg Minikel <[gminikel@manitowoc.org](mailto:gminikel@manitowoc.org)>  
Hi Jim,

Yes, please replace my name with the Mayor and Clerks.

We have never put easements on letterhead before, so we don't see a reason to do it now.

What did you need from us in regard to the FEMA memo again?

As far as the bidding process, we are ok with you doing it and then just turning it over to us at the end similar to how the aquatic center and MYBA projects have been done. If it runs through us, we would be the agency paying the bills, so for this project LNRP should be the lead agency.

Thanks  
Dan

Dan Koski, PE  
Director of Public Infrastructure  
City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220

[dkoski@manitowoc.org](mailto:dkoski@manitowoc.org)  
[www.manitowoc.org](http://www.manitowoc.org)

phone: (920) 686-6910

fax: (920) 686-6906

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**From:** Jim Kettler [mailto:[jkettler@lakefield.net](mailto:jkettler@lakefield.net)]  
**Sent:** Wednesday, October 12, 2016 2:59 PM  
**To:** Dan Koski; Greg Minikel  
**Subject:** Little Maniwoc

Dan and Greg...

I sent an email earlier this week but want to make sure you got it.

Three things that I would like to get settled as soon as we can:

#1 flood plain memo to FEMA to make sure we are in alignment with the ordinance and the City can sustain their insurance

#2 bidding process and whether the City would be the lead agency for the reconstruction work in the wetland

#3 and perhaps the most important, is putting the temporary construction easement and conservation easement on City letterhead with signatory lines for the Mayor and City Clerk.

#3 is the one that has the most urgency.

I'll be on a mini-vacation starting tomorrow through the weekend camping at High Cliff.

It would be great to have some movement on these issues this week so that we can nail it down next week.

Stantec is moving the permit applications forward and these three elements are critical pieces of the puzzle.

Thanks.

Jim Kettler, Executive Director  
Lakeshore Natural Resource Partnership

Email: [jim@lnrp.org](mailto:jim@lnrp.org)  
Cell Phone: 920-304-1919  
Office Phone: 920-726-2199  
Website: [www.lnrp.org](http://www.lnrp.org)

<Little Maniwoc River Estuary Restoration Project with LNRP - Project MOU Draft 10-2016.docx>