

**AGREEMENT FOR THE TREATMENT OF WASTEWATER
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 wastewater treatment facility located in the City, which has capacity for the treatment of wastewater originating in the Town; and

WHEREAS, the Town has agreed to plan, design, construct, own, and operate a wastewater collection system and interceptor located principally in the Town but extending through other municipalities to the City limits; and

WHEREAS, the Town has no wastewater treatment capabilities and has expressed a desire that the City treat the wastewater originating from areas in the Town, said lands being those described in Exhibit A attached hereto ("2018 Service Area"); and

WHEREAS, the City has agreed to accept and treat wastewater originating in the 2018 Service Area; and

WHEREAS, the wastewater to be treated and disposed of by the City from the Town shall be only of the type and nature presently being collected and treated by the City; and

WHEREAS, wastewater of the Town to be treated and disposed of by the City may originate from various land uses, including residential dwellings, commercial businesses and industrial areas within the boundaries of the Town, which uses are hereinafter referred to as "users" and;

WHEREAS, the Town has expressed willingness to enter into a contract for wastewater treatment pursuant to Section 66.0301 Wis. Stats.

NOW, THEREFORE, 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 recitals hereto are hereby incorporated by reference.

B. NATURE OF THIS AGREEMENT

This Agreement is entered into pursuant to the provisions of §66.0301, Wis. Stats., and shall be construed and enforced in accordance with the provisions of that statute.

C. GENERAL INTENT

The Town will plan, design, construct, own and operate a wastewater sewerage system within the Town, extending to the City limits and connecting to the City of Appleton sewerage system, for the purpose of collecting and transporting to the City, the wastewater of users located within the 2018 Service Area. The City shall accept, transport, treat and dispose of such wastewater at its wastewater treatment facility. It is the intent of the Parties that those areas to be served by the City which are located within the Town shall not be added to the geographic boundaries of the City pursuant to the provisions of §200.15, Wis. Stats. Rather, the Town shall be considered a “contract purchaser” of sanitary sewer services from the City for purposes of this Agreement and otherwise.

D. SERVICE AREA AND CAPACITY

The service limits for the treatment of wastewater for the 2018 Service Area of the Town shall include those lands described in Exhibit A attached hereto. Any additions of area to the Existing Service Area or the 2018 Service Area by the Town must be approved by the Common Council. Any future expansion or extension of the Town’s sanitary sewer system to serve property located outside of Town or City limits must be approved in writing by the Town and City.

E. TOWN COLLECTION SYSTEM

- (1) Except as otherwise provided in this Agreement, the Town shall be responsible for the planning, design, construction, ownership, operation and maintenance of the sewerage system located outside of the City boundaries. The Town shall be responsible for all costs associated with the planning, designing and construction of the sewerage system, including, but not limited to any lift station and force main, necessary for connection to the City's sewerage system. All plans and specifications for the Town sewers shall be submitted to and approved by the City. The Town shall obtain from and compensate private landowners for necessary easements over private property, which easements shall run to the Town and the City.
- (2) The Town shall be responsible for obtaining all necessary approvals, easements and permits from all Towns and Counties outside of the City of Appleton jurisdiction.
- (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 necessary to connect to the City sewerage system within for the construction and maintenance of the wastewater sewerage 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) Wastewater collected from the Town service area shall be transmitted to the City's wastewater collection system at the established connection points, which shall be identified by the City Engineer. Any proposed substitute connection points must be approved by the City.
- (5) Upon completion of the construction of the Town's sewerage system and acceptance by the Town, the Town shall be responsible for the operation and maintenance of the Town's sewerage system. The Town's operating and maintenance responsibility shall apply only to the collection system and interceptor components operated by the Town and shall not include the responsibility for maintenance of any service laterals from the sewer main to the building served, or of any facilities located on privately owned property not located in easements. Any approved future expansion of the Town's sewerage system or extensions within the 2018 Service Area will also be undertaken by the Town and paid for by the Town.
- (6) The Town shall maintain the wastewater sewerage system in full conformance with WDNR regulations and 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. Should the Town receive an order from the DNR requiring any action relating to the wastewater sewerage system and should the Town fail, refuse or neglect to reasonably comply with the order, the City shall be authorized to take action to correct the ordered deficiency to the extent necessary to achieve compliance at the Town's expense.

