

COOPERATIVE AGREEMENT FOR USE OF THE BUILDING AND FACILITIES
AT THE N.W. MAUTHE CONTAMINATION REMEDIATION SITE LOCATED AT
725 SOUTH OUTAGAMIE ST., APPLETON, WISCONSIN

April 7, 2008

This Cooperative Agreement ("the contract") is entered into by and between the State of Wisconsin, Department of Natural Resources ("the Department") and the City of Appleton ("the City") under the authority of section 66.0301, Wisconsin Statutes, which provides for intergovernmental cooperation. The Agreement is for the purpose of providing routine building and grounds maintenance in exchange for use of the on-site building and facilities, subject to the following terms and conditions;

1. PERIOD OF AGREEMENT: This contract shall be in effect from the date it is signed by both parties for a period of 24 months, subject to renewal upon mutual agreement of the parties.

2. CANCELLATION. The Department reserves the right to cancel this contract in whole or in part, without penalty, if the City fails to comply with the terms and conditions of this contract. Either the Department or the City may terminate this contract with 60 days written notice to the other party.

3. ENTIRE CONTRACT; AMENDMENTS. This contract, and referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to the subject matter of this contract are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this contract, signed by both parties prior to the ending date of this contract.

4. ASSIGNMENT. Neither this contract nor any right or duty in whole or in part by the City under this contract may be assigned, delegated or subcontracted without the written consent of the Department.

5. SCOPE OF WORK. The Scope of Work for this contract is included in Attachment #1 and is incorporated by reference.

6. COMPENSATION. The Department agrees to allow the City the use of the building and facilities at the N.W. Mauthe site in exchange for the City providing routine maintenance of the building and grounds as described in the above Scope of Work.

7. INDEPENDENT CONTRACTOR. The City is an Independent Contractor for all purposes and is not an employee or agent of the Department. The Department agrees that the City shall have sole control of the method, hours worked, and time and manner of any performance under this contract other than as specifically provided in the scope of work. The Department takes no responsibility for supervision or direction of the City's employees or agents, and no responsibility for their safety. The City shall be responsible for taking adequate measures to protect the health and safety of its employees and agents and any other persons having access to the site. The Department further agrees that it will exercise no control over the selection and dismissal of the City's employees or agents.

8. INDEMNIFICATION. Each party to this contract agrees that, as related to this cooperative agreement, any loss or expense (including costs and attorney fees) by reason of liability imposed by law, will be the responsibility of the party responsible for the officer, employee or agent whose activity caused the loss or expense.

9. WORKERS COMPENSATION & EMPLOYERS LIABILITY INSURANCE. The City shall maintain, during the term of this contract, worker's compensation insurance as required by Wisconsin Statute for all employees engaged in the work and public liability and property damage insurance against any claim(s) which might occur in carrying out the contract. Minimum coverage is \$1,000,000 per accident for bodily injury or disease and \$500,000 property damage.

10. GENERAL LIABILITY INSURANCE. The City shall maintain, during the term of this contract, general liability insurance at a minimum coverage of \$1,000,000 per accident for bodily injury, personal injury and property damage. The State must be named as an additional insured under the general liability policy. The City will provide a Certificate of Insurance to the state within 14 days of execution of this contract.

11. NONDISCRIMINATION. In connection with the performance of work under this contract, the City agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the City further agrees to take affirmative action to ensure equal employment opportunities. The City agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the termination of this contract.

12. APPLICABLE LAW. This contract shall be governed by the laws of the State of Wisconsin. The Contractor shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this contract.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Date 5/30/08

By: Matthew J. Frank, Secretary

Signature: 

CITY OF APPLETON

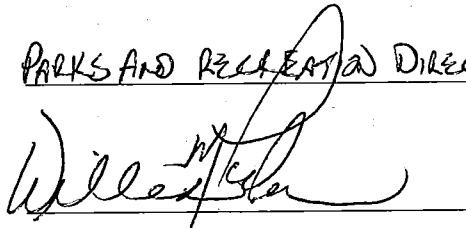
Date 5/7/08

By: WILLIAM D. LEECHER

Title:

