

Parks Rec  
5-5-14

City Copy  
14-1001

**AGREEMENT FOR MOVING OPEN AIR SHELTER FROM LOWER SCHUETTE PARK TO LINCOLN PARK**

**between**

**CITY OF MANITOWOC  
and  
MASTER BUILDERS ASSOCIATION**

**THIS AGREEMENT** made and entered into on this 19 day of May, 2014, by and between the City of Manitowoc, a Municipal Corporation, located at 900 Quay Street, County of Manitowoc, Wisconsin, hereinafter referred to as the "CITY" and Master Builders Association, located at 4511 E. Whitetail Court, Manitowoc, Wisconsin 54220, hereinafter referred to as "BUILDER," to provide services ("Services") to relocate the existing open air shelter from Lower Schuette Park to Lincoln Park.

**WITNESSETH**

**WHEREAS**, CITY owns property known as Lincoln Park located within the city limits of Manitowoc, Wisconsin, which park contains facilities for use by the public for various events and gatherings; and,

**WHEREAS**, due to the age and deterioration of the open air shelter, located in Lower Henry Schuette Park, CITY desires to refurbish and relocate said shelter; and,

**WHEREAS**, BUILDER is experienced and knowledgeable in the construction industry and desires to assist CITY by offering services, personnel and equipment necessary to refurbish and move the open air shelter; and,

**WHEREAS**, CITY desires to accept the generous offer from BUILDER to refurbish and relocate within a mutually agreeable time frame.

**NOW, THEREFORE**, CITY and BUILDER agree as follows:

**I. SCOPE OF SERVICES**

The Services to be provided under this Agreement are general building construction services for dismantling, refurbishing and relocation of the existing open air shelter in Lower Henry Schuette Park to Lincoln Park in the City of Manitowoc. The open air shelter will be constructed on a new concrete pad, poured by Seiler Brothers, southeast of existing Cabin #1.

5/5/2014

Committee recommends ENTERING INTO AGREEMENT.

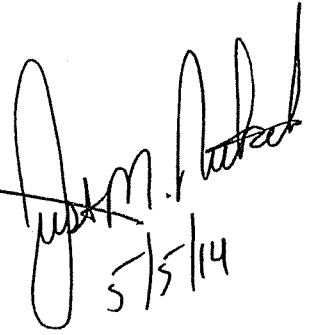


Allan Scler

Keith W Shaw

DI.



  
5/5/14

**A. CITY'S RESPONSIBILITY**

1. To be direct billed for all materials necessary for the new concrete pad, refurbishing and reassembly of the open air shelter.
2. To provide all public notifications, if required.

**B. BUILDER'S RESPONSIBILITY**

1. Provide a list of all material items which are necessary materials for the new concrete pad, refurbishing and reassembly of the open air shelter.
2. Provide all labor, vehicles, equipment and appurtenant items necessary for the relocation of the open air shelter per the plans, except the materials.
3. To carry general liability, auto and worker's compensation insurance for all laborers while on the construction job.
4. To complete the project in a timely fashion and in a workmanlike manner.

**II. SCHEDULE**

BUILDER intends to begin services upon execution of this Agreement by CITY on or about May 6, 2014. All tasks for the refurbishing and relocation of the open air shelter shall be complete and useable by July 31, 2014.

**III. CONSIDERATION**

BUILDER desires to provide services as defined above under the scope of services for one dollar (\$1.00) and other good and valuable consideration the receipt of which is acknowledged by the parties. Builder will provide and install a sign by the open air shelter, with a design and at a location mutually agreeable to the parties, signifying that the labor for the refurbishing and relocation was provided by the courtesy of the Master Builders Association. Said sign shall not exceed 12"x24" in size. The parties acknowledge and agree no other consideration or payment will be due and owing, and no other payment shall be made to BUILDER or any Contractor or Subcontractor working on said open air shelter for services rendered under this Agreement.

**IV. ADDITIONAL SERVICES**

This Agreement may be extended for additional Services upon authorization by CITY. Extension of Services shall be provided on an hourly basis plus expenses, as determined by mutual agreement of the parties.

**V. STANDARD OF CARE**

All services performed or furnished by BUILDER under this Agreement shall be in a workmanlike manner according to the care and skill ordinarily exercised by members of BUILDER'S profession practicing under similar circumstances at a similar time and in a similar locality.

BUILDER's effort shall be directed toward determining for CITY that the completed project will, in general, conform to the contract documents, site plans and specifications. BUILDER shall supervise, direct and have control over the contracted work and shall be responsible for the construction means, methods, techniques, sequences, procedures, and health and safety precautions for this project.

The BUILDER agrees to indemnify, defend, and hold harmless the CITY from and against all liability arising out of negligent errors or sole negligent omissions of the BUILDER, its agents, employees, or representatives in the performance of BUILDER's duties under this Agreement.

