

City of Manitowoc Silver Creek Restoration Project

THIS CONTRACT is entered into by and between the State of Wisconsin, Department of Natural Resources (the Department) and City of Manitowoc (the Contractor) for the purpose of completing the Silver Creek Restoration Project.

FOR AND IN CONSIDERATION of the terms and conditions contained in this contract, the above-named parties agree:

1. PERIOD OF AGREEMENT: This contract shall commence upon its signing by both parties and continue until December 31, 2028, during which period all performance as described in this contract shall be fully completed to the satisfaction of the Department.
2. CANCELLATION. The Department reserves the right to cancel this contract in whole or in part, without penalty, due to nonappropriation of funds or for failure of the Contractor to comply with terms, conditions, or specifications of this contract.
3. ENTIRE CONTRACT; AMENDMENTS. This contract, together with the specifications in the bid request (if any) and referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to the subject matter of this contract are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this contract, signed by both parties prior to the ending date of this contract.
4. ASSIGNMENT. Neither this contract nor any right or duty in whole or in part by the Contractor under this contract may be assigned, delegated or subcontracted without the written consent of the Department. If upon the written consent of the Department this contract or any right or duty in whole or in part is assigned, the Assignee(s) shall expressly agree to assume and perform all relevant obligations expressed under the terms of this contract and be bound by the terms and conditions of this contract. Assignment in whole or in part of this contract does not absolve the Contractor of any liability or obligation expressed and agreed to hereunder.
5. DESCRIPTION OF WORK OR PRODUCTS. The Contractor agrees to provide the following to the satisfaction of the Department:

Completion of the Silver Creek Restoration Project, which includes restoration of in-stream and riparian habitat along 0.48 stream miles of Silver Creek as described in Addendum 1.
6. PAYMENT. The Department agrees to reimburse the Contractor for actual net costs incurred in the following budgeted expenditures categories:

<u>Category</u>	<u>Cost</u>
a) Silver Creek Stream Restoration Project	\$30,000
Total	30,000

Final payment of a maximum of \$30,000 will be made upon receipt and acceptance of the Silver Creek Restoration Project by December 31, 2028 and a detailed summary by category of expenditures incurred.

Billings by the Contractor shall be made on a quarterly basis for review and acceptance:

Josh Brown
ILF Program Coordinator
Wisconsin DNR
JoshuaA.Brown@wisconsin.gov
608-516-3708

7. RECORDS, ACCESS. The Contractor shall, for a period of three (3) years after completion and acceptance by the Department, maintain books, records, documents and other evidence directly pertinent to performance on work under this contract in accordance with generally accepted accounting principles and practices. The Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this contract and a copy of the cost summary submitted to the Department. The Department, its agents and its duly-authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The Contractor shall provide proper facilities for such access and inspection. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such dispute, performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such dispute, appeal, litigation, claim or exception.
8. INDEPENDENT CONTRACTOR. The Contractor is an Independent Contractor for all purposes and is not an employee or agent of the Department.
9. INDEMNIFICATION. The Contractor agrees to save, keep harmless, defend and indemnify the State of Wisconsin, Department of Natural Resources and all its officers, employees and agents, against any and all liability, claims and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this contract or omissions of Contractor's employees, agents or representatives.
10. INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:
 - a) Maintain worker's compensation insurance for all employees engaged in the work.
 - b) Maintain commercial liability and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the contract. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
 - c) Provide an insurance certificate indicating this coverage, counter-signed by an insurer licensed to do business in Wisconsin, covering the period of the agreement/contract. The insurance certificate is required to be presented prior to issuance of the purchase order or before commencement of the contract.
 - d) The state reserves the right to require higher or lower limits where warranted.
11. NONDISCRIMINATION. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include,

but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Contractor being declared an "ineligible" contractor, termination of the contract, or withholding of payment.

12. **AFFIRMATIVE ACTION.** If this contract is for an amount of fifty thousand dollars (\$50,000) or more the Contractor agrees to submit a written affirmative action plan to the Department within 15 business days after the contract commences if an acceptable plan is not already on file with the State of Wisconsin. (Contractors with an annual work force of fewer than fifty (50) employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the Contractor being declared an "ineligible" contractor, termination of the contract, or withholding of payment.
13. **GUARANTEED DELIVERY.** Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the Department's administrative costs.
14. **APPLICABLE LAW.** This contract shall be governed by the laws of the State of Wisconsin. The Contractor shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this contract.
15. **ANTITRUST ASSIGNMENT.** The Contractor and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Contractor hereby assigns to the Department any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
16. **PAYMENT TERMS AND INVOICING.** Payment shall be considered timely if the payment is mailed, delivered, or transferred by the later of the following:
 - a) The date specified on a properly completed invoice for the amount specified in the order or contract, or
 - b) Within thirty (30) days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract or within thirty (30) days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later if the Department does not notify the sender of receipt of an improperly completed invoice within ten (10) working days after it receives the invoice of the reason it is improperly completed.
17. **TAXES.** The Department is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of all federal tax and Wisconsin sales or use tax on its purchases. The State of Wisconsin, Department of Natural Resources has a tax exempt number of 008-1020421193-05. The Department may be subject to other states' taxes on its purchases in that state depending on the laws and of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
18. **TAX DELINQUENCY.** Contractors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

19. LIABILITY. The work to be performed under this contract is to be performed entirely at Contractor's risk. Contractor hereby assumes all liability with all work and all services to be provided by the Contractor under this contract.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Date _____

By: _____

Title: _____

CONTRACTOR

Date _____

By: _____

Title: _____