20-0819

PEDESTRIAN CROSSING SIGN INSTALLATION AND MAINTENANCE AGREEMENT

This Pedestrian Crossing Sign Installation and Maintenance Agreement is entered into on this _____ day of _____, 2020, by and between the City of Manitowoc, Wisconsin, a Wisconsin Municipal Corporation (hereinafter "City") located at 900 Quay Street, Manitowoc, Wisconsin 54220, and Alliance Laundry Systems LLC (hereinafter "ALLIANCE") a Wisconsin Corporation, located at 2401 South 30th Street, Manitowoc, Wisconsin 54220.

WHEREAS, ALLIANCE desires the installation of LED Pedestrian Crossing Signs located on South 30th Street as identified in Exhibit "A" attached hereby and incorporated by reference.

WHEREAS, the purpose of the sign installation is to enhance safety by alerting drivers of the presence of pedestrians crossing mid-block, particularly ALLIANCE employees.

WHEREAS, the City has agreed to install Four (4) LED Pedestrian Crossing Signs at Two (2) separate crosswalks upon the request of ALLIANCE in the interest of safety to ALLIANCE employees and the general public upon the terms and conditions of this Agreement.

WHEREAS, ALLIANCE agrees to pay the entire cost of the signs and the installation of the signs, as well as an annual maintenance fee for the signs.

WHEREAS, the property upon which the signs are to be located is shown on the attached map as Exhibit "A" which is hereby incorporated by reference and is more particularly described as follows:

A location in the right-of-way in the SE ¼ of Section 36, T 19 N., R 23 E., and more particularly described as being located in the City's right-of-way known as South 30th Street between Dewey Street and Viebahn Street.

NOW THEREFORE, it is hereby understood and agreed by and between the parties hereto as follows:

ARTICLE I

SIGNS

Section 1. Property. This agreement shall pertain to four (4) solar powered fluorescent yellow pedestrian crossing signs with push button activation and LED lighting around the perimeter of each sign similar to those shown in **the attached photograph, Exhibit 'B', which is hereby incorporated by reference.**

Section 2. Sign Location. The exact location of the signs shall be determined by the Director of Public Infrastructure/City Engineer for the City in his or her sole discretion. Two signs shall be placed at the existing Crosswalk No. 3 on South 30th Street and two signs shall be placed at the existing Crosswalk No. 4 on South 30th Street as shown in Exhibit "A". The location of the signs shall be for the purpose of enhancing safety by alerting drivers of the presence of these two mid-block pedestrian crossings.

Section 3. Public Right-of-Way. The sign(s) shall be placed in the public right-of-way, and shall be under the ownership and control of the City, and shall be held for the use of the general public, including any ALLIANCE employees.

Section 4. Cost of the Signs and Installation. ALLIANCE shall pay the full cost of the signs and the City installation costs for said signs. The costs shall include, but are not limited to, shipping and transportation charges for signs and materials, labor for placement of signs, materials used to secure placement, equipment utilized for installation and any other costs associated with the purchase and installation of these signs. Payment for installation and materials shall be paid by ALLIANCE within thirty (30) days of receiving the billing statement from the City's Department of Public Infrastructure.

Section 5. Ownership. The sign or signs and all materials for installation shall be placed in the City's right-of-way and shall be solely owned by the City.

ARTICLE II

TERMS

Section 1. Agreement Term. This Agreement shall become effective immediately upon it's signing by all parties and shall remain in force for forty (40) years. After forty (40) years, this Agreement shall automatically renew on a yearly basis, on January 1st of each year, unless either party notifies the other within thirty (30) days of the 1st of January their desire to no longer maintain the signs.

Section 2. Payment for Maintenance. ALLIANCE shall be responsible to pay an annual fee for the maintenance of said signs, which maintenance shall be provided by the City's Department of Public Infrastructure (hereinafter "DPI"). ALLIANCE shall not perform any maintenance to the sign(s). If ALLIANCE feels there is a need for maintenance, ALLIANCE shall notify DPI requesting an inspection of the sign(s) to determine if there is in fact a need for maintenance.

Section 3. Annual Maintenance Fee. The annual maintenance fee shall be $150.00 per year, for the first three (3) years of this Agreement, commencing January 1, 2022, due on or before January 1st of any given year. Beginning with and including 2025 the annual fee shall increase annually on January 1st of each succeeding year $5.00 per year as long as this Agreement is in effect. There shall be no pro-ration of the annual fee for any reason.

Section 4. Maintenance Defined Maintenance shall include all costs for providing a secure sign structure, working push button activation, working LED lights, retro-reflective sign face and battery. Any additional items not specifically noted as maintenance shall be considered repairs/replacement.

