

MEMORANDUM OF UNDERSTANDING

CITY OF APPLETON AND FOX CITIES CHAMBER OF COMMERCE AMMENITY PENINSULA BEAUTIFICATION

I. THE PARTIES

- 1.01 The City of Appleton, a Wisconsin municipal corporation, doing business at 100 North Appleton Street, Appleton, Wisconsin, 54911 (“City”).
- 1.02 Fox Cities Chamber of Commerce, a Wisconsin nonprofit corporation, doing business at 125 North Superior Street, Appleton, Wisconsin, 54911 (“Chamber”).

II. THE RECITALS

WHEREAS,

- 2.01 The City operates and maintains a parking ramp (“Green Ramp”) located at 315 West Washington Street in the City of Appleton, Wisconsin.
- 2.02 The south side of the Chamber’s property located at 125 North Superior Street in the City of Appleton, Wisconsin, borders the north side of the Green Ramp on North Superior Street.
- 2.03 On the north side of the Green Ramp, between the parking structure and the sidewalk, the City owns an “Amenity Peninsula.” The approximately 100 ft² Amenity Peninsula is immediately adjacent to the Green Ramp and curbed on the three sides to the east. See Exhibit A for photo depiction of the Amenity Peninsula.
- 2.04 At their own expense and risk, the Chamber wishes to beautify the Amenity Peninsula consistent with the landscaping on their property to the north of the Amenity Peninsula.
- 2.05 The City wishes to allow the Chamber to beautify the Amenity Peninsula at the Chamber’s own expense while maintaining all other property rights to the Amenity Peninsula.

III. THE AGREEMENT

NOW, THEREFORE, it is agreed between the parties as follows:

- 3.01 The City grants the Chamber permission to beautify the Amenity Peninsula, including professional landscaping services. Any beautification shall be done in a safe manner with appropriate materials and practices.
- 3.02 The Chamber is responsible for all costs of beautification and assumes all risk for the beautification of the Amenity Peninsula.
- 3.03 The City shall not be responsible for any damage caused to the beautification of the Amenity Peninsula, including any damage caused by snow removal and storage, any other maintenance of the public rights of way, or damage caused by any other party.

- 3.04 The Chamber shall provide the required insurance as set forth in Exhibit B, IR 2.1 Small Exposure Jobs, prior to commencing any work. The proof of insurance shall name the City, its officers, and employees as additional insured and shall be updated periodically as required.
- 3.05 The City reserves the right to terminate this agreement at any time for any reason with 30 days' notice to the Chamber.
- 3.06 The City reserves the right to terminate this agreement when necessary for the City to perform its services with reasonable notice to the Chamber. The period of time for reasonable notice will depend on the circumstances surrounding the necessity; the City will make all reasonable efforts to provide the Chamber with the maximum amount of notice when terminating for necessity.
- 3.07 This Agreement shall terminate on December 31, 2023 unless otherwise agreed to in writing by the parties.

IV. SEVERABILITY CLAUSE

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

V. INDEMNIFICATION

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

VI. AMENDMENTS

- 6.01 This agreement may only be amended in writing and any amendment shall only be effective after it is signed by both parties to the original agreement.

IN WITNESS WHEREOF, the parties have caused the foregoing instrument to be executed in three (3) original counterparts on this _____ day of June 2022.

EXHIBIT A



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EXHIBIT B

IR 2.1 SMALL EXPOSURE JOBS

City of Appleton

Insurance Requirements

Project: Fox Cities Chamber of Commerce Beautification of Green Ramp Amenity Peninsula

The Chamber ("Contractor") shall not commence work on contract until proof of insurance required has been provided to the applicable department before the contract or purchase order is considered for approval by the City of Appleton.

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

1. INSURANCE REQUIREMENTS FOR CONTRACTOR

Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

- Each Occurrence limit\$1,000,000
- Personal and Advertising Injury limit\$1,000,000
- General aggregate limit (other than products/completed operations)
per project\$2,000,000
- products/completed operations aggregate.....\$2,000,000
- Fire Damage limit — any one fire.....\$50,000
- Medical Expense limit — any one person\$5,000
- Watercraft Liability, (protection and indemnity coverage) IF the project
work includes the use of, or operation of any watercraft\$1,000,000
NOTE: per occurrence for bodily injury and property damage
- Products/Completed Operations coverage must be carried for two years after acceptance
of completed work.

Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, provided on a Symbol #1 – "Any Auto" basis.

Workers' Compensation as required by the State of Wisconsin, and employers liability insurance with sufficient limits to meet underlying umbrella liability insurance requirements. If applicable for the work coverage must include Maritime (Jones Act) or Longshoremen's and Harbor Workers Act coverage.

Builder's Risk/Installation Floater/Contractor's Equipment or Property (If applicable): The Contractor is responsible for loss and coverage for these exposures. City of Appleton will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the contractor or its subcontractors or are to be built, installed, or erected by the contractor or its subcontractors.

