



CITY OF MANITOWOC

WISCONSIN, USA

www.manitowoc.org

June 28, 2019



19-0795

CONSENT

TO: Mayor and Common Council
FROM: Board of Public Works
SUBJECT: AGMT-19-15 Contract with Fortress Fence

Dear Mayor and Common Council:

At the June 27, 2019 Board of Public Works meeting, the Board met to approve entering into a contract with Fortress Fence for repairs to fence at ball field at Lincoln Park, repairs to fence on Field 1 at Citizen Park, and to remove and replace fence at Field 2 Citizen Park, AGMT-19-15, for a contract price of \$18,475.00.

"Moved by Finance Director/Treasurer Steve Corbeille, seconded by Director of Public Infrastructure Dan Koski, and unanimously carried to enter into the contract. Ayes, 7. Nays, none."

Very Truly Yours,

MACKENZIE REED-KADOW
Acting 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

CONTRACT

This contract is made and entered into this 28 day of June, 2019, by and between Fortress Fence, as stated throughout contract (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 repair Lincoln Park Ballfield fence, at 1215 N. 8th Street, Manitowoc, WI; repair Citizen Park Field 1 (CP2) fence; and remove existing galvanized chain link fence at Citizen Park Field 2 (CP3) and replace with black vinyl chain link fence, at 1840 Rankin Street, Manitowoc, WI 54220, as outlined in Fortress Fence Proposal "Exhibit A".

WHEREAS, Fortress Fence has the ability to provide materials and labor for fencing work at 1215 N. 8th Street, Lincoln Park Ballfield; and 1840 Rankin Street, Citizen Park Ball Field 1 and 2 (CP2 and CP3), 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 **\$18,475.00**.
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 18, 2019**.
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 26, 2019.
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 Contact 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: 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.

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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

Name of Proprietor or Partnership

Fortress Fence
Name of Corporation

Sole Proprietor or Partner (Seal)

By: [Signature] (Seal)
President

Partner (Seal)

Attest: [Signature]
CORPORATE SEAL

Partner (Seal)

CITY OF MANITOWOC

By: [Signature]
Justin M. Nickels, Mayor

Attest: [Signature]
Deborah Neuser, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this 28 day of June, 2019, the above named Justin M. Nickels and Deborah Neuser, known to me to be the Mayor and City Clerk of the City of Manitowoc and acknowledge they executed the foregoing instrument.

[Signature]
[Signature]
Notary Public Manitowoc County, WI
My commission (expires) 10/15/21

STATE OF WISCONSIN)
) ss.
BROWN COUNTY)

Personally came before me, this 26th day of June, 2019, the above named Jason Plate, President for Fortress Fence and acknowledge they executed the foregoing instrument.

[Signature]
[Signature]
Notary Public Brown County, WI
My commission (expires)(is) 10/22





FORTRESS FENCE

A DIVISION OF CENTURY FENCE CO.
YOUR LINK TO SECURITY

1225 Lakeview Drive, Green Bay, WI 54313

“EXHIBIT A”

Office (920) 490-9333
Toll Free (800) 280-1551
Fax (920) 490-9339
Cellular (920) 360-6398
Email JPlate@ffence.com

6/25/2019

Phone: 920-686-3580 Fax: 920-686-6525

CF ID: 76437

Proposal To:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Ship To:

Citizens Park
1840 Rankin Street
Manitowoc

Installed Material Only Prepaid Freight Freight Collect F.O.B. Job Site **Delivery Schedule:**

Description

CITIZENS PARK - FIELD 2

Remove existing 6' galvanized chain link fence and posts.

Furnish and install approximately 500 LF of 6' high black vinyl chain link fence. All posts will be driven 4' deep. Fence mirrors current outfield fence at Citizens Park.

MATERIAL.....\$8,275.00

LABOR.....\$6,485.00

TOTAL.....\$14,760.00

*Does not include furnishing or installing the yellow top cap**

Excludes locating of private utilities

Proposal is valid for 30 days.

Acceptance: This proposal when accepted in writing by purchaser and by Century Fence Company's Main Office becomes a contract between two parties. The conditions on the attached "Terms and Conditions" sheet are made a part of this contract.

Terms of Payment: Net Cash upon receipt of invoice.

Buyer's signature _____ Date _____

Submitted by _____

Jason Plate



FORTRESS FENCE

A DIVISION OF CENTURY FENCE CO.
YOUR LINK TO SECURITY

1225 Lakeview Drive, Green Bay, WI 54313

Office (920) 490-9333
Toll Free (800) 280-1551
Fax (920) 490-9339
Cellular (920) 360-6398
Email JPlate@ffence.com

6/25/2019

Phone: 920-686-3580 Fax: 920-686-6525

CF ID: 76397

Proposal To:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Ship To:

Lincoln Park
1215 N 8th Street
Manitowoc

Installed Material Only Prepaid Freight Freight Collect F.O.B. Job Site Delivery Schedule:

Description

LINCOLN PARK BALLFIELD

- Remove and replace (5) heaved 2" line posts in outfield fence. New posts will be driven 4' deep.
- Lower approximately 145 LF of chain link fence in the area where the heaved posts are.
- Remove and replace 10 LF of 6' high galvanized chain link fence in left field corner.
- Add approximately 465 LF of bottom tension wire to tighten the bottom of the chain link.

