



CITY OF MANITOWOC

WISCONSIN, USA
www.manitowoc.org

May 4, 2023

TO: Mayor and Common Council
FROM: Board of Public Works
SUBJECT: AGMT-23-07

Dear Mayor and Common Council:

At the May 3, 2023 Board of Public Works meeting, the Board met to approve entering into AGMT-23-07 Agreement with Fortress Fence to furnish and install 10' high galvanized chain link fence at Westfield Park as outlined in "Exhibit A", Fortress Fence Proposal, for a contract price not to exceed \$10,560.00.

"Moved by Alderperson Brey, seconded by Interim City Attorney Nycz, to enter into the agreement. Ayes, 8. Nays, none."

Very Truly Yours,

Mackenzie Reed
Secretary Board of Public Works

CONTRACT

This contract is made and entered into this 2nd 3rd day of May, 2023, by and between Fortress Fence (hereinafter "Contractor"), located at 1225 Lakeview Drive, Green Bay, WI 54313 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

WHEREAS, Fortress Fence located at 1225 Lakeview Drive, Green Bay, WI 54313, intends to furnish and install 10' high galvanized chain link fence at Westfield Park as outlined in "Exhibit A", Fortress Fence Proposal.

WHEREAS, Fortress Fence has the ability to perform the required work needed for removal and replacement of 10' fence along the 1st and 3rd base lines as required:

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 are "Exhibit A).

3. Contract Price. The City agrees to pay to the Contractor for the performance of this contract the sum not to exceed **\$10,560.00**.
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 **July 7, 2023**.
5. Liquidated Damages. **For every calendar day of delay in the completion of the work beyond the time specified, unless extended by written agreement, there shall be deducted from the amount due under this Contract as fixed, agreed and liquidated damages, the sum of One-Hundred Dollars (\$100).**
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. Contractor shall be entitled to payment within 30 days following approval by the Director of Public Infrastructure. The Contractor shall be required to submit a Lien Waiver prior to

the City processing the final payment.

7. **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.
8. **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.
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. **Sales Tax Exemption.** The Contractor 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).
11. **Contract Notice.** Per Wisconsin State Statutes 62.15, a Class I notice has been executed and published for this work on May 2nd, 2023.
12. **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.
13. **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 or indirectly 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.
14. **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.

15. **Permits.** No Permits are anticipated for this project.
16. **Termination.** Either party may terminate this Contract with ten (10) days written notice to the other party.
17. **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:
Fortress Fence
1225 Lakeview Drive
Green Bay, WI 54313

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.

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

24. 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.
25. 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 a 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.
26. 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.
27. Authority. The undersigned hereby represents and warrants that it has the authority to enter into this Contract. If the party entering into this Contract is not an individual, the person(s) signing on behalf of the entity represents and warrants that they have been duly authorized to bind the entity and sign this Contract on the entity's behalf.

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Quote

Fortress Fence
1225 Lakeview Drive
Green Bay, WI 54313



Quote To:
CITY OF MANITOWOC
900 QUAY STREET
MANITOWOC, WI 54220

Project Location:
WESTFIELD PARK SIDELINE FENCE
709 S 18TH STREET
MANITOWOC, WI 54220

Quote #: 15829
Quote Date: 3/15/2023

Description

SIDELINE FENCE

Remove the 10' high fence along the 1st and 3rd base lines. Salvage the yellow top cap.

Furnish and install approximately 70 LF of 10' high galvanized chain link fence down each base line (closely matching the existing fence along the current first base line). All posts will be driven 5' deep. The fence will include 1-5/8" OD top and middle rails and bottom tension wire. The salvaged top cap will be reinstalled onto the new fence.

Excludes: Winter Install, Private Utility Locate

Quote Total: \$10,560.00

Quote Valid For 15 days

Buyer's Signature: _____

Date: _____

Submitted by: _____

Jason Plate

Change

Acceptance:

This quote when accepted in writing by purchaser and by Century Fence Company becomes a contract between two parties. If the project is cancelled upon agreement and special materials are purchased, the customer will be charged for 25% of the material cost for restocking plus shipping. The conditions on the attached 'Terms and Conditions' are made a part of this contract.

Jason Plate

Office: 920-857-2624

Cell: 920-360-6398

Email: jplate@ffence.com

Terms of Payment: Net Cash upon receipt of invoice.