2. APPLICABLE TO CONTRACTORS/SUBCONTRACTORS

- **Builder's Risk/Installation Floater/Contractor's Equipment or Property:** The Contractor is responsible for loss and coverage for these exposures. The City of Appleton will not assume responsibility for loss, including loss of use, or damage to property, materials, tools, equipment and items of a similar nature which are being used in the work being performed by the Contractor or its subcontractors or are to be built, installed or erected by the Contractor or subcontractors.
- **Primary and Non-Contributory requirement:** All insurance must be primary and non-contributory to any insurance or self-insurance carried by City of Appleton.
- **Acceptability of Insurers:** Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the State of Wisconsin.
- **Additional Insured Requirements:** The following must be named as **additional insureds** on all liability policies for liability arising out of project work: **City of Appleton, and its officers, council members, agents, employees and authorized volunteers.** On the **Commercial General Liability Policy**, the **additional insured coverage must be ISO form CG 20 10 07 04 and also include Products – Completed Operations equivalent to ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Workers Compensation policies.**
- Certificates of Insurance acceptable to the City of Appleton shall be submitted prior to commencement of the work to the applicable department. **In addition form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent.** These certificates shall contain a provision

that coverage afforded under the policies will not be canceled or non-renewed until at least 30 days' prior written notice has been given to the City of Appleton.

3. INSURANCE REQUIREMENTS FOR SUBCONTRACTOR

All subcontractors shall be required to obtain commercial general liability (if applicable watercraft liability), automobile liability, workers' compensation and employers liability, (if applicable aircraft liability) insurance. This insurance shall be as broad and with the same limits as those required per Contractor requirements, excluding umbrella liability, contained in Section 1 above.

The following additional coverages are required where the corresponding box is checked. In addition, Contractor shall be responsible for consulting with its insurance carrier to determine whether any of the other following coverages should be carried based upon the specific project:

- Bond Requirements**
- **Bid Bond:** The Contractor's Bid Bond equal to 5% of the contract shall accompany the bid for the project.
 - **Payment and Performance Bond:** If awarded the contract, the Contractor will provide to the Owner a Payment and Performance Bond in the amount of the contract price, covering faithful performance of the contract and payment of obligations arising thereunder, as stipulated in bidding requirements, or specifically required in the contract documents on the date of the contract's execution.
 - **Acceptability of Bonding Company:** The Bid, Payment and Performance Bonds shall be placed with a bonding company with an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI.
 - **License and Permit Bond:** The Contractor will provide to the City a License and Permit Bond in the amount stipulated in Appleton's Municipal Code.
- Property Insurance Coverage** to be provided by the Contractor
- The property insurance must include engineering or architect fees and must equal the bid amount, plus any change orders.
 - Coverage includes property on the work site/s, property in transit and property stored off the work site/s.
 - Coverage will be on a **Replacement Cost basis**.
 - The City of Appleton, consultants, architects, architect consultants, engineers, engineer consultants, contractors and subcontractors will be added as named insureds to the policy.
 - Coverage must include collapse and be written on a "special perils" or "all risk" perils basis.

- Coverage must include water damage (including, but not limited to, flood, surface water, hydrostatic pressure) and earth movement.
- Coverage must include testing and start up.
- Coverage must include boiler and machinery if the exposure exists.
- Coverage must include engineers' and architects' fees.
- Coverage must include building ordinance or law coverage with a limit of 5% of the contract amount.
- The policy must cover/allow partial utilization by owner.
- Coverage must include a "waiver of subrogation" against any named insureds or additional insureds.
- Contractor is responsible for all deductibles and coinsurance penalties.

Pollution Liability – Contractors; Motor Vehicle/Automobile; Professional; Environmental Consultants/Engineers

- Definition of "Covered Operations" in the policy must include the type of work being done for the City of Appleton
- Limits of Liability:
 - \$500,000 each loss for bodily injury, property damage, environmental damage
 - \$1,000,000 Aggregate for bodily injury, property damage, environmental damage (environmental damage includes pollution and clean-up costs)
- Deductible must be paid by the Contractor, consultants/engineers
- The City of Appleton, its Council members and employees must be Additional Insureds
- The policy must also cover subcontractors
- Specify if "Wrongful Delivery" is covered
- Must cover motor vehicle loading and unloading and show on Certificate of Insurance
- Certificate of Insurance must state:
 - If the policy is an Occurrence or a Claims Made Form
 - If the defense costs reduce the limit of liability
 - If the policy covers motor vehicle loading and unloading claims
 - If there is an underground storage tank or a super fund exclusion
 - If there is a Contractual Liability Exclusion
 - If Bodily Injury includes mental anguish and emotional distress

- Aircraft Liability** insurance with a limit of \$3,000,000 per occurrence for bodily injury and property damage including passenger liability and slung cargo **IF** the project includes the use or operation of any aircraft, drone or helicopter.

- Unmanned Aircraft Liability** insurance with a limit of \$1,000,000 per occurrence for bodily injury, property damage liability, and invasion of privacy liability if the project includes the use of or operation of any unmanned aircraft.

- Watercraft liability protection and indemnity coverage** to be provided by the Contractor

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