TOTAL.....\$2,365.00

CITIZENS PARK - FIELD 1 REPAIRS

- Furnish and install 500 LF of bottom tension wire to tighten up the bottom of the chain link fabric.
- Straighten leaning fence posts.

TOTAL.....\$1,350.00

Excludes locating of private utilities
Proposal is valid for 30 days.

Acceptance: This proposal when accepted in writing by purchaser and by Century Fence Company's Main Office becomes a contract between two parties. The conditions on the attached "Terms and Conditions" sheet are made a part of this contract.

Terms of Payment: Net Cash upon receipt of invoice.

Buyer's signature _____ Date _____

Submitted by _____

Jason Plate



TERMS & CONDITIONS (Upon acceptance of proposal become binding to the contract, PLEASE INITIAL BELOW)

1. **Insurance coverage** – Century Fence will maintain standard General Liability and Worker’s Compensation coverage as required by the state the work is to be performed in. Any additional coverage required by the General Contractor, Owner or Customer will be available only upon request, if it is available. An additional charge to cover the cost of that specific coverage will be considered an add order to the contract.
2. **Pricing** – The prices set forth herein are based upon current prices and are subject to change without notice.
3. **Change Order** – An extra charge will be made to Purchaser for any material or labor additional to that specified herein necessary to make a complete installation in a workmanlike manner and final measurement after erection will govern the amount of invoice.
4. **Installation** – All property line stakes and grade stakes are to be established by Purchaser. Fence is to follow ground lines unless otherwise provided for in this contract.
5. **Site Conditions** – Obstructions of every nature which in any manner interfere with the erection of fence shall be moved by Purchaser prior to commencing work on fence. This contract does not contemplate the encountering of rock, swampy conditions, or boulders larger than the hole to be dug. Should any of the above conditions be encountered, Purchaser shall pay the actual cost of the additional work caused thereby unless stated in this proposal.
6. **Job Delays** – When work is started by Century Fence Company under this contract, work may be continued to completion without interruption, including, without limitation, interruptions caused by other contractors or changes in the plans of Purchaser. In the event Century Fence Company is required to withdraw from work after starting, Purchaser agrees to pay charges covering the actual expenses incurred. It is understood that when Century’s crew reports to the job site by appointment, this constitutes starting work. Century Fence Company shall not be responsible for delays, defaults or damages occasions by any causes beyond Century’s control including, without limitations, governmental actions or orders, embargoes, strikes, lockouts, fires and floods.
7. **Underground Obstructions** – Before work is started, Purchaser shall furnish Century Fence Company with the location and character of any underground wire, pipe, sewer conduits, obstructions, conditions, or restrictions of any nature which might interfere with injuries, or other damages. If the Purchaser fails to do so, or if any of the release, indemnify, hold harmless and defend Century Fence Company from and against any and all liability, loss damages, fines and expenses caused thereby or from any claims, demands or suits based thereon.
8. **Laws** – This contract is subject to all applicable laws, regulations and ordinances or any federal, state or local governmental authority or agency.
9. **Warranty** – All material and labor sold hereunder is warranted to be free from manufacturing defects and in the event of any breach hereunder will either be repaired or replaced without charge, or the purchase price refunded at the option of Century Fence Company. ***IN NO EVENT SHALL CENTURY FENCE COMPANY BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES.*** There are not warranties which extend beyond the description of the face hereof.
10. **Payment** – Payment shall be net cash upon receipt of invoice with 18% annual interest charges on accounts past due 30 days. All accounts are payable in United States funds, free of exchange, collections or other charges. Century Fence Company reserves the right to lien the owner of the property if timely payment is not received.
11. **Cost of Collections** – Should the Buyer default in its obligations herein, the Buyer shall, in addition to other obligations herein, be liable to Century Fence Company for all costs of collections, including reasonable attorney’s fees.
12. **Building Permits** – Permits or licenses including the payment of fees therefore shall be the sole responsibility of Purchaser.
13. **Sale Terms** – The above and foregoing terms and conditions are the final expression of the terms and conditions of this contract, and are intended as a complete and exhaustive statement of the agreement. Modifications or change shall only be permitted by signed writing between the Purchaser and Century Fence Company. This contract shall not be assigned by Purchaser, in whole, or in part, without the written consent of Century Fence Company, and shall be binding upon the successors, administrators, executors or assigns of the parties hereto. Waiver of any default shall not be considered as a waiver of any subsequent default. No conditions, terms, agreements, or stipulations other than those stated herein shall be binding on Century Fence Company.

Initial