

CONTRACT

16-0773

This contract is made and entered into this _____ day of _____, 2016, by and between Maloney Associates, LLC (hereinafter "Architect"), located at 634 N. 8th Street, Manitowoc, Wisconsin 54220 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

WHEREAS, Maloney Associates, LLC located at 634 N. 8th Street, Manitowoc, WI 54220 intends to provide design services for alterations to Silver Creek Park Fieldhouse, 3001 South 10th Street, Manitowoc, WI 54220, as outlined in "Exhibit A", Maloney Associates, LLC Proposal.

WHEREAS, Maloney Associates, LLC intends to provide design services for alterations to existing building which includes create bid/Construction documents to include drawings for building alterations, new outdoor deck and Engineering/Design Specifications on the drawings. Work to also include shop drawing review and field observation for Engineering/Design phase of Silver Creek Park Field House located at 3001 S. 10th Street, Manitowoc, WI 54220, 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 Architect 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 Architect for the performance of this contract the sum of **\$4,800.00**.
4. Schedule. Architect 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 **December 31, 2017**.
5. Sales Tax Exemption. The Architect shall be required to comply with Chapter 77 of Wisconsin State Statutes and more specifically Section 77.54(9m) as it relates to the sales tax exemption for building materials that become part of a facility for a local unit of government. (This is also known as 2015 Wisconsin Act 126).

P.I.
8-15-16

6. **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. Architect shall be entitled to payment within 30 days following approval by the Director of Public Infrastructure.
7. **Assignment and Subcontracting.** Architect shall not be permitted to sign or subcontract any of the work hereunder without the prior written consent of the City.
8. **Insurance and Bonding.** None required.
9. **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.
10. **Contract Notice.** Per Wisconsin State Statutes 62.15, a Class I Notice had been executed and published for this work on August 10, 2016.
11. **Other Indebtedness to City.** It is understood and agreed by the parties hereto that whenever a Architect is for any reason indebted to the City of Manitowoc, the Architect 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 Architect under this contract.
12. **Indemnify.** Architect 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 Architect or agents.
13. **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.
14. **Permits.** None Required.
15. **Termination.** Either party may terminate this Contract with ten (10) days written notice to the other party. Any labor and/or expenses incurred prior to cancellation will be billed at

standard retail rates and will be due in full and billed immediately.

16. **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

ARCHITECT: Maloney Associates, LLC
634 North 8th 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.

17. **Assignment.** This Contract is not assignable without prior written consent of City.
18. **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.
19. **Amendments.** This Contract can only be amended or modified in writing and signed by the parties involved.
20. **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, unless documented in writing and signed by the parties involved.
21. **Survival of Provisions.** All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
22. **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.
23. **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.
24. **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.

25. Engineering/Design. 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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IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

SOLE PROPRIETORSHIP OR PARTNERSHIP

CORPORATION

MALONEY ASSOCIATES LLC
Name of Proprietor or Partnership

Name of Corporation

Claude J. Maloney (Seal)
Sole Proprietor or Partner MEMBER

By: _____ (Seal)
President

Partner (Seal)

Attest: _____
Secretary

Partner (Seal)

CORPORATE SEAL

CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Attest: _____
Jennifer Hudon, City Clerk

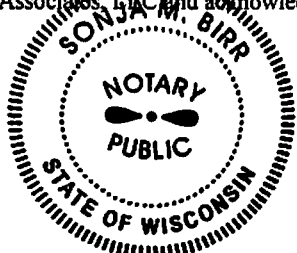
STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this _____ day of _____, 2016, the above named Justin M. Nickels and Jennifer Hudon, known to me to be the Mayor and City Clerk/Deputy Treasurer of the City of Manitowoc and acknowledge they executed the foregoing instrument.

Notary Public Manitowoc County, WI
My commission (expires)(is) _____.

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this 18 day of August, 2016, the above named Gene Maloney, Owner of Maloney Associates, LLC and I acknowledge they executed the foregoing instrument.



Sonja M. Birk
Notary Public Manitowoc County, WI
My commission (expires)(is) 12-21-18.

PROPOSAL FOR DESIGN SERVICES

Proposal From: Gene Maloney - Maloney Associates LLC
634 N 8th Street - Manitowoc, WI 54220

Proposal To: Jim Muenzenmeyer
City of Manitowoc

Project: Alterations to Existing Building
Silver Creek Park Field House – Manitowoc, WI

Work by Maloney: The following is included as part of this Proposal:
1. Create Bid/Construction Documents including:
 a. Drawings for Building Alterations
 b. Drawings for New Outdoor Deck
 c. Construction Specifications on the Drawings
2. Shop Drawing Review
3. Field Observation in Construction Phase

Expenses Included: Architect's Time

Expenses Excluded: The following expenses are specifically NOT included:
1. Costs for reproduction and mailing of Bid materials.
2. Bid Documents will be provided to Bidders in Electronic Format

Reimbursables: All out-of-pocket expenses that the Architect is called upon by the Owner to pay shall be reimbursed by the Owner in addition to the compensation listed below in the same amount as expended.

Compensation: Maloney proposes to provide the Work stated herein for the lump sum of \$4,800 (Forty-Eight Hundred Dollars)

Signed: Gene Maloney

Dated: July 5, 2016

Accepted: _____

Date: _____