F. FLOW VOLUMES AND CHARACTERISTICS

The parties agree that the wastewater generated by the Town is of normal domestic strength as defined in Chapter 20 of the City's Municipal Code. Flows with strength characteristics higher than the stated limits shall be pretreated or corrected at the source prior to entry into any interceptor sewer or collector sewer connected to the City's sewerage system. For purposes of billings to the Town, flow volumes shall be based on the master flow meter described in Section H. Measurements of wastewater flow will be based upon quarterly flow meter reading.

G. SEWERAGE SERVICE

- (1) The Town hereby agrees to 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. City agrees that any sewer use ordinance enacted or to be enacted or amended will treat users in the Town the same as users in the City, except as otherwise specifically provided herein.

- (2) The parties agree that the City shall have the right to inspect all users within the Town and if, from any inspection, it is determined by the City that any deleterious waste is improperly entering, the system, or that either the Town or a user are violating any ordinance rule or regulation or this Agreement, the user and the Town will be notified in writing and shall be required to cease and desist such discharge immediately in the case of deleterious waste and within five days if some other violation. In the event the Town and/or user fail to take corrective action (or in the alternative to satisfactorily assure the City that corrective action will be taken within a specified period of time), the City shall pursue any and all remedies available to achieve compliance.
- (3) The Town agrees that all Federal, State, City and local regulations regarding pretreatment of those industrial wastes demanding such pretreatment shall be rigidly monitored and enforced upon the applicable industrial dischargers by the Town.

H. FLOW MEASUREMENT

- (1) The actual flow of sewage from the Town shall be measured at a sewage metering station that shall be installed to accurately measure the total volume of wastewater and to transmit the flow information to the City. The metering stations shall be located so that all wastewater conveyed to the City from the Town shall be metered. The meter shall be at a location mutually acceptable to both parties. The City shall furnish, install, and maintain the flow meters and telemetry equipment. All costs for installation, operation and maintenance of the metering station and communication lines shall be the Town's responsibility.
 - b. The City shall take periodic 24-hour flow proportional samples at the metering station to determine the waste loadings from Town.
 - c. The meters shall be calibrated, and if necessary, adjusted, annually by the Town. A report of the calibration and adjustment shall be provided to the City within five (5) days of the Town's receipt of the report.

I. SEWER SERVICE CONNECTIONS

- (1) No connections shall be made to the Town collection system without prior written notice to the City.
- (2) 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 sewer service connections. All connections to the system shall meet the requirements of Chapter 20 of the Municipal Code of the City.

J. BILLING DATES AND PROCEDURES; PAYMENT TERMS

- (1) The City is providing wastewater treatment, collection and interceptor operation 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. All invoices shall be paid 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 sewer charges. The City shall have the right to withhold approval of any sewer connections while bills are delinquent.
- (2) 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 this Agreement.

K. SEWAGE TREATMENT RATES

- (1) The rates for treating and disposing of the wastewater discharges from the Town wastewater sewerage system shall be as established by the City pursuant to Sec. 20-204 of the Appleton Municipal Code. The Town shall provide any data required by the City for non-residential customers.
- (2) All existing and future industries subject to the Federal Pretreatment Program under 40 CFR 403 shall be billed in accordance with rates established by the City for Quantity/Quality dischargers.

