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7-20-20



CITY OF MANITOWOC

WISCONSIN, USA
www.manitowoc.org

20-0724



July 16, 2020

CONSENT


TO: Mayor and Common Council
FROM: Board of Public Works
SUBJECT: AGMT-20-10 with Valley Sealcoat, Inc.

Dear Mayor and Common Council:

At the July 1, 2020 Board of Public Works meeting, the Board met to approve entering into AGMT-20-10 with Valley Sealcoat, Inc. to make repairs and improvements to Fleetwood Park Tennis Courts for a contract price of \$19,887.00.

“Moved by City Attorney Kathleen McDaniel, seconded by Alderperson John Brunner, and unanimously carried to enter into the agreement. Ayes, 7. Nays, none.”

Very Truly Yours,



DEBORAH NEUSER
Secretary Board of Public Works

Deborah Neuser, CMC, City Clerk
CITY HALL · 900 Quay Street · Manitowoc, WI 54220-4543
Phone (920) 686-6950 · Fax (920) 686-6959 · dneuser@manitowoc.org

AGMT-20-10**CONTRACT**

This contract is made and entered into this 29th day of June, 2020, by and between Valley Sealcoat, Inc. (hereinafter "Contractor"), located at W6265 Contractor Dr, Appleton, WI 54914 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

WHEREAS, Valley Sealcoat, Inc., located at W6265 Contractor Dr, Appleton, WI 54914, intends to make repairs and improvements to Fleetwood Park Tennis Courts in Manitowoc, WI as outlined in "Exhibit A", Valley Sealcoat, Inc. Proposal.

WHEREAS, Valley Sealcoat, Inc. has the ability to perform the hydro-blast, crackpatching, and tennis court color system to Fleetwood Park Tennis Courts, as outlined in "Exhibit A".

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. **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 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 **\$19,887.00**.
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 **October 31, 2020**.
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 Statutes 62.15, a Class I Notice had been executed and published for this work on June 29, 2020.
10. **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.
11. **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.
12. **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.
13. **Permits.** None Required.
14. **Termination.** Either party may terminate this Contract with ten (10) days written notice to the other party.

15. **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
900 Quay Street
Manitowoc, WI 54220

CONTRACTOR: Valley Sealcoat, Inc.
W6265 Contractor Drive
Appleton, WI 54914

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.

16. **Assignment.** This Contract is not assignable without prior written consent of City.
17. **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.
18. **Amendments.** This Contract can only be amended or modified in writing and signed by the parties involved.
19. **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.
20. **Survival of Provisions.** All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
21. **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.
22. **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.
23. **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.

24. **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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"EXHIBIT A"



City of Manitowoc
Attention: Curt Hall
2655 S. 35th Street
Manitowoc, WI 54220

VALLEY SEALCOAT, INC.
W6265 CONTRACTOR DRIVE ♦ APPLETON, WI 54914
TELEPHONE: (920) 731-0202 ♦ FAX: (920) 730-0252
www.valleysealcoat.com

June 11, 2020

Phone: (920) 323-4194

Email: chall@manitowoc.org

Description of Property: Fleetwood Park – Tennis Courts

HYDRO-BLAST:

- Aggressive surface cleaning/stripping of peeling acrylic finish and removal of contamination.
- Stripping will be sufficient to allow new coatings to bond to a solid substance.
- Clean up and disposal of stripped materials.
- City to provide water.

CRACKPATCHING:

- Crackpatching: Cracks and expansion joints will be filled with tennis court cracksealer (Note: Cracks are permanent and repairs will improve but not eliminate their existence).
- Patch minor birdbaths. This will reduce standing water.

TENNIS COURT COLOR SYSTEM:

- Sand down any left-over coatings that wouldn't come off to be sure it is completely adhered and clean up.
- Application of two (2) coats of fortified Laykold NuSurf Acrylic Resurfacer for filling and leveling of the surface.
- Application of two (2) coats of fortified Laykold Colorflex Color Coating.
- Single color green as existing.
- Layout, taping and striping according to USTA specifications for 2 tennis courts.
- Layout, taping and striping according to USAPA specifications for 2 pickleball courts on the tennis courts.

TOTAL PROJECT COST: \$19,887

NOTES:

- Any modifications over and above the original contract price will require a written change order.
- Valley Sealcoat, Inc. assumes no liability for future cracking of court surface or for birdbaths that may develop.
- Valley Sealcoat, Inc. assumes no liability for any material that cannot be removed and loses adhesion over time.
- Contractor is not responsible for lawn damage or subsurface damage due to access of equipment. Landscaping is not included.
- We assume the pitch, slope and drainage of court surface is acceptable to Owner. Valley Sealcoat, Inc. assumes no liability for cracking or bubbling of court surface or for water holes that may be apparent. Contractor will attempt to improve any drainage or ponding issues.

TERMS: Total due upon completion of project.

- 1 VALLEY SEALCOAT (CONTRACTOR) and OWNER agree that CONTRACTOR shall furnish the labor and materials to complete certain construction in accordance with the above specifications.
- 2 OWNER agrees to pay CONTRACTOR for said construction in one (1) installment of total price unless otherwise specified in quotation within (ten) 10 days after invoice date. Following final scheduled maturity, a Delinquency Charge of 1 1/2 % per month (18% per annum) will be assessed on the unpaid balance of the Total of Payments outstanding as of said maturity date and at the expiration of each succeeding 30 day period thereafter.
3. As required by the Wisconsin Construction Lien Law, builder hereby notifies owner that persons or companies furnishing labor or materials for the construction on owner's land may have the lien rights on owner's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned builder, are those who contract directly with the owner or those who give the owner notice within 60 days after they first furnish labor or materials for the construction. Accordingly, owner probably will receive notices from those who furnish labor or materials for the construction, and should give a copy of each notice received to his mortgage lender, if any. Builder agrees to cooperate with the owner and his lender, if any, to see that all potential lien claimants are duly paid.
4. In event of commencement of legal action to enforce the terms of this agreement, CONTRACTOR will be entitled to recover all costs of collection, including reasonable attorney fees.
5. CONTRACTOR will perform all construction in a workmanlike manner according to standard practices and all material is guaranteed to be as specified. All alterations or deviations from the above specifications will be in writing, executed by the parties hereto, and any extra cost involved therein will become an extra charge over and above the contract price. OWNER shall carry fire, extended coverage, vandalism and malicious mischief insurance covering CONTRACTOR and its sub-contractors.
6. CONTRACTOR'S obligations hereunder are contingent upon strikes, accidents, delays, or acts of God beyond CONTRACTOR'S control. This agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors, and assigns.

IF CONTRACT IS ACCEPTED, PLEASE SIGN, DATE, AND RETURN WHITE COPY TO VALLEY SEALCOAT.

Shaun Walter

(CONTRACTOR REPRESENTATIVE)

(OWNER)

(DATE)