## **VI. OPINION OF COST**

Any opinions of cost prepared by BUILDER are supplied for general guidance purposes only. BUILDER has no control over competitive bidding or market conditions and cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.

## **VII. DATA PROVIDED BY OTHERS**

BUILDER is not responsible for the quality or accuracy of data nor for the methods used in the acquisition or development of any such data where such data is provided by or through CITY, Contractor, or others to BUILDER and where BUILDER's Services are to be based upon such data. Such data includes, but is not limited to, soil borings, groundwater data, chemical analysis, geotechnical testing, reports, calculations, designs, drawings, specifications, record drawings, Contractor's marked-up drawings, and topographical surveys.

All maps, data, inventory, reports drawings, surveys or other documents supplied by CITY are the property of the CITY, and BUILDER, its agents, employees, assigns or officers shall not share the documents supplied by CITY without the expressed written permission of CITY.

## **VIII. TERMINATION**

This Agreement may be terminated with or without cause in whole or in part in writing by either party upon thirty (30) calendar days written notice to the other party.

## **IX. DEFAULT**

A material breach or default shall include, but not be limited to, the failure of a party to comply with any or all terms, provisions, requirements or covenants under this Agreement. The non-breaching/non-defaulting party shall give the other party written notice of said breach/default. The breaching or defaulting party shall have ten (10) calendar days in which to cure such material breach or default. Failure to cure may result in the non-breaching or non-defaulting party to choose to terminate this Agreement immediately if they so desire. The parties may agree to a different time period to cure if curing cannot be completed within ten (10) calendar days.

## **X. INSURANCE**

The BUILDER shall maintain at a minimum, during the term of the Agreement, the following liability insurance coverage to cover claims for property damage, injuries, and death, which may arise from the performance of work under the Agreement.

1. General liability insurance, including personal injury liability, blanket contractual liability and broad form property damage liability. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
2. Auto liability insurance coverage for owned or rented vehicles of \$500,000.
3. Workers compensation and employer's liability insurance as required by the State Statutes.
4. Professional liability insurance covering damages resulting from errors and omissions of the BUILDER.

BUILDER shall furnish to the CITY, for approval by the CITY Attorney, a Certificate of Insurance along with Endorsements, prior to commencing work on the project. Said Certificate shall demonstrate that BUILDER has the appropriate insurance from an insurance company authorized to do business in the State of Wisconsin, along with an Endorsement naming the CITY as an additional insured, and an Endorsement giving the CITY thirty (30) day notice of cancellation, modification, or non-renewal of said insurance.

## **XI. INDEMNITY**

BUILDER agrees to defend, indemnify and hold harmless the City, its officials, officers, employees, assigns and agents, against any and all liability, including but not limited to liability arising from or for actions, causes of action, costs, charges, claims, damages, demands, expenses, fees, judgments, liens, losses, obligations, penalties, proceedings, reasonable attorney fees, suits, injuries to persons, death, or damage to property arising directly or indirectly out of the work performed under this Agreement by BUILDER, its employees, officials, agents, contractors, subcontractors or assigns.

## **XII. SUCCESSORS AND ASSIGNS**

The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective transferees, successors and assigns. This Agreement is not assignable without the prior written consent of both parties.

## **XIII. INTEGRATION**

This Agreement represents the entire understanding of the CITY and BUILDER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

**XIV. JURISDICTION**

This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin and shall be governed by, construed under and enforced in accordance with the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly, to this Agreement whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Agreement hereby subject themselves to the jurisdiction of the Courts of Manitowoc County, Wisconsin.

**XV. SUSPENSION OF SERVICES**

The CITY may suspend, in writing, all or a portion of the services under this Agreement in the event unforeseen circumstances beyond the control of the CITY make normal progress in the performance of the services impossible. The BUILDER may request that the services be suspended by notifying the CITY, in writing, of circumstances, which are interfering with normal progress of the services. The time for completion of the services shall be extended by the number of days the services is suspended.

**XVI. NOTICE AND DEMAND**

Any notice, demand or communication under this Agreement by any party to the other party shall be given or delivered by first class mail, registered or certified mail, postage paid, return receipt requested or delivered in person as follows to:

<b>CITY:</b>	CITY CLERK 900 Quay Street Manitowoc, WI 54220	<b>COPY TO:</b>	CITY ENGINEER 900 Quay Street Manitowoc, WI 54220
<b>BUILDER:</b>	Master Builders Association Irv Seiler, President 4511 E. Whitetail Manitowoc, WI 54220		

The above addresses or designated party may be changed at any time by either party by giving notice in writing in the manner provided above.

