

Public Infra  
5-5-14

14-928

**CONTRACT**

This contract is made and entered into this 25<sup>th</sup> day of April, 2014, by and between Serenity Farm Landscaping, Inc. (hereinafter "Contractor"), located at 2803 Old Park Road, Sheboygan, Wisconsin 53081 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

**RECITALS**

**WHEREAS**, Serenity Farm Landscaping, Inc., located at 2803 Old Park Road, Sheboygan, Wisconsin 53081 intends to cut and remove approximately 46 trees at the Lincoln Park Zoo located at 1235 North 8<sup>th</sup> Street, Manitowoc, Wisconsin 54220 as outlined in "Exhibit A", Serenity Farm Landscaping, Inc. Proposal and Exhibit "B" the map/drawing showing the general area for the tree removals.

**WHEREAS**, Serenity Farm Landscaping, Inc. has the ability to perform the required tree cutting and removal as outlined in "Exhibits A and B".

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

Recitals. The above recitals are deemed to be true and correct.

Scope of Work. The Contractor agrees to perform the following work and/or furnish the following labor and materials in accordance with the terms of this contract:

**All work shall be performed in accordance with the City of Manitowoc's Standard Specifications for Public Works Construction.**

**See listing of tasks for this project. (Attached is "Exhibit A and B", and it is incorporated into this Contract by reference).**

3. Contract Price. The City agrees to pay to the Contractor for the performance of this contract the sum of **\$9,045.00**.

4. Schedule. Contractor agrees to commence work under this Contract upon its execution and complete performance of this contract in accordance with the City of Manitowoc's Standard Specifications, which are made part of this Contract and are incorporated by reference. The contract completion date shall be **May 31, 2014**.

5. Payment Schedule. Requests for payment shall be made to the Director of Public Infrastructure. The Director of Public Infrastructure shall make a recommendation on the payment request and submit the same to the City's Board of Public Works when applicable. Contractor shall be entitled to payment within 30 days following approval by the Director of Public Infrastructure.

6. Assignment and Subcontracting. Contractor shall not be permitted to sign or subcontract any of the work hereunder without the prior written consent of the City.

7. Insurance and Bonding. Prior to commencing work hereunder, Contractor 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. **Contractor shall include with the Certificate of**

**Insurance**

**two endorsements, one endorsement naming the City of Manitowoc as an additional insured, and a second endorsement giving City thirty (30) days prior notice of non-renewal, modification or cancellation.**

8. 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.

9. Contract Notice. Per Wisconsin State Statues 62.15, a Class I Notice had been executed and published for this work on April 13, 2014.

Other Indebtedness to City. It is understood and agreed by the parties hereto that whenever a contractor is for any reason indebted to the City of Manitowoc, the contractor consents that the City of Manitowoc through its officials shall and may, deduct and retain, any such balance out of the money or monies which may be due or become due to the contractor under this contract.

Indemnify. Contractor 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 caused by or resulting from the work performed under this Contract where the injury, damage, or death is caused by negligence or willful misconduct on the part of the Contractor, subcontractor, officers, employees, or agents.

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.

Permits. None Required.

Termination. Either party may terminate this Contract with ten (10) days written notice to the other party.

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:

**CITY:** City Clerk  
Inc.

900 Quay Street  
Manitowoc, WI 54220

**CONTRACTOR:** Serenity Farm Landscaping,

2803 Old Park Road  
Sheboygan, WI 53081

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.

Assignment. This Contract is not assignable without prior written consent of City.

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.

Amendments. This Contract can only be amended or modified in writing and signed by the parties involved.

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.

Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.

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.

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.

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.

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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STATE OF WISCONSIN )

*Sheboygan*  
MANITOWOC COUNTY )

) ss.

Personally came before me, this 25 day of April, 2014, the above named Andrew Kissel and Theresa M. Kissel for Serenity Farm Landscaping, Inc. and acknowledge they executed the foregoing instrument.



*Teresa Corrigan*

*Sheboygan*  
Notary Public Manitowoc County, WI

My commission (expires) (is)

*January 27, 2014*

# Exhibit "A"

 **Serenity Farm Landscaping, Inc.** 

Andrew Kissel, President

2803 Old Park Road

Shaboygan, WI 53081

Phone 920-457-0314 Fax 920-457-4095

NAME: City of Manitowoc - Dept. of Public Works CHAD SCHEINOHA - PARKS OPERATIONS MGR.	PHONE Chad Cell - 374-0402 920-686-6550 FAX - 920-686-6525	DATE: March 24, 2014
ADDRESS 2655 South 35th Street	JOB: Cutting & Removal Trees	
CITY, STATE, ZIP: Manitowoc, WI 54220-5965	JOB LOCATION: Manitowoc Zoo	

Cutting and removal 1 maple tree and cutting 1 oak limbs on south side and over bear pen; removal of brush, leaving wood on site - \$685.00

1) Cutting all marked trees (about 46) - no stump grinding - cut the logs into lengths up to 20' or whatever is appropriate and place in marked area; chip the branches and leave on-site in one pile. \$8,760.00

2) Cutting all marked trees (about 46) - no stump grinding - cut the logs into lengths up to 20' or whatever is appropriate and place in marked area; chip the branches; Hauling of logs off site \$8,360.00

THANK YOU FOR GIVING US THE OPPORTUNITY TO BID ON THIS PROJECT. IF YOU HAVE QUESTIONS, PLEASE CALL.

PAYMENT TO BE MADE AS FOLLOWS: Net 30 days, 1½%/month

RESPECTFULLY SUBMITTED BY: Andy Kissel

NOTE: This proposal may be withdrawn if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as stated above.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date of Acceptance \_\_\_\_\_

## NOTICE

Under the Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier or other person who helps to improve your property but is not paid for his work or supplies, has the right to enforce a claim against your property. This means that, after a court hearing, your property could be sold by a court officer and the proceeds of its sale used to satisfy the indebtedness. This can happen even if you have paid your own contractor in full, if the subcontractor, laborer or supplier remains unpaid.

Under the law, you may protect yourself against such claims by filing, before commencing such work of improvement, and original contract for the work of improvement or a modification thereof, in the office of the county recorder of the county where the property is situated and requiring that a contractor's payment bond be recorded in such office. Said bond shall be in an amount of not less than fifty percent (50%) of the contract price and shall, in addition to any conditions for the performance of the contract, be conditioned for the payment in full of the claims of all persons furnishing labor, services, equipment or materials for the work described in said contract.

