

CONTRACT

This contract is made and entered into this _____ day of _____, 2021, by and between Bodart Electric Service, Inc. (hereinafter "Contractor"), located at 1113 Orlando Drive, DePere, WI 54115 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

WHEREAS, Bodart Electric Service, Inc. located at 1113 Orlando Drive, DePere, WI 54115, intends to furnish labor, material, and equipment to complete the installation of traffic signal replacements at the intersection of South 8th and Washington St., South 10th and Marshall St., South 10th and Washington St. and South 10th and Franklin St. as outlined in the plans and specifications that were prepared by J.T. Engineering and are included by reference in this contract and "Exhibit A", Bodart Electric Service, Inc. Proposal.

WHEREAS, This work is being completed under the Wisconsin Department of Transportation's (WDOT) SISF funding program and a State & Municipal Agreement (SMA). The SMA is attached to this agreement as Exhibit "B". The SISF is a reimbursement funding program. The WDOT will fund 90% of the eligible costs and the City of Manitowoc is responsible for 10% of the cost of the project. The City will be responsible for paying Bodart and will seek reimbursement from WDOT.

WHEREAS, Bodart Electric Service, Inc. has the ability to perform the required work needed for the traffic signal replacement project at the various intersections listed above.

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. Scope of Work. The Contractor agrees to perform the following work and/or furnish the following labor and materials in accordance with the terms of this contract:

All work shall be performed in accordance with the J.T. Engineering Specifications, City of Manitowoc's Standard Specifications for Public Works Construction and the Wisconsin Department of Transportation's (WDOT's) Standard Specifications for Highway and Structure Construction, latest edition.

See listing of tasks for this project. (Attached are "Exhibit A).

3. Contract Price. The City agrees to pay to the Contractor for the performance of this contract the sum not to exceed **\$532,623.76**.
4. Schedule. The Contractor agrees to commence work under this Contract upon its execution, **but no later than October 25, 2021** and complete performance of this contract in accordance with the City of Manitowoc's Standard Specifications, which are made part of this Contract and are incorporated by reference. **The contract completion date for all underground work and above grade restorations shall be November 19, 2021. The final completion date to have a fully operationally traffic signal shall be February 1, 2022.**

5. Liquidated Damages. **For every calendar day** of delay in the completion of the work beyond the time specified, unless extended by written agreement, there shall be deducted from the amount due under this Contract as fixed, agreed and liquidated damages, the sum of **Two-Hundred Fifty Dollars (\$250).**
6. Payment Schedule. Requests for payment shall be made to the Director of Public Infrastructure. The Director of Public Infrastructure shall make a recommendation on the payment request and submit the same to the City's Board of Public Works when applicable. Contractor shall be entitled to payment within 30 days following approval by the Director of Public Infrastructure. The Contractor shall be required to submit a Lien Waiver prior to the City processing the final payment.
7. Assignment and Subcontracting. Contractor shall not be permitted to sign or subcontract any of the work hereunder without the prior written consent of the City.
8. Insurance and Bonding. Prior to commencing work hereunder, Contractor 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. Contractor shall include with the Certificate of Insurance two endorsements, one endorsement naming the City of Manitowoc as an additional insured, and a second endorsement giving City thirty (30) days prior notice of non-renewal, modification or cancellation.
9. 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.
10. Sales Tax Exemption. The Contractor shall be required to comply with Chapter 77 of Wisconsin State Statutes and more specifically Section 77.54(9m) as it relates to the sales tax exemption for building materials that become part of a facility for a local unit of government. (This is also known as 2015 Wisconsin Act 126).
11. Other Indebtedness to City. It is understood and agreed by the parties hereto that whenever a contractor is for any reason indebted to the City of Manitowoc, the contractor consents that the City of Manitowoc through its officials shall and may, deduct and retain, any such balance out of the money or monies which may be due or become due to the contractor under this contract.
12. Indemnify. Contractor 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 where the injury, damage, or death is caused by negligence or willful misconduct on the part of the Contractor, subcontractor, officers, employees, or agents.
13. 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 thirty (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 thirty (30) day period, provided that the defaulting party has commenced to cure within the thirty (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.

14. Permits. No Permits are anticipated for this project.
15. Termination. Either party may terminate this Contact with ten (10) days written notice to the other party.
16. 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:

CITY:
City Clerk
900 Quay Street
Manitowoc, WI 54220

CONTRACTOR:
Bodart Electric Service, Inc.
1113 Orlando Drive
DePere, WI 54115

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.

17. Assignment. This Contract is not assignable without prior written consent of City.
18. 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.
19. Amendments. This Contract can only be amended or modified in writing and signed by the parties involved.
20. 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.
21. Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
22. 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.

