

PI
8-21-17

CONTRACT

17-0823

This contract is made and entered into this _____ day of August, 2017, by and between Aurora Health Care North, Inc., a Wisconsin corporation doing business as Aurora Medical Center Manitowoc County (hereinafter "Aurora") with local offices at 5000 Memorial Drive, Two Rivers, WI 54241, and the City of Manitowoc (hereinafter "City"), a Wisconsin municipal corporation located at 900 Quay Street, Manitowoc, WI 54220.

RECITALS

WHEREAS, the Little Manitowoc River Walkway (hereinafter "Walkway"), located within tax parcel 820-103-010 at 900 Maritime Drive in the City of Manitowoc is located adjacent to the City's Mariner's Trail and provides for recreational opportunities for Manitowoc residents and tourists; and,

WHEREAS, Aurora wishes to donate outdoor exercise equipment to the City of Manitowoc, to be installed in the pavilion on the walkway, to improve the recreational opportunities available at the Little Manitowoc River Walkway and the Mariner's Trail for Aurora employees and the general public; and,

WHEREAS, Aurora is working with several contractors of their selection to cause the exercise equipment to be installed.

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. Equipment. The exercise equipment provided shall be as outlined on the attached Exhibit A, to include various outdoor weightlifting equipment.
3. Costs. Aurora agrees to pay the contractors and subcontractors for their performance of renovation work and to obtain lien waivers for both the Aurora and the City. The City shall bear no responsibility for the contractor's payments.
4. Ownership. Aurora shall retain ownership of the equipment until the contractor has finished installing it. At that time, the City will take ownership of the equipment and bear the responsibility for insurance.
5. Ongoing Maintenance Fund. Aurora agrees to provide a monetary donation to the City of no less than \$2,500 to be used for ongoing maintenance and repairs of the exercise equipment and to assist with the insurance costs. The City will keep this fund segregated to be used only for this purpose. Aurora will provide this donation by December 1, 2017.
6. Schedule. Aurora will coordinate the work at the Walkway with the City's employees to minimize delay and disruption of the normal activities and prevent damage to existing City facilities, including the existing pavilion where the equipment will be installed. No contractors shall begin work without the approval of Director of Public Infrastructure Daniel Koski or his designee, Chad Scheinoha.
7. Insurance and Bonding. Prior to commencing work hereunder, Aurora and all

contractors hired on behalf of the Aurora 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 occurrence, \$2,000,000.00 in the aggregate; property damage limits of not less than \$250,000.00 per occurrence, and shall carry the statutory amounts for worker's compensation insurance. All contractors shall include with the Certificate of Insurance an endorsement naming Aurora and the City of Manitowoc as an additional insured. Aurora will forward all insurance certificates and endorsements to the City prior to any contractors commencing work.

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. **Disclaimer and Limitation of Liability.** Aurora provides all donated equipment to the City on an as-is basis, but will transfer any warranties from the manufacturer to the City of Manitowoc. The City acknowledges that Aurora will not be liable for any action in contract and tort related to the donated equipment unless the action arises as a result of negligence on the part of Aurora or their contractors.
10. **Indemnification.** Aurora 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.

The City agrees to release, indemnify, and hold harmless Aurora and all of its members, shareholders, officers, directors, employees, agents, and representatives of liability arising out of the use of the donated equipment or any act or omission on their part, other than negligent acts on the part of Aurora or their contractors.

11. **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 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 30 day period, provided that the defaulting party has commenced to cure within the 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.
12. **Permits.** Aurora shall require all contractors to obtain required building permits.
13. **Termination.** Either party may terminate this Contract prior to the beginning of construction with ten days written notice to the other party. Aurora may not terminate this contract once installation has begun.
14. **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:

AURORA:

Aurora Medical Center of Manitowoc Co.
5300 Memorial Drive
Two Rivers, WI 54241

CITY:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

With copy to:

Aurora Health Care, Inc.
750 West Virginia Street
Milwaukee, WI 53204
Attn: General Counsel

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.

15. **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.
16. **Amendments.** This Contract can only be amended or modified in writing and signed by the parties involved.
17. **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.
18. **Survival of Provisions.** All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
19. **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.
20. **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.
21. **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.