L. TREATMENT PLANT EXPANSION AND TREATMENT PROCESS IMPROVEMENTS

- (1) It is understood by the Town that the City's wastewater treatment facility is considered a regional facility and accordingly, the potential exists for future agreements by the City for treatment of wastewater originating in other municipalities, or sanitary and utility districts created therein. Additions to the capacity of the wastewater treatment facility or interceptors, consistent with upgraded treatment processes as required by Department of Natural Resources and the Environmental Protection Agency (EPA) or caused by growth, may be necessary in the future.
- (2) Inasmuch as the City is not reserving capacity for the Town or any other entity to be served, and is not therefore intending to sell reserve capacity, any wastewater treatment facility expansion or interceptor extension not covered by this Agreement shall be financed by the City.
- (3) If improvements to the wastewater treatment facility or the addition of a specific process for treating wastewater is required due to the treatment of wastewater from

a user within the Town, the total of such expense shall be calculated and billed on the basis of the percentage of wastewater flow from the Town as a proportion of the total wastewater flow into the City's Wastewater Treatment Facility.

M. INDEMNIFICATION

In constructing the Town wastewater sewerage system, as well as performing its obligations under this Agreement, the Town agrees to indemnify, save and hold harmless the City, its successors and assigns, from any and all claims, suits, demands or causes of action, arising out of any act or omission of the Town, its contractors, agents or employees, causing injury, directly or indirectly, to any person or persons whomsoever, or property whatsoever.

N. TERM

This Agreement shall commence upon its execution hereof by all interested parties; and shall continue thereafter for so long as wastewater discharges are made into the City wastewater sewerage system, and such wastewaters are conveyed to the City's facilities. This agreement may be terminated upon the mutual agreement of the parties.

O. DEFAULT

In the event either party hereto shall default in its obligations contained herein, then in such event the non-defaulting party may give notice of such default to the defaulting party. The defaulting party shall then have a period of not to exceed thirty (30) days within which to cure such default, except, however, that if the default is in the failure to make any payment required under the City's ordinance or the terms of this Agreement, then in such event, the terms of Section P of this Agreement shall apply. If the default as specified is not cured within the applicable cure period, then in such event, the non-defaulting party shall have the right and option to terminate this Agreement, and exercise any other right or remedy provided for by law or equity.

P. PENALTIES

The Town agrees that in the event of violation of this Agreement or the City's Municipal Ordinance, and after 30-days written notice, penalties may be assessed as allowed by Chapter 20 of the City's Municipal Code for each violation, with each day of continued violation considered as a separate "offense" for which an additional penalty assessment would be due. All such penalties shall be paid at the time the next monthly billing is due and payable.

Q. NOTICE

All notices, demands, and communications provided for herein or made hereunder shall be delivered or mailed first class with postage prepaid, addressed in each case as follows,

unless some other address shall have been designated in a written notice given in like manner, and shall be deemed to have been given or made when so delivered or mailed:

City of Appleton
Attn: Director of Public Works
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799

Town of Clayton
Attn: Clerk
8348 County Road T
Larsen, WI 54947

R. BINDING EFFECT

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. ASSIGNMENT

Neither the Town nor the City may assign this Agreement or their interests herein, without the prior written consent of the other.

T. 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.

U. DISPUTES

The parties hereto agree that the resolution of any dispute concerning the interpretation of this Agreement or the rates, rules and practices of the parties shall be determined in a bench trial in the Circuit Court for Outagamie County.

V. 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.

W. 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 and other entities.

X. 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.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

DRAFT

DATED THIS ____ DAY OF _____, 2018

CITY OF APPLETON

By: _____
Timothy M. Hanna, Mayor

Attest:

