

**AGREEMENT FOR THE PROVISION OF WATER SERVICE BETWEEN THE  
TOWN OF CLAYTON AND THE CITY OF APPLETON**

**(Sec. 66.0301, Wis. Stats.)**

This **AGREEMENT**, entered into this day of by and between Town of Clayton organized and existing under the laws of the State of Wisconsin with principal offices at 8348 CTR T Larsen, Wisconsin, hereinafter called the "Town" and the City of Appleton, a Municipal Corporation organized and existing, under the laws of the State of Wisconsin with principal offices at 100 N. Appleton Street Appleton, Wisconsin, hereinafter called the "City", is as follows:

**WITNESSETH:**

**WHEREAS**, the City owns and operates a system of water supply, storage, pumping, and distribution facilities which has capacity for supplying water utility service to properties located in the Town; and

**WHEREAS**, the Town has no water supply, storage, pumping or distribution capabilities in any other areas and has expressed a desire that the City provide wholesale water utility service to additional areas in the Town, said lands being those described in Exhibit A attached hereto ("2018 Water Service Area"); and

**WHEREAS**, the City has agreed to sell water to the Town water utility customers in the 2018 Water Service Area; and

**WHEREAS**, §66.0813(1), Wis. Stats., authorizes a city owning a water utility to serve persons or places outside its corporate limits, and §66.0813(3), Wis. Stats., authorizes the limits of the water utility service to be fixed and requires that the area of service be delineated; and further, that the City Utility has no obligation to serve beyond the delineated area unless enlarged by a subsequent ordinance; and

**WHEREAS**, water supplied to the 2018 Water Service Area by the City may supply various land uses, including residential dwellings, commercial businesses and institutional and industrial areas within the boundaries of the Town, which uses are hereinafter referred to as "users"; and

**WHEREAS**, the Town and City have expressed willingness to enter into a contract for water utility service pursuant to §66.0301, Wis. Stats.

**WHEREAS**, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration to each in hand paid by the other, receipt of which is hereby acknowledged, and in further consideration of the covenants herein contained and the benefits derived by each, the Town and the City contract and agree as follows:

**A. RECITALS**

The representations and recitations set forth in the foregoing Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section A and constitute representations and understandings of the City and the Town according to the tenor and import thereof.

**B. GENERAL INTENT AND OWNERSHIP**

The Town, at its sole expense, will plan, design, construct, operate, and maintain a water supply system, including but not limited to, water towers, booster pump stations and the like, within the Town 2018 Water Service Area connecting to the City of Appleton water system, for the purpose of providing water and fire protection service to users located within the 2018 Water Service Area. The City will own up to and including the “curb stop” unless, however, the service is larger than two inches, in which case the City will own to the first valve at the connection point.

**C. SERVICE AREA AND CAPACITY**

The service limits for the provision of water utility service to the Town shall include only those lands described in Exhibit A, the 2018 Water Service Area, attached hereto. Pursuant to §66.0813(3)(a), Wis. Stats., the City Utility has no obligation to serve beyond or in addition to the delineated areas.

By action of the City Common Council by adopting a subsequent amending ordinance to the ordinance limiting the utility service areas, the delineated areas may be enlarged.

**D. TOWN WATER SYSTEM**

(1) Except as otherwise provided in this Agreement, the Town shall be responsible for the planning, design, bidding, construction, operation and maintenance of the water system located within the 2018 water service area and from the Town boundaries to the existing City water system located in the City. The Town shall be responsible for all costs associated with the planning, designing and construction of the water system to serve properties within the 2018 Water Service Area. All plans and specifications for the Town water mains shall be submitted to and approved by the City.

(2) The City shall be permitted to periodically inspect construction of the water system at all phases of the construction or may delegate said inspections to a construction manager who is mutually agreed upon by the parties.

(3) The City shall grant to the Town any permits, easements or other

necessary approvals within public right-of-way or within existing public easements within those areas of the City needed for the construction and maintenance of the Town water system. The Town shall restore any areas disturbed by the construction to pre-construction conditions, and the restoration upon completion of construction must be approved by the City prior to final payment by the Town to the contractor retained by the Town for said work, which approval will not be unreasonably withheld.