**XVII. DRAFTING**

All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party by virtue of that party having drafted the document or any portion thereof.

### **XVIII. SEVERABILITY**

If any provision of this Agreement is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws.

### **XIX. HEADINGS**

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.

### **XX. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto. The parties agree that the BUILDER is acting as an independent contractor and not as an employee of the CITY.

### **XXI. AMENDMENTS**

This Agreement is the entire agreement between the parties and can only be modified or changed in writing executed by all parties.

### **XXII. THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CITY or BUILDER. BUILDER's services under this Agreement are being performed solely for CITY's benefit, and no other party or entity shall have any claim against BUILDER because of this Agreement or the performance or nonperformance of services hereunder. CITY and BUILDER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this project to carry out the intent of this provision.

DISMANTLE, REFURBISH AND RELOCATE OPEN AIR SHELTER  
FROM LOWER HENRY SCHUETTE PARK TO LINCOLN PARK

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement.

MASTER BUILDERS ASSOCIATION

CITY OF MANITOWOC

By: Irv Seiler  
Irv Seiler, President

By: Justin M. Nickels  
Justin M. Nickels, Mayor

By: Pat Poklinkoski  
Pat Poklinkoski, Secretary

By: Jennifer Hudon  
Jennifer Hudon, City Clerk, Dep. Treas.

Date: May 13 2014

Date: 5/19/14

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF Manitowoc     )

Personally came before me this 15<sup>th</sup> day of May, 2014, the above signed Irv Seiler, President, and Pat Poklinkoski, Secretary, of the Master Builders Association, of Manitowoc, Wisconsin, and acknowledged that they executed the foregoing instrument as such Officers of said Corporation, by its authority.

Stan P. Hynick  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires) (is):  
3-14-17

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF MANITOWOC     )

Personally came before me this 19 day of MAY, 2014, the above signed Justin M. Nickels, Mayor, and Jennifer Hudon, City Clerk, of the City of Manitowoc, Wisconsin and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

Daniel J. Jensen  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires) (is):  
8-17-14

Drafted by Kathleen M. McDaniel, City Attorney





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/15/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Ansay & Associates, LLC. MTW 4712 Expo Drive PO Box 1030 Manitowoc, WI 54221	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (800) 700-7350	FAX (A/C, No): (920) 682-7799	
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b>  Seiler Bros Construction Inc 4511 E Whitetail Court Manitowoc, WI 54220	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A : Acuity, A Mutual Insurance Co</b>		<b>14184</b>
	<b>INSURER B :</b>		
	<b>INSURER C :</b>		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		X04054	11/01/2013	11/01/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			X04054	11/01/2013	11/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			X04054	11/01/2013	11/01/2014	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	X04054	11/01/2013	11/01/2014	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Form CB7242 0513 & CB7191 0513 are attached to the general liability - Additional insured if required by written contract

*col  
MM/YY  
5/16/2014*

<b>CERTIFICATE HOLDER</b>  City of Manitowoc 900 Quay St Manitowoc, WI 54220	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**ADDITIONAL INSURED - COMPLETED OPERATIONS - PRIMARY AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU (OWNERS, LESSEES OR CONTRACTORS)**

CB-7242(5-13)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. Who Is An Insured is amended to include as an additional insured:
  - a. Any person(s) or organization(s) for whom you have performed operations if you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy for completed operations; and
  - b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person(s) or organization(s) is an additional insured only with respect to liability included in the *products-completed operations hazard* for *bodily injury* or *property damage* caused, in whole or in part, by *your work* performed for that additional insured at the location designated and described in the contract or agreement.

2. The insurance does not apply to:
  - a. *Bodily injury* or *property damage* which occurs prior to execution of the contract or agreement described in item 1; or
  - b. *Bodily injury* or *property damage* that occurs after the time period during which the contract or agreement described in item 1 requires you to add such person or organization onto your policy as an additional insured for completed operations; or
  - c. *Bodily injury* or *property damage* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:
    - (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    - (2) Supervisory, inspection, architectural or engineering activities.
3. The insurance provided by this endorsement is primary and noncontributory.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS -  
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION  
AGREEMENT WITH YOU - PRIMARY**

CB-7191(5-13)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. Who Is An Insured is amended to include as an additional insured:
  - a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as additional insured on your policy; and
  - b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an insured only with respect to liability for *bodily injury, property damage or personal and advertising injury* caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

2. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. *Bodily injury, property damage, personal and advertising injury* arising out of the rendering of, or the failure to render, any professional, architectural, engineering or surveying services, including:
    - (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    - (2) Supervisory, inspection, architectural or engineering activities.
  - b. *Bodily injury or property damage* occurring after:
    - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
    - (2) That portion of *your work* out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
3. The insurance provided by this endorsement is primary and noncontributory.