

**INTER-GOVERNMENTAL AGREEMENT
FOR HIGHWAY IMPROVEMENT PROJECTS**

Description: Street Lighting in the City of Menasha on Midway Road at Oneida Street

The City of Appleton, through its undersigned duly authorized officers or officials hereby request City of Menasha to participate in implementation of street lights on the project that locate within City of Menasha corporate limits as part of the Wisconsin DOT highway improvements (1517-75-83).

PROPOSED IMPROVEMENTS:

The City of Appleton and City of Menasha have mutual interest to provide street lighting on Midway Road approaching Oneida Street (US Highway 10). Wisconsin Department of Transportation (DOT) is leading the design and reconstruction of Oneida Street, including the Midway Road intersection and approaches. Through mutual interest, the City of Appleton applied for and received approval for a Continuous Lighting Permit from Wisconsin DOT to construct new street lighting within the project limits concurrent with project 1517-75-83. A subsequent State-Municipal Agreement (SMA) between the City of Appleton and Wisconsin DOT established 50/50 cost share for the construction of all permitted street lighting facilities within the project limits. Through this SMA, the City of Appleton will make payment to Wisconsin DOT for their 50/50 share of all street lights along Midway Road. This agreement is for payment to the City of Appleton for the street lighting facilities that are within City of Menasha corporate limits.

TERMS AND CONDITIONS:

1. The State of Wisconsin Department of Transportation will be the lead agency for this project.
2. The project cost in the agreement is an estimate. The City of Menasha will be invoiced based on actual costs incurred.

COST ESTIMATE AND PARTICIPATION

	Total Estimated Cost	City of Appleton	Effective %	City of Menasha	Effective %
1517-75-83 Street Lighting (Per SMA - 19 total lighting units) UPFRONT PAYMENT TO WISCONSIN DOT	\$95,000	\$47,500	50%	\$0	0%
City of Menasha Street Lights (4 total lighting units) REIMBURSEMENT TO CITY OF APPLETON FOR UPFRONT PAYMENT TO WISCONSIN DOT	\$20,000	- \$10,000	50%	\$10,000	50%
TOTALS		\$37,500		\$10,000	

This request is subject to the terms and conditions listed above, and is made by the undersigned under proper authority to make such request and upon acceptance by Outagamie County shall constitute agreement between City of Appleton and Outagamie County.

Signed on behalf of
City of Menasha

Signed on behalf of
City of Appleton

By: _____

Mayor Timothy Hanna

Date

Printed Name: _____

Title: _____

Kami Lynch
City Clerk

Date

Anthony Saucerman
Finance Director

Date

Jim Walsh
City Attorney

Date

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF APPLETON AND CITY OF MENASHA
TO PROVIDE FOR STREET LIGHTING RELATED SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into as of the date appearing at the end of this Agreement ("**Effective Date**") by and between the CITY OF APPLETON, with a business address of 100 North Appleton Street, Appleton, WI 54911 ("**Appleton**"), and the CITY OF MENASHA, with a business address of 140 Main Street, Menasha, WI 54952 ("**Menasha**"). The purpose of this Agreement is to define the services Appleton shall provide to Menasha relating to four (4) street lighting units located along Midway Road near the intersection of Oneida Street in Calumet and Winnebago Counties ("**street lights**"). Appleton and Menasha may be singularly referred to herein as a "**party**" or jointly referred to as the "**parties.**"

RECITALS

WHEREAS, the parties wish to enter into an agreement pursuant to the authority granted to them in Wis. Stats. § 66.0301 whereby Appleton will service street lights located in Menasha; and

WHEREAS, Appleton has the means and ability to efficiently service the street lights; and

WHEREAS, Menasha desires to have Appleton service the street lights as it will be cost effective and time-saving to Menasha; and

WHEREAS, this Agreement shall bind the parties for the length of time herein specified;

IT IS NOW, THEREFORE, in consideration of the foregoing and for the consideration described herein, agreed by the parties agree as follows:

**ARTICLE I
TERM**

1.1 **Term.** This Agreement shall become binding on the Effective Date. The Agreement shall have no expiration or termination date but may be terminated by either party pursuant to the Section 1.2 below.

1.2 **Termination.** Either party may terminate this Agreement at any time and for any reason by giving thirty (30) calendar days written notice of termination to the other party.

**ARTICLE II
SERVICES**

2.1 **Services.** Appleton shall provide Menasha the following services as they relate to this Agreement: electrical power to the street lights, repairs to the street lights, maintenance work to the street lights, and other assistance as noted in this Agreement.

2.2 **Routine Repairs and Electrical Maintenance Work.** Appleton's electrical crews will perform required repairs and electrical maintenance work on the street lights upon the reasonable written request of Menasha. Common examples of this category of work are servicing the LED fixtures; repairs to above or below-ground facilities as necessary as a result of vehicular collisions, weather, and construction damage; and repairs necessary as a result of normal equipment malfunctions or failures.

2.3 Non-Routine Electrical Work. Appleton will perform non-routine electrical work on the street lights as Appleton's staff time and availability permits upon the reasonable written request of Menasha. Examples of non-routine electrical work include, but are not limited to, special projects, i.e., adding or upgrading equipment, street lights, poles, underground facilities; and upgrades or changes to lighting control cabinets.

2.4 Technical Assistance. Appleton will review related construction plans and specifications; assist with field location, laying out, and implementation of new street lights as Appleton's staff time and availability permits.

