AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF RED ARROW PARK MEMORIAL MONUMENT

This Agreement is made and entered into this _____ day of ~~March~~ April, 2018, by and between Friends of Red Arrow Park, a 501(c)3 non- profit, non-stock organization, with its principal office located at 1113 North 8th Street, Manitowoc, Wisconsin, 54220, and the City of Manitowoc, a Wisconsin municipal corporation, located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

WHEREAS, Red Arrow Park is a City-owned park located at 1931 South 9th Street, Manitowoc, Wisconsin, consisting of 19.77 acres along the Lake Michigan shoreline; and

WHEREAS, Friends of Red Arrow Park is a non-profit organization whose mission is to facilitate construction of a veterans' memorial at Red Arrow Park over the western portion of Red Arrow Park currently used as a baseball diamond; and

WHEREAS, Friends of Red Arrow Park is working with several contractors of their selection to cause the memorial to be constructed; and

WHEREAS, the City wishes to authorize Friends of Red Arrow Park to construct a permanent veterans' memorial within Red Arrow Park to enhance the Park and honor the soldiers who have served in the Red Arrow Division and Brigade over the last 100 years.

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 recitals above are deemed true and correct.

2. Costs. Friends of Red Arrow Park agrees to pay the contractors and subcontractors for their performance of construction-related work and to obtain lien waivers for both Friends of Red Arrow Park and the City. The City shall bear no responsibility for the contractor's payments.

3. Ownership. Friends of Red Arrow Park assumes ownership of the memorial until its construction is complete at which point the City will take ownership and bear the responsibility for insurance. Friends of Red Arrow Park will provide the City with as-builts and a total cost of the project for insurance purposes.

4. Construction. Friends of Red Arrow Park will coordinate construction with City staff to minimize delay and disruption of the normal activities and to prevent damage to existing City facilities and grounds during construction. No contractors

shall begin work without the approval of Director of Public Infrastructure, Daniel Koski, or his designee, Chad Scheinoha.

5. Insurance and Bonding. Prior to commencing work hereunder, any contractors hired on behalf of Friends of Red Arrow Park 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. All contractors shall include with the Certificate of Insurance an endorsement naming the City of Manitowoc as an additional insured. Friends of Red Arrow Park will forward all insurance certificates and endorsements that are not already on file at City Hall to the City prior to any contractors commencing work. Any members of the Friends of Red Arrow Park doing work shall sign a City Volunteer Waiver.

6. Maintenance. Once construction is completed, the City will be solely responsible for maintaining the memorial and surrounding grounds.

7. 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.

8. Indemnification. Friends of Red Arrow Park 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.

9. 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.

10. Permits. Friends of Red Arrow Park shall require all contractors to obtain required building permits.

11. Termination. Either party may terminate this Contact prior to the beginning of construction with ten days written notice to the other party. Friends of Red Arrow Park may not terminate this contract once installation has begun.

12. 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 if it is sent by certified mail or personally delivered to:

Friends:	**CITY:**
Edgar J. Hansen	City of Manitowoc
1113 North 8th Street	900 Quay Street
Manitowoc, WI 54220	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.

13. 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.

14. Amendments. This Contract can only be amended or modified in writing and signed by the parties involved.

15. 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.

16. Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.

17. 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.

18. 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.

19. 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.

20. 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.

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

City of Manitowoc

By: _____
Mayor Justin M. Nickels

By: _____
City Clerk Deborah Neuser

Friends of Red Arrow Park

_____
Edgar J. Hansen, President

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this 30 day of March, 2018, the above named Edgar J. Hansen, and acknowledge they executed the foregoing instrument.

_____
Kathleen M McDaniel
Notary Public Manitowoc County, WI
My commission ~~(expires)~~(is) permanent

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of March, 2018, the above signed Justin M. Nickels, Mayor, and Deborah Neuser, 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.

_____
Notary Public
Manitowoc County, Wisconsin
My commission (expires) (is): _____

This agreement was drafted by Elizabeth Majerus, City of Manitowoc Staff Attorney