



# City of Appleton

100 North Appleton Street  
Appleton, WI 54911-4799  
[www.appleton.org](http://www.appleton.org)

## Meeting Agenda - Final Utilities Committee

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Wednesday, November 7, 2018

5:45 PM

Council Chambers, 6th Floor

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### Special

1. Call meeting to order
2. Roll call of membership
3. Approval of minutes from previous meeting

#### 4. Public Hearings/Apearances

#### 5. Action Items

- [18-1643](#) Approval of Agreement to provide water to the Town of Clayton, contingent on the Town receiving all necessary approvals from other Agencies.

**Attachments:** [Water Service Agrm - City Clean - 11-02-2018.pdf](#)

- [18-1644](#) Approval of Agreement to provide waste water service to the Town of Clayton, contingent on the Town receiving all necessary approvals from other Agencies.

**Attachments:** [Clayton Wastewater Agrm - City Clean - 11-02-2018.pdf](#)

#### 6. Information Items

#### 7. Adjournment

*Notice is hereby given that a quorum of the Common Council may be present during this meeting, although no Council action will be taken.*

*Reasonable Accommodations for Persons with Disabilities will be made upon Request and if Feasible.*

*For questions on the agenda, contact Chris Shaw at 920-832-5945 or Paula Vandehey at 920-832-6474.*

**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]



**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]**



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