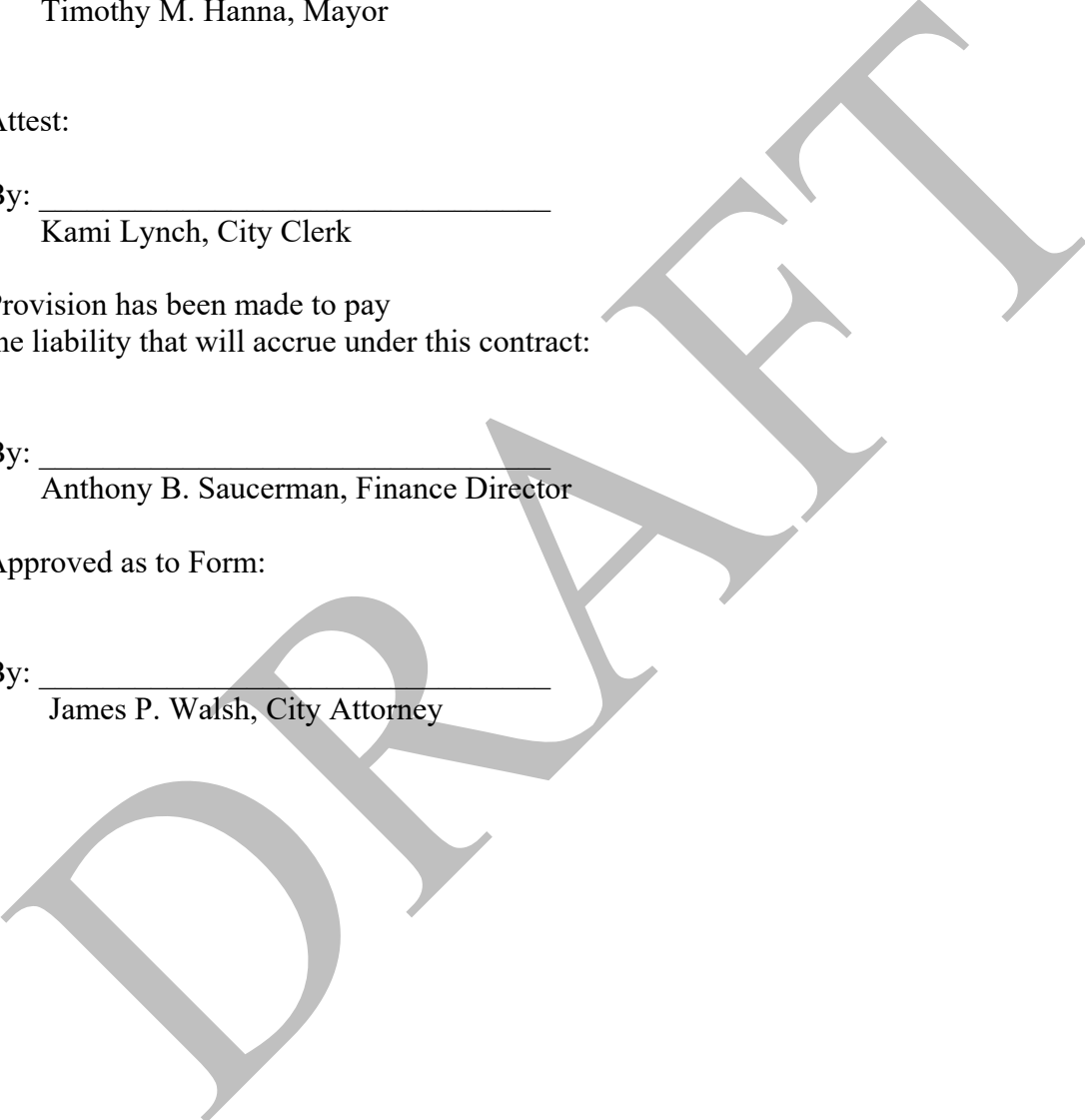
By: _____
Kami Lynch, City Clerk

Provision has been made to pay
the liability that will accrue under this contract:

By: _____
Anthony B. Saucerman, Finance Director

Approved as to Form:

By: _____
James P. Walsh, City Attorney



DATED THIS ____ DAY OF _____, 2018

TOWN OF CLAYTON

By: _____
Russell Geise, Chair

Attest: _____
Richard Johnston,
Town Administrator/Clerk

Provision has been made to pay the liability that will accrue under this contract:

By: _____
Tori Straw, Finance Director

Approved as to Form:

By: _____
H. Stanley Riffle,
Special Town Attorney