- (4) Upon completion of the construction of the Town's 2018 Water Service Area water system and acceptance by the Town and the City, the Town shall dedicate the 2018 Water Service Area water system to the City and the City shall accept dedication and ownership. Notwithstanding ownership by the City, the Town shall be responsible for the operation and maintenance of the 2018 Water Service Area water system including, but not limited to, the following: a.) provide location service; b.) notify the City of major breaks/malfunctions; and c.) repair main breaks with staff/contractor approved by the City.
- (5) The Town's operating and maintenance responsibility shall apply only to the water supply, storage, pumping, transmission or distribution components located outside of City limits. Any future expansion or extension of the water service system within the Town's 2018 Water Service Area to serve Town property(ies) will also be undertaken and paid for by the Town. Any future expansion or extension of the Town's water service system to serve property(ies) located outside of Town or City limits must be approved in writing by the Town and City.

**E. METERS**

**(1) Master Metering System**

a. The Town shall install, own and maintain an above-ground metering station. The metering station shall be equipped with a fully functional telemetry system so as to enable both the Town and City to access real-time flows and pressures. The booster station shall be equipped with a back-up generator.

b. The City shall install, own, and maintain the master meter in good operating condition. The master meter shall be tested and calibrated by the City annually at City expense. Copies of all system testing and calibration reports shall be submitted to both parties within 30 days of the date of meter testing or calibration. The City shall have access to the meter(s) for maintenance purposes at any reasonable time. The meter(s) shall be tested by the City as the PSC recommended schedule with copies of all test results provided to the Town. The Town may request additional tests at its expense.

- (2) **Individual Customer Meters** The Town shall install meters for accurately measuring the quantity of water delivered to each of the Town's water customers in the 2018 Water Service Area. The Town shall install, operate, maintain, calibrate, and read the meters of its retail customers as required by Chapter 196, Wis. Stats., and Chapter PSC 185 of the Wisconsin Administrative Code. The Town shall require immediate connection to water service as authorized under §281.45 Wis. Stats.

**F. WATER SUPPLY**

The water provided by the City to the Town at the master meter station and the water provided by the Town to all Town customers pursuant to this Agreement shall satisfy all applicable regulations for safe drinking water. The Town shall provide water pressure sufficient to satisfy all applicable pressure requirements of the Wisconsin Department of Natural Resources (the "DNR"), of the Wisconsin Public Service Commission (the "PSC"), the Environmental Protection Agency ("EPA"), and the American Water Works Association ("AWWA"). The Town shall reasonably cooperate with the City to facilitate the provision of retail water service by the City to water users located within the Town.

**G. COSTS OF CONSTRUCTION**

**H. LOCAL ORDINANCES**

- (1) The Town hereby agrees to adopt and comply with Chapter 20 of the City's Municipal Code now in existence or enacted or amended at any time during the existence of this agreement or any extension thereof. Both the Town and City agree that any water utility ordinance enacted or to be enacted or amended will treat users in the either municipality the same, except as otherwise specifically provided herein.
- (2) The parties agree that the City shall have the right to inspect all necessary components of the Town water system. The City agrees to take all reasonable actions to assist the Town in ensuring continuous water supply to the Town.

**I. WATER SERVICE CONNECTIONS**

- (1) The City shall have the right to inspect the Town building permit records to ensure compliance with this agreement. The City shall also have the right to inspect any work performed relating to water service connections. All connections to the system shall meet the requirements of Chapter 20 of the Municipal Code of the City and the Wisconsin State Plumbing Code.

**J. BILLING DATES AND PROCEDURES; PAYMENT TERMS**

- (1) The City is providing water utility service to the Town and the Town shall be liable for payment for all charges relating to these services. The City shall bill the Town on a quarterly basis for all charges, to be computed in accordance with the provisions of Paragraph K herein.
- (2) The Town shall pay all invoices in full within 20 days after the date of billing, and if not so paid, the account shall be considered delinquent. Delinquent payments shall be subject to the same penalties and charges assessed by the City to City residents who are delinquent in the payment of water charges. The City shall have the right to withhold approval of any water connections while bills are delinquent.
- (3) Users of water in the 2018 Water Service Area shall be individual retail customers of the Town of Clayton. The Town of Clayton shall be solely responsible for the billing of all charges and fees to such retail customers and for the collection of all such charges and fees from such retail customers. Individual retail customers shall pay their water bills directly to the Town of Clayton.

