

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 2010

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 six months 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entire agreement and previous communications or agreements pertaining to the subject matter of this contract are hereby superseded.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. LIABILITY IMPOSED BY LAW. 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 \_\_\_\_\_

By: Matthew J. Frank, Secretary

Signature:

\_\_\_\_\_

CITY OF APPLETON

Date \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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April 2010

Signature: \_\_\_\_\_

**City of Appleton Cooperative Agreement  
ATTACHMENT 1 – April 2010  
N. W. Mauthe Contamination Remediation Site**

**City of Appleton (the "City") Responsibilities:**

**I. DOORS AND SECURITY**

- A. The City will provide a combination lock and chain for the security gate. The combination shall be communicated with the Department.
- B. Keys provided to the City must be stamped "DO NOT COPY".
- C. A list of City staff with keys assigned must be provided to the Department annually. One key will be stored in the City of 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. The City is responsible to provide signs necessary for their staff (e.g. no smoking, turn lights off, etc.)
- C. The City is responsible to implement and fund recommendations by the Appleton Fire Department that are a result of City of Appleton occupancy and use.
- D. The City will provide signs or notices of general guidelines for placement on the walls (e.g. Lock all doors before leaving.)
- E. The City will stock, use and maintain the Morton Safety Kit located outside the control room.
- F. City staff will immediately notify the operator or Department Project Manager of emergency issues (e. g. building maintenance needs, vandalism, etc.)

**III. FACILITIES OPERATION & MAINTENANCE**

- A. The City will post a signed copy of the Cooperative Agreement and Attachment in the Truck Bay.
- B. The City 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).
- C. City 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.). The City will notify the Department's operations contractor immediately if there are any issues to be addressed.
- D. A microwave and stand is allowed in the control room for use by City staff during breaks and lunch.
- E. City staff (not external cleaning crew) are responsible for cleaning and stocking the bathroom and providing cleaning tools and products. The City 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.)

- F. 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.
- G. The truck bay drain empties into the treatment system. Vehicle and machine washing in the truck bay is not allowed. Truck washing on the lawn within the fence is acceptable. The City will place and maintain a silt screen over the truck bay drain to prevent dirt, leaves, etc. from entering the drain that may fall from vehicles (e.g. snow and ice melt, mud off wheels, etc).
- H. One trailer stored on site outside overnight is acceptable. No other equipment may be stored outside.
- I. The City may place a picnic table within the fence for use by City staff.

#### IV. SITE ACCESS AND UTILITIES

- A. The City is 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. The City is responsible to maintain an access agreement with the property owner. The current access agreement expires December 31, 2014.

#### **Department of Natural Resources (the "Department") Responsibilities:**

- A. The Department will hold a meeting with new or existing City staff upon request regarding the history of the site, safety concerns and on-going remediation operations.
- B. The Department will provide updated fact sheets on the N. W. Mauthe Superfund site for City staff, as appropriate (e.g. after a Five-Year-Review with EPA). These fact sheets may be provided to interested citizens.
- C. The Department will provide City staff with a short checklist for daily use (e.g. heaters/AC functional, no water on floor, no vandalism, etc.)
- D. The Department will inform the City when there is a change of operations contractor. The operations contract is typically put out for bid every three to four years.
- E. The Department will inform the City in advance of any additional investigative or remedial actions on the property that may temporarily affect their operations.
- F. The Department will perform a biennial walk-through.
- G. Either the Department or the City may terminate the agreement with six months written notice.