

**City of Appleton | City of Kaukauna
Memorandum of Agreement
Weights and Measures Services**

I. THE PARTIES

- 1.01 The City of Appleton, is a Wisconsin municipal corporation, doing business at 100 North Appleton Street, Appleton, Wisconsin (“Appleton”).
- 1.02 The City of Kaukauna, is a Wisconsin municipal corporation, doing business at 144 West Second Street, Kaukauna, Wisconsin (“Municipality”).

II. THE RECITALS

WHEREAS,

- 2.01 Appleton employs staff that are trained and qualified to provide the services and perform the duties of sealers of weights and measures in accordance with §§ 98.04(1) and 98.05, Wis. Stats.
- 2.02 The Municipality does not have its own department of weights and measures and therefore is in need of such services in order to comply with § 98.04(1), Wis. Stats.
- 2.03 In the interest of intermunicipal cooperation, Appleton is interested in offering weights and measures services to various municipalities provided it is economically feasible to do so.
- 2.04 Appleton and the Municipality wish to enter into a mutually beneficial agreement, in accordance with § 66.0301, wherein Appleton provides weights and measures services to the Municipality.

III. THE AGREEMENT

NOW, THEREFORE,

- 3.01 The recitals are hereby made a part of the Agreement.
- 3.02 Appleton agrees to furnish the Municipality with the services and perform duties of sealers of weights and measures pursuant to § 98.04, Wis. Stats. for the duration of this Agreement.
- 3.03.1 The Municipality agrees to compensate Appleton as follows:
- 3.03.2 The Municipality shall pay Appleton a fee of **\$12,075.00** and, in exchange, shall be provided up to **Twenty-one (21) days** of service. A day shall consist of 8 hours inclusive of travel to and from Appleton, inspections, paperwork, and reasonable personal breaks. Payment under this provision shall be non-refundable and non-proratable in the event that fewer days of service are actually required by the Municipality. The Municipality shall be billed 1/12 of the fee mentioned above per month. Invoices will be issued on the first day of the month. Payment of the invoices shall be due within thirty (30) days and shall accumulate interest at

1.5% per month for any unpaid balances. In the event the Municipality fails to pay the amount previously billed, in its entirety, within sixty (60) days of delinquency, Appleton may discontinue providing services under this Agreement until full payment of all amounts due is received. In addition, Appleton may require pre-payment of any remaining months, on a monthly basis, remaining under the contract.

- 3.03.3 In the event that the Municipality requires service in excess of the amount agreed to herein, the Municipality shall compensate Appleton at the rate of **\$575.00** per each additional day of service provided. The Municipality receiving the service under this paragraph, shall be billed in the same month that the service is provided. Payment of said invoice shall be due within thirty (30) days of issuance of the invoice. Terms as listed in Section 3.03.2 of this Agreement, relating to failure to pay invoices, shall apply to additional services provided pursuant to this paragraph.
- 3.04 [Reserved.]
- 3.05 Appleton is relying on several municipalities utilizing its weights and measures services in order to support the economic feasibility of this program and therefore reserves the right to cancel this Agreement if a sufficient number of municipalities fail to enter similar agreements with Appleton or withdraw from the program at some point in the future.
- 3.06 [Reserved.]
- 3.07 The Municipality agrees that the City of Appleton Sealer and Deputy Sealers of Weights and Measures shall have the full authority of, serve and act as agent of the Municipality to secure compliance with Ch. 98, Wis. Stats. and the Municipality's weights and measures ordinances.
- 3.08 The Municipality shall provide security and approval seals, letterhead and such other materials that shall bear the Municipality's name or location to be used in the course of the weights and measures services. Appleton shall provide equipment used in the course of testing.
- 3.09 The Municipality shall not withhold payments to Appleton for any reason provided City is in compliance with all terms of this Agreement.
- 3.10 This Agreement shall be valid for one (1) year commencing on date of execution.
- 3.11 Parties have the option to renew the agreement for additional one (1)-year periods upon mutual written agreement of the parties.
- 3.12 City of Appleton officers, officials, employees and agents shall have normally or regularly accepted insurance coverage provided by the City of Appleton and its insurance carrier(s).
- 3.13 This Agreement terminates and replaces any and all previous agreements between the Parties for furnishing the services and duties of sealers of weights and measures pursuant to § 98.04, Wis. Stats.
- 3.14 Nothing contained within this contract is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin

law, including those contained within Wis. Stats. §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

- 3.15 This contract may be executed in several counterparts, either by original signature or verified electronic signature, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same agreement. The headings in this contract are inserted for convenience of reference only and shall not constitute a part hereof.
- 3.16 Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Contract has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf that respective Party.

IV. SEVERABILITY CLAUSE

- 4.01 In the event that any part of this Agreement is found to be illegal, it shall be stricken from the Agreement and the Agreement interpreted as is that clause did not exist.

V. INDEMNIFICATION CLAUSE

- 5.01 **The Municipality agrees to indemnify, defend and hold harmless Appleton and its officers, officials, employees and agents from and against any and all liability, loss, damage, expense or costs (including attorney fees) arising out of this agreement, caused in whole or in part by the Municipality, its officers, officials, employees, agents or anyone for whose acts they may be liable, except where caused by the sole negligence or willful misconduct of Appleton.**

SIGNATURES BEGIN ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the day and year of the last signature below.

City of Kaukauna

By: _____
Anthony J. Penterman, Mayor

By: _____
Sally Kenney, City Clerk

Approved as to form:

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

Tim Greenwood, City Attorney

William Van Rossum
Finance Director/Treasurer

City of Appleton

By: _____
Jacob A. Woodford, Mayor

By: _____
Kami Lynch, City Clerk

Approved as to form:

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

Christopher R. Behrens, City Attorney
City Law: A22-0552 | 2024 Revisions dg

Jeri A. Ohman, Finance Director