ARTICLE III FEES AND PAYMENT

3.1 Fees. Menasha will pay Appleton for electrical power to the street lights and for the cost of repairs and maintenance work to the street lights:

- 3.1.1 Parts, materials, subcontractor, and third-party rental fees will be billed by Appleton to Menasha at Appleton's actual cost.
- 3.1.2 Electrical maintenance truck time and other equipment time will be billed by Appleton to Menasha at the current Appleton rate per hour plus mileage.
- 3.1.3 Labor cost will be billed by Appleton to Menasha at Appleton's current hourly rate plus fringe benefits.
- 3.1.4 Appleton will bill Menasha the actual cost for all other normal administrative and small tool costs associated with any work on or to the street lights.
- 3.1.5 Appleton will bill Menasha for the actual costs for the electrical power pursuant to Section 3.2.2 below.

3.2 Invoices.

- 3.2.1 All invoices for repairs and maintenance work will be generated quarterly or by incident and will include a description of the work, hours worked and party requesting the work.
- 3.2.2 All invoices for electrical power work will be generated annually and will be based on the estimated power consumption, with an annual review of electrical tariff rates (CG6) established by the utility company. The invoice will assume a street light is energized 4,400 hours per year, with 600 hours in the peak (9AM to 9PM) tariff rate and 3,800 hours in the off-peak (9PM to 9AM) tariff rate.
- 3.2.3 Payment must be received by Appleton on or before the date indicated on the invoice.

ARTICLE IV ADDITIONAL PROVISIONS

4.1 Items covered by this Agreement. This Agreement pertains solely to the four (4) street lighting units located along Midway Road near the intersection of Oneida Street in both Calumet and Winnebago Counties as shown on Exhibit A.

4.2 Other Street Lights. Menasha agrees that any future street lights constructed on the same electrical circuit as the street lights during the time this Agreement is in force will be constructed in compliance with Appleton's specifications.

4.3 No Assignment. No party to this Agreement may assign its interest in this Agreement to any other entity or individual.

4.4 Entire Agreement; Rules of Construction. The parties acknowledge and agree that this Agreement, including the recitals which are incorporated into and made a part of this Agreement, expresses the entire agreement between the Parties as to the subject matter of this Agreement, and that this Agreement replaces and supersedes any prior negotiations and agreements, written or oral. The parties further acknowledge and agree that each party has been adequately and fully represented in connection with the negotiation and execution of this Agreement, and that, accordingly, rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply.

4.5 Captions. The captions or headings in this Agreement are for convenience and in no way define, limit, or describe the scope or intent of the provisions of this Agreement.

4.6 Governing Law. The laws of the State of Wisconsin shall govern the interpretation and enforcement of this Agreement. Venue over any action brought under this Agreement will lie in the Circuit Court for Outagamie County.

4.7 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures were on the same instrument.

4.8 No Third-party Beneficiaries. This Agreement is entered into for the sole and exclusive benefit of the parties. No third party (including, without limitation, any employees of the parties) shall have, obtain, or derive from this Agreement any rights or other benefits or interests, under law, in equity, or otherwise.

4.9 No Joint Venture. Nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the parties.

4.10 Exculpatory Provision. The parties expressly acknowledge and agree that, anything herein to the contrary notwithstanding, that no officer, director, employee, agent, or official (elected or appointed) of either party shall have any personal liability or obligation arising out of this Agreement, and no party shall make any claim to the contrary.

4.11 No Waiver. No failure to exercise, and no delay in exercising, any right, power, or remedy under this Agreement on the part of any party shall operate as a waiver of such right, power, or remedy, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term, or condition contained in this Agreement shall not be construed as a waiver of any, subsequent breach of the same covenant, term, or condition.

4.12 Notice. For the purpose of this Agreement, the term "notice" shall mean notice in writing,

provided in person or sent to the other party by United States Certified Mail or other mail delivery that provides proof of mailing and delivery, unless an alternate method of service is agreed to in writing by the parties, and sent to the following:

To Appleton: City of Appleton
Department of Public Works – Traffic Section
100 North Appleton Street
Appleton, WI 54911

To Menasha: City of Menasha
140 Main Street
Menasha, WI 54952

4.13 Severability. The terms of this Agreement are severable and any determination by any court or agency having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part shall not affect the remainder of the Agreement.

4.14 INDEMNIFICATION.

4.14.1 For good and valuable consideration, Menasha agrees to indemnify, defend and hold harmless Appleton and its officers, officials, employees and agents from and against any and all liability, loss, damage, expenses, costs, including attorney's fees, arising out of the activities and/or services performed as described herein, caused in whole or in part by any negligent act or omission of Menasha, anyone directly or indirectly employed by them, or anyone whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of Appleton.

4.14.2 For good and valuable consideration, Appleton agrees to indemnify, defend and hold harmless Menasha and its officers, officials, employees and agents from and against any and all liability, loss, damage, expenses, costs, including attorney's fees, arising out of the activities and/or services performed as described herein, caused in whole or in part by any negligent act or omission of Appleton, anyone directly or indirectly employed by them, or anyone whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of Menasha.

4.15 Disputes. The parties shall endeavor to resolve any disputes as they pertain to this Agreement by mediation which, unless the parties mutually agree otherwise, shall be held in Appleton, Wisconsin. The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.16 Amendments. This Agreement may be amended at any time by mutual written agreement by the parties.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the _____ day of _____, 2017

CITY OF APPLETON

Witness: _____
Printed Name: _____

By: _____
Timothy M. Hanna, Mayor

Witness: _____
Printed Name: _____

By: _____
Kami Lynch, City Clerk

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

Approved as to form:

Anthony D. Saucerman, Finance Director

James P. Walsh, City Attorney

CITY OF MENASHA

Witness: _____
Printed Name: _____

By: _____
Printed Name: _____
Title: _____

Witness: _____
Printed Name: _____

By: _____
Printed Name: _____
Title: _____