Section 5. Repairs and Replacement

a. Damage In the event of damage, destruction or deterioration of any kind, by any means, to the sign or signs, the City, through DPI in its sole discretion, shall determine if the sign(s) shall be repaired or replaced.

b. Cost Of Repairs/Replacement. If the City, through DPI, determines that the sign or signs should be repaired or replaced, it shall do so at ALLIANCE's cost. The City shall provide ALLIANCE with ten (10) days written notice in accordance with Article III of this agreement of any proposed repair or replacement of the signs along with an estimate of the cost of any such repairs or replacement. Any repair or replacement of the signs shall be billed to ALLIANCE on a time and material basis, payable by ALLIANCE within thirty (30) days of receipt of the bill from the City.

Section 6. Termination.

a. Termination For Convenience by ALLIANCE. Notwithstanding the provisions of Article II, Section 1 above, ALLIANCE may, at any time following ten (10) years after the execution of this Agreement, terminate this Agreement and any and all of its obligations hereunder at its sole convenience upon providing a thirty (30) day written notice of termination to the City in accordance with Article III of this Agreement. Upon notification, it shall be in the City's sole discretion to determine whether the signs shall remain in place or be removed, at no further cost to ALLIANCE.

b. Termination For Cause By The City The City may terminate this Agreement at any time upon thirty (30) days written notice to ALLIANCE in accordance with Article III of this Agreement, if the City in its sole discretion, determines the signs create a hazard or the signs are in violation of any Local, State or Federal Law.

c. Default And Termination If either party fails to perform or observe any material term or condition of this Agreement, then such party would be in default of the Agreement and the non-defaulting party may terminate the Agreement. The party seeking to terminate the Agreement must provide written notice of default to the defaulting party. This written notice must specify the default(s) giving rise to the right to terminate the Agreement. The defaulting party will have thirty (30) days to cure the default(s) unless such cure period is extended by agreement of the parties. If the default is not cured within this thirty (30) day period or any extension thereof, then the Agreement will automatically terminate.

ARTICLE III

NOTICE

All notice required or otherwise given hereunder shall be in writing and delivered personally or by registered mail. All mailed notice shall require proof of acknowledgement of receipt of said notice and addressed, as the case may be, to the respective party as addressed below:

In the case of City:

City Clerk
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220-4543

In the case of ALLIANCE:

Maintenance and Facilities Manager
Alliance Laundry Systems LLC
P.O. Box 2167 Manitowoc, WI
Manitowoc, WI 54220

Either party may change the address to which notice is to be given by notifying the other party, in writing, of such a change.

ARTICLE IV

APPLICABLE LAW

This agreement shall be deemed to have been made in Manitowoc County, Wisconsin and shall be governed by and construed under, and enforced 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.

ARTICLE V

HEADINGS

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, the text shall control.

ARTICLE VI

RELATIONSHIP OF PARTIES

Nothing in this Agreement, nor any act of the City or ALLIANCE, shall be deemed or be construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the City and ALLIANCE.

ARTICLE VII

ASSIGNABILITY

ALLIANCE shall not assign this Agreement or any part of it without the prior written consent of the City, which consent shall not be unreasonably withheld.

ARTICLE VIII

MODIFICATION

This is the entire Agreement made this date between the parties and any modification or change shall be in writing, by agreement of the parties and executed with the same formality as this document.

ARTICLE IX

DRAFTING OF AGREEMENT

All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this Agreement 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 this Agreement or any portion thereof.

This Agreement shall be dated, effective and binding on the parties as of the date of the last execution.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Dated this _____ day of _____, 2020.

CITY OF MANITOWOC

By: _____
Justin Nickels, Mayor

Attest: _____
Deborah Neuser, City Clerk

ALLIANCE LAUNDRY SYSTEMS LLC

_____ 8/10/2020
Andrew Ford, Site Leader

_____ 8/10/2020
Emily Ward, HR Generalist

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this _____ day of _____, _____, Justin Nickels, Mayor and Deborah Neuser, City Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be such Mayor and City Clerk of the City of Manitowoc and acknowledged that they executed the foregoing instrument as Officers of said City, by its authority.

_____

_____

Notary Public, Manitowoc County, Wisconsin
My commission expires

_____

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this 10 day of AUGUST, 2020, ANDREW STEVEN FORD and EMILY ANN WARD, as duly authorized officers of Alliance Laundry Systems LLC to me known to be the person(s) who executed the foregoing instrument, and to me known to be officers of said corporation, and acknowledged that they executed the foregoing instrument as such officers of such corporation, by its authority.

JESSICA A. BLAHNIK NOTARY PUBLIC STATE OF WISCONSIN

_____
Notary Public, Manitowoc County, Wisconsin
My commission expires:
1/6/21

This instrument was drafted by Kathleen McDaniel, City Attorney

JESSICA A. BLAHNIK
NOTARY
PUBLIC
STATE OF WISCONSIN