This agreement was drafted by Kathleen M. McDaniel, Manitowoc City Attorney

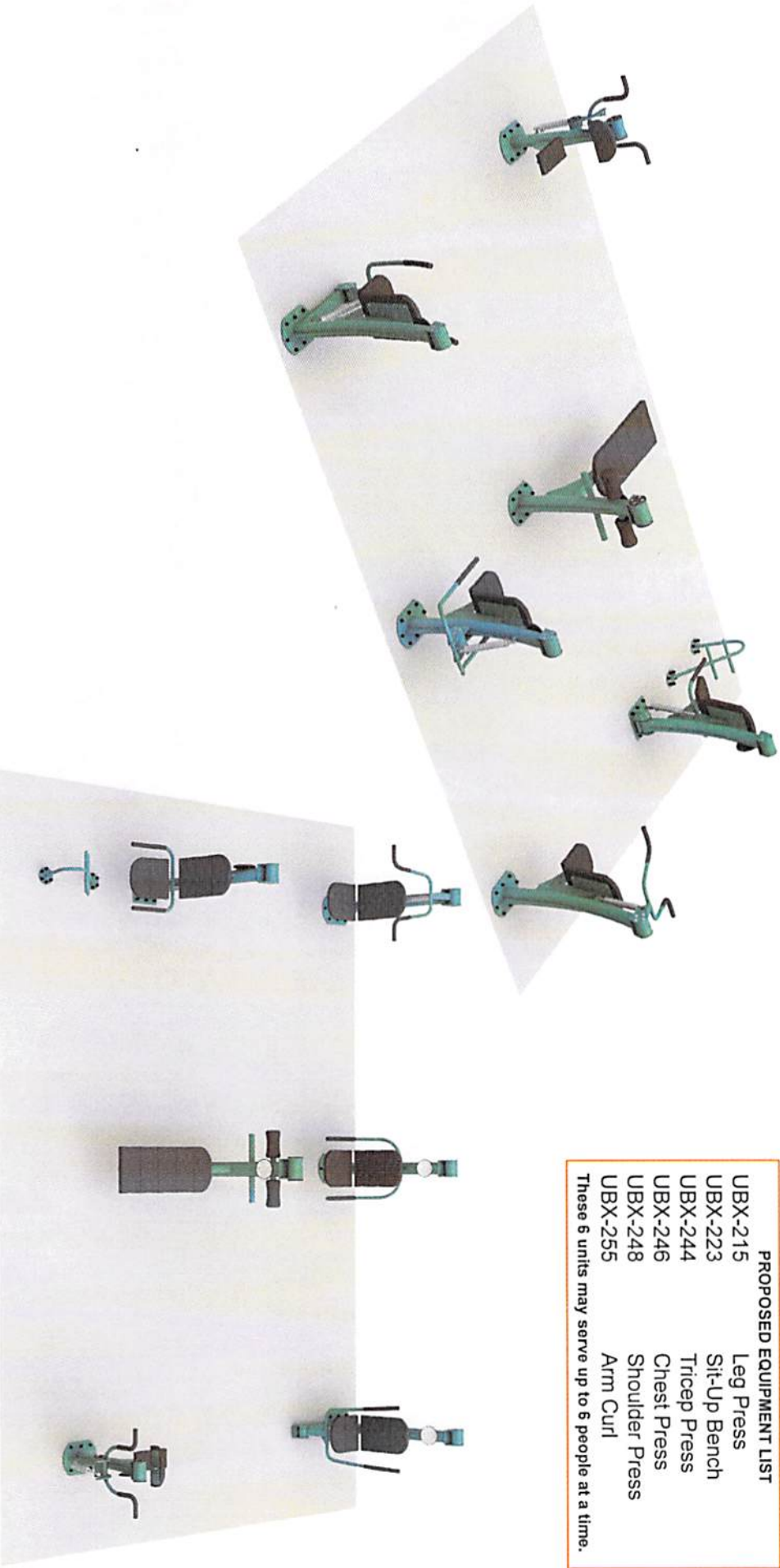
\\city_server\ca2flr\S\CYCOM\WpDocs\D025\P002\00055112.doc

**WI-MANITOWOC COUNTY-AURORA MEDICAL CENTER -V2
PROPOSED OUTDOOR FITNESS ZONE**



EXHIBIT A - Page1

**WI-MANITOWOC COUNTY-AURORA MEDICAL CENTER -V2
 PROPOSED OUTDOOR FITNESS ZONE**



- PROPOSED EQUIPMENT LIST**
- UBX-215 Leg Press
 - UBX-223 Sit-Up Bench
 - UBX-244 Tricep Press
 - UBX-246 Chest Press
 - UBX-248 Shoulder Press
 - UBX-255 Arm Curl
- These 6 units may serve up to 6 people at a time.*

**WI-MANITOWOC COUNTY-AURORA MEDICAL CENTER -V2
PROPOSED OUTDOOR FITNESS ZONE**



PROPOSED EQUIPMENT LIST

UBX-215	Leg Press
UBX-223	Sit-Up Bench
UBX-244	Tricep Press
UBX-246	Chest Press
UBX-248	Shoulder Press
UBX-255	Arm Curl

These 6 units may serve up to 6 people at a time.

