

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF APPLETON AND CALUMET COUNTY
TO PROVIDE FOR TRAFFIC SIGNAL 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 ("**City**"), and CALUMET COUNTY, with a business address of 241 E. Chestnut St., Chilton, WI 53014 ("**County**"). The purpose of this Agreement is to define the services the City shall provide to the County relating to a traffic signal located at the intersection of County Road KK and County Road N in Calumet County ("**traffic signal**"). The City and the County may be singularly referred to herein as a "**party**" or jointly referred to as the "**parties**." 206

RECITALS

WHEREAS, the Parties wish to enter into an agreement pursuant to the authority granted to them in Wis. Stats. § 66.0301 whereby the City will service a traffic signal located in Calumet County; and

WHEREAS, the City has the means and ability to efficiently service the traffic signal; and

WHEREAS, the County desires to have the City service the traffic signal as it will be cost effective and time-saving to the County; and

WHEREAS, this Agreement may bind the Parties for the length of time herein specified;

IT IS NOW, THEREFORE, in consideration of the foregoing, that 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 cancellation to the other party.

**ARTICLE II
SERVICES**

2.1 **Services.** The City shall provide the County the following services: routine repairs and electrical maintenance work, non-routine electrical work, and technical assistance.

2.2 **Routine Repairs and Electrical Maintenance Work.** City electrical crews will perform required routine repairs and electrical maintenance work on the specified traffic signal upon the request of the County. Common examples of this category of work are LED relamping and cleaning; repairs to above or below-ground facilities as necessary as a result of vehicular collisions, weather, and construction damage; repairs necessary as a result of normal equipment malfunctions or failures; and traffic signal controller programming to implement minor timing or operational changes not requiring technical assistance.

2.3 Non-Routine Electrical Work. The City will perform non-routine electrical work on the traffic signal as the City's staffing permits upon the written request of the County. Examples are special projects, i.e., adding or upgrading equipment, adding turn indications, street lights, pull boxes, vehicle detection loops; and upgrading control cabinets, controllers, poles or signal heads.

2.4 Technical Assistance. The City will review traffic signal construction plans and specifications; assist in field location, laying out, controller programming, and startup of new traffic signals; recommend and implement signal timing and operational changes; and complete various traffic engineering studies based on data gathered by the County as City staff time permits.

ARTICLE III FEES AND PAYMENT

3.1 Fees. The County will pay the City a guaranteed annual minimum of \$1,875 per signal for the routine repairs and electrical maintenance work. Labor and equipment charges will accrue toward this guaranteed minimum on the following basis:

3.1.1 Electrical maintenance truck time and other equipment time at the current City rate per hour plus mileage when charged.

3.1.2 Labor cost at the current hourly rate plus fringe benefits.

3.1.3 Other normal administrative and small tool costs.

3.1.4 Should the labor and equipment charges for routine repairs and equipment charges exceed the guaranteed minimum, the City will bill the excess as per above.

3.2 Non-Routine Electrical Work Fees. The County will pay for such work on the following basis (this work will not accrue toward the guaranteed minimum):

3.2.1 Electrical maintenance truck time and other equipment time at the current City rate per hour plus mileage when charged.

3.2.2 Labor cost at the City's hourly rate plus fringe benefits.

3.2.3 Other normal administrative and small tool costs.

3.2.4 All bills will be generated by project and will include a description of work, hours worked and party requesting work.

3.3 Technical Assistance Fees. The County will pay for this work on the following basis (this work will not accrue toward the guaranteed minimum):

3.3.1 Labor costs at the current rate plus fringe benefits.

3.3.2 All bills will be generated monthly and include a description of work, hours worked and

the party requesting work.

- 3.4 Parts, Materials, Subcontractor, and Third-party Rental Fees. In all cases, parts, materials, subcontractor, and third-party rental fees will be billed to the County at the City's actual cost plus any applicable fees.

ARTICLE IV ADDITIONAL PROVISIONS

- 4.1 Intersection Covered by this Agreement. This agreement pertains solely to the intersection of County Road KK and County Road N and any additional intersections mutually agreed to in writing by the parties.
- 4.2 Other Intersections. The County agrees that all future signalized intersections constructed during the time this agreement is in force will be constructed in compliance with the City's specifications, and to relocate certain existing traffic signal bases/standards as requested by the City to increase safety and minimize the number of knockdowns.
- 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 any 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, to the address listed above unless an alternate method of service is agreed to between the parties.
- 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. EACH PARTY RETAINS FOR ITSELF ALL LEGAL RESPONSIBILITY FOR ANY INJURIES, CLAIMS, OR LOSSES ARISING FROM OR CAUSED BY THE ACTS OR OMISSIONS OF ITS AGENTS OR EMPLOYEES ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN ASSUMPTION OR INDEMNIFICATION BY ONE PARTY OF ANY LEGAL LIABILITY OF THE OTHER PARTY. THE OBLIGATIONS OF THE PARTIES UNDER THIS PROVISION SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN WIS. STAT. § 893.80 AND WIS. STAT. § 895.46, AND SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the _____ day of _____, 201__.

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

CALUMET COUNTY

Witness: Patricia K. Winkler

Printed Name: Patricia K. Winkler

By: Todd M. Romenesko

Printed Name: Todd M. Romenesko

Title: County Administrator

Witness: _____

Printed Name: _____

By: _____

Printed Name: _____

Title: _____

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