PARKS AND RECREATION DIRECTOR

Signature:



ATTACHMENT 1
NW Mauthe City of Appleton Cooperative Agreement
City of Appleton Responsibilities:

I. DOORS AND SECURITY

- A. Appleton will provide a chain for the security gate and lock. This will be coupled with a lock from the DNR consultant.
- B. Keys provided to Appleton must be stamped "DO NOT COPY".
- C. A list of Appleton staff with keys assigned must be provided to DNR annually. One key will be stored in Appleton Parks main office.
- D. The front door should be shut and not propped open. Truck bay doors can be left open while on site.
- E. All doors (pedestrian and overhead) will be closed and locked when the building is vacated.
- F. An electronic key pad for entrance is not allowed.

II. HEALTH & SAFETY

- A. There is no smoking in the building.
- B. Appleton will be responsible to provide signs necessary for their staff (e.g. no smoking, turn lights off, etc.)
- C. Appleton is responsible to implement and fund recommendations by the Appleton Fire Dept.
- D. Appleton will provide signs or notices of general guidelines for placement on the walls (e.g. Lock all doors before leaving.)
- E. Appleton will stock, use and maintain the Morton Safety Kit located outside the control room.
- F. Appleton staff will immediately notify the operator or DNR Project Manager of emergency issues (e. g. building maintenance needs, vandalism, etc.)

III. FACILITIES OPERATION & MAINTENANCE

- A. Appleton will maintain the grounds at their expense year-round in exchange for use of the truck bay, control room and bathroom (e.g. perform additional landscaping around the building including installing borders, raised vegetation beds and new vegetation, lawn, tree and shrub care, snow removal, daily litter pick-up, graffiti removal, etc).
- B. Appleton staff will walk the grounds and building daily to fill out a general grounds and facility checklist provided by the Department (e.g. all heaters/air conditioning is working; no water on the floor; not obvious leaking of roof or pipes; no vandalism, etc.). Appleton will notify the Department's operations contractor immediately if there are any issues to be addressed.
- C. A microwave and stand will be placed in the control room by Appleton for use during breaks and lunch.
- D. Appleton Parks staff (not external cleaning crew) will be responsible for cleaning and stocking the bathroom and providing cleaning tools and products. Appleton will sweep and clean the office and truck floors and walkways weekly. Daily cleaning of floors is necessary after heavy use (e.g. mud, slush, etc.)
- E. All modifications to the building and grounds need pre-approval by the Department. In general, wall penetration is acceptable on exterior walls only but must be pre-approved. Clothes hooks and a punch clock may be installed in the control room with pre-approval. Wall penetration is not acceptable on the south wall in the control room.

- F. Vehicle and machine washing in the truck bay is not allowed. The truck bay drain empties into the treatment system. Truck washing on the lawn within the fence is acceptable.
- G. One trailer stored on site outside overnight is acceptable. No other equipment may be stored outside.
- H. Appleton may place a picnic table within the fence for use by Appleton staff.

IV. SITE ACCESS AND UTILITIES

- A. Appleton will be responsible to provide their own telephone services. The existing phone in the control room is designated for system alarms and must be available to call out 24 hrs/day, 7 days/week.
- B. Appleton is responsible to maintain an access agreement with the property owner.

Department of Natural Resources Responsibilities:

- A. DNR will hold a meeting with Appleton staff when an agreement is in place regarding the history of the site, safety concerns and on-going remediation operations.
- B. DNR will provide fact sheets on the N. W. Mauthe Superfund site for Appleton staff to provide to interested citizens.
- C. DNR will provide Appleton with a short checklist for daily use (e.g. heaters/AC functional, no water on floor, no vandalism, etc.)
- D. DNR will remove the "Disable Audible Alarm" sign.
- E. This is going to be a two year pilot with an annual walk-through by DNR staff. At the end of the two years, DNR or the City may terminate the agreement. A new written agreement should be developed after two years.
- F. Either DNR or Appleton may terminate the agreement with 60 days written notice.