23. 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.
24. 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 a 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.
25. 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

SOLE PROPRIETORSHIP OR PARTNERSHIP

CORPORATION

Name of Proprietor or Partnership

Name of Corporation

(Seal)

By: _____
(Seal)

Sole Proprietor or Partner

President: Tim Bodart

(Seal)

Attest:

Partner

Secretary:

(Seal)

CORPORATE SEAL

Partner

CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Attest:

Mackenzie Reed-Kadow, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this _____ day of _____, 2021, the above named Justin M. Nickels and Mackenzie Reed-Kadow, known to me to be the Mayor and City Clerk of the City of Manitowoc and acknowledge they executed the foregoing instrument.


Notary Public Manitowoc County, WI
My commission (expires)(is)_____.

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this _____ day of _____, 2021, the above named Tim Bodart, President for Bodart Electric Service, Inc. and acknowledge they executed the foregoing instrument.

Notary Public Manitowoc County, WI
My commission (expires)(is)_____.

Exhibit "B"

 <p style="text-align: center;">Original</p> <p style="text-align: center;">Intelligent Transportation Systems (ITS) Program</p> <p style="text-align: center;">STATE/MUNICIPAL FINANCIAL AGREEMENT FOR A STATE- LET HIGHWAY PROJECT</p>	Date: January 14, 2021 I.D.: 3700-30-37 Road Name: US 151 & US 10 WB (8 th Street) US 151 & US 10 EB (10 th Street) US 10 EB (10 th Street) & Franklin Street US 10 EB (10 th Street) & Marshall Street Title: C Manitowoc Signal Retrofit Limits: USH 151 & USH 10 County: Manitowoc Project Length: 0.04 MI
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The signatory City of Manitowoc hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Section 86.25(1), (2), and (3) of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

Existing Facility - Describe and give reason for request: The existing signals are outdated and obsolete.

Proposed Improvement - Nature of work: Update the existing traffic signals with a new signal cabinet, conduit, pull boxes, bases, poles, arms, heads, and initial inspection of monotubes. This work is being done at the following intersections; US 151 & US 10 WB (8th Street), US 151 & US 10 EB (10th Street), US 10 EB (10th Street) & Franklin Street, and US 10 EB (10th Street) & Marshall Street.

Describe non-participating work included in the project and other work necessary to finish the project completely which will be undertaken independently by the municipality: None

TABLE 1

PHASE	ESTIMATED COST				
	Total Estimated Cost	State Funds	%	Municipal Funds	%
Preliminary Engineering:					
Plan Development	99,000	89,100	90	9,900	10
Construction :					
Signal Items	1,002,000	901,800	90	100,200	10
TOTAL COST DISTRIBUTION:	1,101,000	990,900	90	110,100	10

This request is subject to the terms and conditions that follow (pages [2] – [3]) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signed for and in behalf of the City of Manitowoc (please sign in blue ink)		
Name	Title	Date
Signed for and in behalf of the State (please sign in blue ink)		
Name	Title	Date

TERMS AND CONDITIONS:

1. The initiation and accomplishment of the improvement will be subject to the applicable Federal and State regulations.
2. The Municipality shall pay to the State all costs incurred by the State in connection with the improvement which exceeds Federal/State financing commitments or are ineligible for Federal/State financing. Local participation shall be limited to the items and percentages set forth in table 1 that shows Municipal funding participation. In order to guarantee the Municipality’s foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
3. Funding of each project Phase is subject to inclusion in an approved program and per the State’s Facility Development Manual (FDM) standards. Federal aid and/or State transportation fund financing will be limited to participation in the costs of the following items as specified in the Summary of Costs:
 - (a) Design engineering is split 90% State and 10% Municipal. State funds up to a maximum total of \$89,100.
4. Work necessary to complete the improvement to be financed entirely by the Municipality or other Utility or Facility Owner includes the following items:
 - (a) New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
5. As the work progresses, the Municipality will be billed for work completed which is not chargeable to Federal/State funds. Upon completion of the project, a final audit will be made to determine the final division of costs.
6. If the Municipality should withdraw the project, it shall reimburse the State for any costs incurred by the State on behalf of the project.

7. The Municipality shall at its own cost and expense:

(a) Maintain all portions of the project that lie within its jurisdiction for such maintenance through statutory requirements, in a manner satisfactory to the State and shall make ample provision for such maintenance each year.

(b) Use the WisDOT Utility Accommodation Policy unless the Municipality adopts a policy which has equal or more restrictive controls.

9. Basis for local participation:

Design: Costs for Design are 90% State and 10% Municipal. State funds up to a maximum total of \$89,100. Any overages shall be funded by the Municipality.

Construction: Costs for Construction are 90% State and 10% Municipal. State funds up to a maximum total of \$901,800. Any overages shall be funded by the Municipality.