**K. COMPUTATION OF VOLUME FOR BILLING**

- (1) The Town shall be billed at the Bulk Rate per Schedule Mg-1 of the City's approved tariff, said charges being calculated as modified from time to time, as applied to the volume of water measured at the Master Meter. A copy of the current Schedule Mg-1 of the City's approved tariff is attached here as Exhibit B.
- (2) The Town shall bill all Town customers in strict conformity with the City's Customer Water Utility Rate schedule and all PSC regulations, as applied to all individual customer meters at rates applicable to City customers, as modified from time to time. A copy of the current Customer Rate schedule is included herein as Exhibit B.
- (3) The Town shall provide, on a quarterly basis, a customer billing summary which indicates any changes to the number of customers being served by the Town. The City shall have the right to inspect the Town customer billing records to ensure compliance with the agreement.

**L. DISPUTES**

The parties hereto agree to be bound by the provisions of §196.37, Wis. Stats., in the resolution of any dispute concerning the interpretation of this agreement or the rates, rules and practices of the parties.

**M. BOOKS AND RECORDS**

The Town and the City shall keep accurate books, records, and accounts of costs, expenses, expenditures, and receipts as they pertain to this Agreement. Upon reasonable notice, either party shall be entitled to examine any and all such books and records. Either party may request an annual certified audit report of the books and records of the other party.

**N. EFFECTIVE DATE**

The effective date of this Agreement shall be the date upon which it is executed by the last of the parties to this Agreement.

**O. TERM OF CONTRACT; REMEDIES**

- (1) The term of this Agreement shall be fifty (50) years and shall be renewed for fifty (50) year periods thereafter commencing on the 1st day of \_\_\_\_\_, 2018, unless the Agreement is terminated by mutual agreement.
- (2) In addition to the penalties provided herein, and in the event of violation of the terms of this Agreement or of any rule and regulation of the Wisconsin Department of Natural Resources, the United States Environment Protection Agency, the PSC, or other authority having legal jurisdiction in these matters, either party may sue in any court of record for declaratory judgment or other relief as may be provided by law.
- (3) The Town shall periodically evaluate no less than every five (5) years whether it meets criteria established by the PSC and any other agencies to be considered its own utility.

**P. EFFECT OF AGREEMENT**

The City and Town recognize that this Agreement is the product of a unique set of circumstances. Accordingly, it is mutually acknowledged that many of the provisions contained herein are unique unto themselves and should not be seen as precedent for any future agreement between the City, the Town and/or other entities.

**Q. SEVERABILITY**

If any clause, provision, or section of this Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions.

**R. BINDING AGREEMENT**

This Agreement shall be binding upon the parties hereto and their respective successors and assigns, including an incorporated successor to the Town and shall be considered to run with the land of the Town and any incorporated successor thereto, whether in whole or in part.

**S. TRANSFER OF OWNERSHIP**

During the term of this Agreement, the City shall not transfer, pledge, assign or in any manner encumber the 2018 Water Service Area water system. Upon written request of the Town, the City shall tender, relinquish and transfer all right title and interest to the 2018 Water Service Area water system, free and clear of any liens or encumbrances.

**T. INDEMNIFICATION**

For good and valuable consideration, the Town and its successors and assigns, including any incorporated successor to the Town agree to indemnify, defend and hold harmless the City and its officers, officials, employees and agents from and against any and all liability, loss, damage, expenses, costs, including attorney's fees, arising in any way out of the goods provided and activities performed pursuant to this agreement, caused in whole or in part by any negligent act or omission of the Town, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, except where caused by the sole negligence or willful misconduct of the City.

[SIGNATURE LINES ON NEXT PAGE]