

Cost-Sharing and Construction Agreement Between Lake Michigan Carferry and the City of Manitowoc

This agreement (“Agreement”) is made and entered into this ____ day of October, 2018, by and between the City of Manitowoc (“City”) and Lake Michigan Carferry Services, Inc., (“LMC”), to formalize the cost-sharing agreement for the dock for the LMC SS Badger that is owned by the City and located at 900 S Lakeview Drive, Manitowoc, WI 54220, sometimes collectively referred to as the “Parties” or individually as a “Party”.

Recitals

1. The City owns a dock leased to LMC for the operation of LMC’s SS Badger Carferry (“Manitowoc Dock”), and the Manitowoc Dock is in significant need of repair due to storm damage, wind damage, environmental conditions, and age.
2. LMC owns and operates a dock in the City of Ludington, Michigan for the operation of LMC’s SS Badger Carferry (“Ludington Dock”) that is also in need of repairs.
3. LMC has engaged the services of Foth Infrastructure and Environmental, LLC (“Foth”) to obtain grants to do repairs to the Manitowoc Dock and the Ludington Dock (the “Project”), as well as to serve as construction manager of the Project.
4. The City adopted Resolution 16-0967 on October 17, 2016, which authorized the Mayor to seek grant funding to repair the Manitowoc Dock and contemplated the City and LMC entering into this Agreement.
5. Numerous grants have been awarded for the Project, including a federal FASTLANE Grant (“FASTLANE Grant”) that will be administered by Ludington and two Harbor Assistance Program Grants (“HAP Grants”) from the State of Wisconsin.
6. The HAP Grants will be used for improvements made to the Manitowoc Dock and the FASTLANE Grant will be used for the overall Project.
7. LMC and Foth will be responsible for the construction at the Manitowoc Dock.
8. The City will enter into a separate agreement with the City of Ludington addressing reimbursement between the municipalities for expenses covered under the FASTLANE Grant associated with the Project.

Now, therefore, the parties agree as follows:

1. **Recitals.** The Parties agree the recitals are true and correct and are incorporated herein, as if fully set forth.

- 2. Payment.** The Project is primarily grant-funded and the Manitowoc Dock repairs are estimated to cost \$5,029,380 (the “Manitowoc Dock Cost”). The City shall bear responsibility for 3.10% of the Manitowoc Dock Cost, not to exceed \$279,023. LMC shall bear responsibility for all costs not funded by the FASTLANE Grant, the HAP Grants, or the City, including any cost overages by the construction manager or subcontractors.
- 3. Ownership.** The City shall retain ownership of the Manitowoc Dock LMC uses in the City at all times, including during construction.
- 4. Insurance.** LMC shall ensure that all contractors working on the Manitowoc Dock carry appropriate insurance naming the City as an additional insured and provide copies of the certificates and additional insured endorsement to the City. The City shall procure and LMC and the City shall equally split (50/50) the cost of builder’s risk insurance during the construction period.
- 5. Lien Waivers.** LMC shall obtain lien waivers for the City from all contractors and shall provide them with the final project invoices.
- 6. Limitation of Authority.** LMC has no authority to bind the City for payment of any costs or expenses in excess of this Agreement.
- 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 Agreement.
- 8. Indemnification.** LMC 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 resulting from the work performed by LMC or its contractors under this Agreement.
- 9. Permits.** LMC shall require all contractors to obtain required permits.
- 10. 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.
- 11. Amendments.** This Agreement can only be amended or modified in writing and signed by the parties involved.
- 12. Integration.** This Agreement 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.

- 13. Survival of Provisions.** All indemnification and hold harmless obligations shall survive the expiration or termination of this Agreement.
- 14. Choice of Law.** This Agreement 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 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 circuit court for Manitowoc County, Wisconsin.
- 15. Heading.** The section titles have been inserted in this Agreement 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.
- 16. Construction.** All parties have contributed to the drafting of this Agreement. 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.

LMC

City of Manitowoc

Patrick McCarthy, Vice President

Justin M. Nickels, Mayor

Shari Vandervest, Executive Secretary

Deborah Neuser, City Clerk